



# CONSULTATION RESPONSE

## Prisons Strategy White Paper

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## About the Zahid Mubarek Trust

Following the racist murder of 19-year-old Zahid Mubarek at HMYOI Feltham in 2000 the Zahid Mubarek Trust (ZMT) was established as a national charity to advocate for racial justice in the prison system. We deliver evidence-based policy advice, research, and scrutiny with the aim of reducing racial disparities, improving the treatment of, and outcomes for, Black, Asian and minority ethnic people in prison.

## Introduction

The Ministry of Justice released the Prison Strategy White Paper on 7 December 2021<sup>1</sup>, for public consultation. It sets out the Government's 10-year vision for a reformed prison system, with stated aims of cutting crime, reducing re-offending, and keeping the public safe.

### **The scale of ethnic minority overrepresentation**

People from ethnic minority backgrounds make up 14% of the general population, but over a quarter (28% - 21,394 prisoners<sup>2</sup>) of the prison population. Roma and Irish Traveller communities represent just 0.1% of the population but account for around 5% of the male and 7% of the female prison population. Muslim individuals represent 5% of the population, but over 15% the prison population.

### **A lack of action on racial disparities**

We welcome the government's commitment to improve the quality of our prisons, recognising the inadequate conditions in many prisons, and the provision of additional support for rehabilitation before people are release back into society. But we are concerned and disappointed that the strategy provides little to no recognition of overrepresentation and discrimination, neither does it present any new or focussed ways to reduce existing and increasing racial disparity in the prison system. This is a missed opportunity to take push ahead with pre-existing recommendations for improvement expressed in multiple government reviews into the overrepresentation of Black, Asian, and ethnic minority people in prison.

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<sup>1</sup> Prison Strategy White Paper, Ministry of Justice, 2021, <https://www.gov.uk/government/publications/prisons-strategy-white-paper>

<sup>2</sup> HM Prison and Probation Service Offender Equalities Annual Report 2020 to 2021, <https://www.gov.uk/government/statistics/hm-prison-and-probation-service-offender-equalities-annual-report-2020-to-2021>

We welcome the references to fair, safe and decent treatment of prisoners and respectful working conditions for staff as part of the prison service's overarching values. However, these values can only be fully realised through a strong and clear commitment to the equitable treatment of, and outcomes for, Black, Asian and minority ethnic people in our prisons.

## **Recommendations**

Our response outlines areas of racial disparity experienced by staff and prisoners from ethnic minority communities. It sets out arguments for how the prioritisation of racial disparity can support the delivery of the Ministry of Justice's strategic priorities over the next ten years. We recommend the Ministry of Justice's Prison Strategy:

1. Tackle the existing and increasing racial disparity as a strategic priority and set out clear actions over the next 10 years. Without this focus we are confident racial disparity will continue to increase, directly and indirectly, hinder the success of this Government's vision for an effective, safe, and secure prison system.
2. Create a process to engage the collective experiences of ethnic minority people with lived experience of the prison system to support culture change. Enabling staff to work alongside Black, Asian and minority ethnic prisoners to co-create a clear and concise commitment to reducing racial disparity.
3. Measure the treatment of, and outcomes for, Black, Asian and ethnic minority people in prison. This will hold the Ministry of Justice and individual prisons to account by highlighting where the prison system is succeeding or failing to tackle racial disparities.

## Chapter One – A Roadmap to Building the Future Prison Estate

### Overcrowding

Prisons need to be safe, secure, and humane to aid rehabilitation. The Government has committed £3.5 billion over the next three years to create 18,000 additional prison places, with a further £250 million to fund up to 2,000 new temporary places. The proposed 20,000 extra are being built on the assumption that the prison population will rise from its current 79, 412 to 97,500 by July 2025<sup>3</sup>. The current operational capacity is 81,292. We assert that building new prisons should only be considered alongside a clear commitment to de-commission inadequate prisons. Furthermore, that when prisons are built or refurbish it is done solely for the purposes of tackling overcrowding and/or improving conditions in custody.

We welcome some acknowledgement of the capacity pressures which hamper rehabilitation outcomes. Reducing overcrowding in prisons, which currently stand at the highest level in Western Europe<sup>4</sup>, should ease the pressure to offer prisoners safer and more meaningful regimes. Although it varies between the establishments, overcrowding has been a long-standing challenge of the prison service. In 2017, 48% of male prisoners in local prisons and 14.7% of male prisoners in category C prisons lived in crowded conditions<sup>5</sup>. Overcrowding causes multiple challenges for prisons, especially in maintaining safe and secure environments; two of the major concerns identified by the Prison Strategy White Paper.

The long-term strategy must consider other factors for reducing overcrowding alongside racial disparity in the system, for example, overuse of remanding people in custody awaiting trial or sentencing. Around one in six people in prison (16%) are there on remand, and the majority are awaiting trial (65%), whilst the rest await sentencing<sup>6</sup>. A significant number are held beyond the time limit of six

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<sup>3</sup> Prison Population Projections 2021 to 2026, England, and Wales, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1035682/Prison\\_Population\\_Projections\\_2021\\_to\\_2026.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1035682/Prison_Population_Projections_2021_to_2026.pdf)

<sup>4</sup> Prison Populations, Council of Europe, 2021, [https://wp.unil.ch/space/files/2021/04/210330\\_FinalReport\\_SPACE\\_I\\_2020.pdf](https://wp.unil.ch/space/files/2021/04/210330_FinalReport_SPACE_I_2020.pdf)

<sup>5</sup> Life in Prison, Living Conditions, HM Inspectorate of Prisons, 2017, <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2017/10/Findings-paper-Living-conditions-FINAL-.pdf>

<sup>6</sup> Bromley Briefing, Winter Fact file, Prison Reform Trust, 2022, <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley%20Briefings/Winter%202022%20Factfile.pdf>

months set down in law<sup>7</sup>. One in 10 people (10%) remanded into custody by magistrates' courts were subsequently acquitted. A further 11% received a non-custodial sentence. In the Crown Court, the figures were 11% and 14%, respectively<sup>8</sup>. The use of remand for ethnic minority people is alarming: Black men are 26% more likely than white men to be remanded in custody. Worryingly, in the youth estate 60% of children in youth custody on remand were from ethnic minority groups<sup>9</sup> and the overall number of ethnic minority children in youth custody continues to rise; this is the sort of stark racial disparity that the Ministry of Justice needs to tackle in its 10-year strategy.

Other significant consequences of the overcrowding need to be given due attention for overall safety, security, and effectiveness of the system:

- a) Due to overcrowding, prisoners are often required to share very small cells which do not meet the minimum cell size requirements set out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Such conditions are not simply a problem for old Victorian prisons, they are found in more modern establishments. In 2017, HM Inspectorate of Prisons' assessment against CPT minimum standards found that most cells did not meet the required minimum standard for multi-occupancy cells as they did not have the fully partitioned sanitary facilities required by CPT. The Prison Strategy needs to make a clear commitment that cells designed to hold one prisoner will not be used to hold two people.
- b) Enforced cell sharing can cause severe safety and security issues in prisons. Whilst some prisoners favour cell sharing for its reported benefits (i.e., a protective factor against suicide<sup>10</sup>), others strongly dislike it due to the resulting stress, anxiety, violence, and lack of privacy. The Zahid Mubarek Public Inquiry<sup>11</sup> felt that the most obvious way to reduce racist in-cell attacks was to eliminate enforced cell sharing. The cell-sharing risk assessment (CSRA), introduced by the Prison Service in 2002 in response

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<sup>7</sup> Fair Trials, 2021, <https://www.fairtrials.org/articles/news/one-ten-remand-population-england-and-wales-have-been-prison-more-year/>

<sup>8</sup> Bromley Briefing, Winter Fact file, Prison Reform Trust, 2022, <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley%20Briefings/Winter%202022%20Factfile.pdf>

<sup>9</sup> Youth justice statistics: 2020 to 2021, Youth Justice Board for England and Wales, <https://www.gov.uk/government/statistics/youth-justice-statistics-2020-to-2021>

<sup>10</sup> Shaw, J., Appleby, L. and Baker, D. (2003). Safer prisons: A national study of prison suicides 1999–2000 by the National Confidential Inquiry into Suicides and Homicides by People with Mental Illness. Manchester: National Confidential Inquiry into Suicides and Homicides by People with Mental Illness.

<sup>11</sup> The Zahid Mubarek Inquiry, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/231789/1082.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/231789/1082.pdf)

to the murder of Zahid Mubarek to assess the risk a prisoner poses to another prisoner in a locked cell, can be invaluable tool to reduce in-cell violence if applied with rigour<sup>12</sup>. For the prison service to provide a modern, humane, safe, and secure environment for its staff and people in its care, it should aim to eliminate enforced cell sharing practice, especially between convicted and unconvicted prisoners.

- c) In 2020/21, the prison population decreased due to Covid-19 restrictions. Despite the overall fall in the number of people sentenced and remanded in custody, the number of ethnic minority prisoners increased by 1% to a staggering 28% of the prison population<sup>13</sup>. The number of ethnic minority people in the prison system has increased over the last few decades. Prisons might not be the main driver of racial disparity in the criminal justice system, but they can certainly play a significant role in reducing the overall disparity by ensuring fair and equitable access to the services and support available in custody.

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<sup>12</sup>Thematic report by HM Inspectorate of Prisons Report of a review of the implementation of the Zahid Mubarek Inquiry recommendations, 2014, <https://www.justiceinspectors.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/07/Mubarek-final-published.pdf>

<sup>13</sup> Prison Population Projections 2021 to 2026, England, and Wales, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1035682/Prison\\_Population\\_Projections\\_2021\\_to\\_2026.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1035682/Prison_Population_Projections_2021_to_2026.pdf)

## Chapter Two – Tackling Violence and Reducing Harm

### Safety and Reducing Violence

The focus on creating a safe, secure, and stable environment for prison staff and prisoners is welcome. It is vital for enabling an environment in which rehabilitation can occur. Inspectors found that safety was inadequate in more than half of men's prisons (51%) they visited during 2019–20. Almost half of the people in men's prisons (48%) and women's prisons (49%) said that they had felt unsafe at some point whilst in prison.<sup>14</sup>

We welcome the strategy's focussed effort to build on the Security Investment Programme; reducing the flow of drugs and other contraband; setting up an innovative task force to consider the best interventions for violent prisoners or self-harm; and Enhanced Support Service for prisons where violence is most prevalent. However, prior to any new investment, a full evaluation of existing schemes needs to be carried out with new initiatives building on that learning. This evaluation should be published to allow public scrutiny. We also need detail on how new approaches will learn from the past, for example, how will the new Enhanced Support Service in local prisons will differ from the current Challenge, Support, and Intervention Plans (CSIPs) rolled out across all prisons in 2019; how the innovative task force will be built on the learning from current violence reduction work. In its 2019/20 Annual Report, HM Inspectorate of Prisons raised concerns that the quality of investigation and intervention to manage the most prolific perpetrators of violence varied greatly, support for the victims of violence and bullying remained weak, and prisons often failed to collate and analyse data well enough to inform effective violence reduction strategies<sup>15</sup>. We must learn from the past to develop an evidence-based approach to tackle violence and reduce harm.

As acknowledged in the White Paper, the causes of prison violence and self-harm are complex, stemming from both the prison environment and individual factors that prisoners bring with them into custody. We welcome the focus on preventive approaches that intervene before incidents occur, including building positive staff-prisoner relationships. However, the White Paper remains silent on how the

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<sup>14</sup> Life in Prison, Living Conditions, HM Inspectorate of Prisons, 2017, <https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2017/10/Findings-paper-Living-conditions-FINAL-.pdf>

<sup>15</sup> 2019-2020 Annual Report, HM Inspectorate of Prison, [https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2020/10/HMI-Prisons\\_Annual-Report-and-Accounts-2019-20-WEB.pdf](https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2020/10/HMI-Prisons_Annual-Report-and-Accounts-2019-20-WEB.pdf)

Government intends to improve the staff-prisoner relationships between those from ethnic and non-ethnic minority backgrounds, despite compelling academic evidence highlighting the importance of addressing cultural distance between ethnic minority prisoners and non-ethnic minority prison officers<sup>16</sup>. Progress could be made if the strategy prioritised cultural competency skills in staff development. Our recommendations for specialist staff training is discussed in more detail under our response to Chapter Five: Our People.

The commitment to improved understanding of issues that drive violence in prisons is welcomed, including the engagement with third sector organisations. The White Paper should reflect the existing evidence surrounding interpersonal violence and use of force incidents in prisons before creating policy and operational responses. We welcome the Government's willingness to develop its evidence base by using the findings from studies and pilots to achieve a safe and decent environment for staff and prisoners. Academic studies<sup>17</sup> illustrate the critical role of just and fair processes and procedures in gaining trust and compliance from ethnic minority prisoners.

Historically, ethnic minority prisoners are overrepresented in the use of a range of sanctions, for example:

- Black prisoners are 90% more likely to have force used on them by staff than White prisoners<sup>18</sup>
- HM Inspectorate of Prisons reports highlight that ethnic minority people are more likely to report having been restrained or placed in segregation<sup>19</sup>
- The recent Bromley Briefing report shows that around two in five deployments of PAVA spray in prisons have been against black men.

We urge the Government to commit to greater transparency and accountability on the data related to use of force incidents in prisons, which has not been publicly available since 2011.

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<sup>16</sup> Liebling, A., Arnold, H. and Straub, C. (2011) *An Exploration of Staff-Prisoner Relationships at HMP Whitemoor: Twelve Years On*. London: National Offender Management Service

<sup>17</sup> <sup>14</sup> Liebling, A. (2004). *Prisons and their Moral Performance: A Study of Values, Quality and Prison Life*. Oxford: Oxford University Press. Sparks, R., Bottoms, A.E. and Hay, W. (1996). *Prisons and the Problem of Order*. Oxford: Clarendon Press

<sup>18</sup> National Offender Management Service – Ethnic Monitoring SMART reports April 2008 – June 2009

<sup>19</sup> 2019-2020 Annual Report, HM Inspectorate of Prisons, <https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2020/10/HMI-Prisons-Annual-Report-and-Accounts-2019-20-WEB.pdf>



Whilst good order and discipline is viewed as central to creating an environment that supports rehabilitation, the prison strategy does not pay enough attention to legitimacy and procedural justice in prisons. A functional and orderly prison is the product of its legitimacy in the eyes of prisoners, which, in turn, depends upon procedural fairness<sup>20</sup>. We welcome some reference to the fair application of rules and dealing with infractions in a procedurally fair manner. However, the reference to this critical evidence is not strong enough. Legitimacy and procedural fairness are imperative for ethnic minority prisoners who experience consistent and disproportionately negative outcomes. As a result, ethnic minority prisoners display a lack of trust towards authority that hinders their rehabilitation. To address these existing challenges in an honest and meaningful way the White Paper must explicitly commit to reducing racial disparity.

## **Mental Health**

We support the strategic aim to better support people with mental health issues through effective diversion and community-based interventions. Mental health provision requires investment and improvement, and some of the proposed measures in the White Paper present a step in the right direction. However, greater clarity needs to be provided on the long-term funding for both diversion and prison based mental health provision, to adequately address the existing shortcomings in provision.

Last year we published 'A Record of Our Own' report<sup>21</sup>, which showed the increased mental health issues reported amongst ethnic minority groups during the Covid-19 restrictions in prisons. Figures compiled by Nacro as part of the Offender Health Research Network (OHRN) show that black communities are over 40% more likely than average to be referred to mental health services through the criminal justice system<sup>22</sup>. The white paper must commit to ensuring commissioned mental health services set out how they will meet the distinct needs of Black, Asian, or Minority Ethnic communities, and monitor the equity of access and outcomes for the people that access their services.

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<sup>20</sup> Sparks R, Bottoms AE, and Hay W (1996) Prisons and the Problem of Order. Oxford: Clarendon Press

<sup>21</sup> A Record of Our Own, Zahid Mubarek Trust, 2021, <https://thezmt.org/2021/03/31/a-record-of-our-own-lockdown-experiences-of-ethnic-minority-prisoners/>

<sup>22</sup> Black communities, mental health, and the criminal justice system, Nacro, 2007, <http://www.ohrn.nhs.uk/resource/policy/Nacroblackcommunities.pdf>

## Adjudications

The White Paper makes several references to dealing with violent behaviour appropriately through adjudications. It acknowledges that sanctions and adjudications work best when they are swift, transparent, fair, and used alongside rewards for good behaviour. We welcome the commitment to developing robust KPIs to track prison improvement on adjudications. However, the strategy fails to acknowledge that Ethnic minority prisoners, who represent 28% of the prison population, hold overwhelmingly negative perceptions about the adjudication process. Moreover, many feel unfairly charged with adjudications which might prevent them from accessing the benefits of the proposed rehabilitative sanctions. The Lammy Review found clear discrimination in the adjudication process, stating that:

“Analysis commissioned for this review indicates that based on 2014/15 data, adjudications were disproportionately brought (charges made) against adult male BAME prisoners from a Black or a Mixed ethnic background. Adjudications are brought by individual officers. But the analysis showed that when the case was reviewed by a panel, adjudications against all adult male BAME prisoners were less likely to be upheld. The lesson is that oversight provides an important corrective.”<sup>23</sup>

As part of its planned improvements to the functioning of the adjudications system, the White Paper needs to commit to procedural fairness and legitimacy of the current system and the current racial disparity. In addition, the strategy needs to address the poor conditions and harmful impact of segregation units, where prisoners who are found guilty on adjudications are held.

## Incentives Scheme

The White Paper emphasises the role of the refreshed Incentives Policy (2020), which allows greater autonomy for Governors to depart from the parameters of the incentives for managing behaviour in their prisons. Whilst greater flexibility for local decision-making is welcome, the White Paper needs to acknowledge some of the existing and persistent challenges around the Incentives scheme.

The White Paper neglects to tackle the current disparities in outcomes on the incentives scheme. In 2019/2020, the proportion of prisoners on Basic Incentives status was highest for Black or Black British and Mixed prisoners. Considering religion, Jewish and Muslim prisoners had the highest proportion of individuals

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<sup>23</sup> The Lammy Review, Ministry of Justice, p. 52 [The Lammy Review](#)

with a Basic Incentives status<sup>24</sup>. Several other studies<sup>25</sup> and HMIP reports highlight issues in relation to the incentives scheme, mostly related to the effectiveness, consistency, transparency, accountability, and fairness of the scheme. Historically, ethnic minority prisoners experience more negative outcomes on the processes involving staff discretionary decisions and powers<sup>26</sup>. This provides a strong case for greater scrutiny into the application of incentive schemes, especially in relation to race and ethnicity. The Prison Strategy must clearly set out how the incentives scheme will be closely monitored to ensure and race equality.

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<sup>24</sup> Her Majesty's Prison and Probation Service Offender Equalities Annual, 2019/20 Report  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/938345/hmpps-offender-equalities-2019-2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/938345/hmpps-offender-equalities-2019-2020.pdf)

<sup>25</sup> Khan, Zarek (2022), A typology of prisoner compliance with the Incentives and Earned Privileges scheme: Theorising the neoliberal self and staff-prisoner relationships,  
<https://journals.sagepub.com/doi/pdf/10.1177/1748895820947456>. See also: Liebling A (2008) Incentives and earned privileges revisited: Fairness, discretion, and the quality of prison life. *Journal of Scandinavian Studies in Criminology and Crime Prevention* 9(1): 25–41

<sup>26</sup> Race Review, Ministry of Justice, 2008,  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/294157/100439crace\\_review\\_part\\_1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/294157/100439crace_review_part_1.pdf)

## Chapter Three-

# The Role of Prisons and Probation in Cutting Crime and Protecting the Public

The White Paper pays welcomed attention to the strong evidence that improved education, training, employment, and strengthened family ties will significantly reduce the current rate of reoffending, which is costing the public over £18 billion a year. In addition to the economic cost of ethnic minority over-representation in our prisons (estimated to be £234m a year), there is a disparity in the reoffending rates amongst Black offenders for both young people (47.1%) and adults (31.0%)<sup>27</sup>. Yet, the White Paper does not mention the existing racial disparity when describing its 10-year ambitions to cut crime and protect the public. By failing to provide a clear focus on the needs of ethnic minority prisoners, the Ministry of Justice will miss an opportunity to tackle the poorer outcomes experienced by ethnic minority groups being released from prison.

We need targeted services that reflect the needs of ethnic minority prison leavers, which needs to start with the honest acknowledgement of the current disparity in outcomes in accessing accommodation, healthcare, and jobs. Following that, services need to be funded in a way that specifies the need for distinct approaches to working with ethnic minorities in prison. This will better ensure that the £200 million a year investment in improving prison leavers' access to accommodation, employment support and substance misuse treatment, offers tailored support to diverse groups, including ethnic minority prisoners.

It is not clear if a single performance measure to assess the equity of treatment and outcomes for BAME and white prisoners, per the Lammy Review recommendation, has already been developed and the measure has already been added to the Prison Performance Tool (the prison-level annual performance framework) as previously promised in the Government's update<sup>28</sup>. Indicators intended for inclusion within the Lammy performance measure include Release on Temporary Licence (ROTL); Incentives and Earned Privileges; Adjudications; Home Detention Curfew (HDC); Accommodation on release; Employment on release; and Use of Force. It was expected that a weighted and targeted measure would be ready from 2021/22.

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<sup>27</sup> GOV.UK, Reoffending, <https://www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law/crime-and-reoffending/proven-reoffending/latest>

<sup>28</sup> Ministry of Justice, 2020, [Tackling racial disparity in the criminal justice system: 2020](https://www.gov.uk/government/news/tackling-racial-disparity-in-the-criminal-justice-system-2020) - GOV.UK ([www.gov.uk](http://www.gov.uk))

We are calling for the progress update on the Lammy Review recommendations, especially concerning the performance measure, to be published alongside the White Paper and recommendation 30 to be included in the KPIs promised in the Paper.

## **Regimes**

The White Paper is proposing the rollout of an ambitious two-year programme of Future Regime Design, which will support and empower Governors to design their own regimes to meet the strategic objectives set out in the Prison Strategy. It suggests that the programme will set targets for prisons to focus more closely on the different needs and goals of the prisoners in their establishments.

Without an explicit strategic priority on reducing racial disparity, the resulting prison regime will neither account for, understand, nor address the needs of ethnic minority prisoners. Without that explicit reference, the Ministry of Justice cannot ensure the strategic importance of equalities, or the overarching aim to create fair, equal and just access to newly designed prison regimes. The Prison Strategy must make a clear commitment to equality, with specific reference to improving the outcomes for ethnic minority groups that are currently overrepresented in the prison system.

We welcome some of the long overdue improvements for prisons with disabilities, health issues and the older prison population. However, the Prison Strategy White Paper needs to carefully consider the proposed 7% target for cells suitable for wheelchair users in newly built prisons and accessibility audits of the current prison estate against the projected increased and ageing prison population. Equal and fair access to the daily regime or the rehabilitative work is the legal requirement, and we recognise the urgency of these measures.

The White Paper acknowledges that prisoners serving short sentences have worse resettlement outcomes than those serving longer sentences. Many of those serving short custodial sentences had committed a non-violent offence and are sentenced to less than six months. To tackle higher reconviction rates amongst this group, the Government proposes the establishment of a Short Sentence Function (SSF) in all Probation Regions by June 2022 to support all prisoners serving ten months or less. Whilst the proposed support, including Drugs and Alcohol treatment services both in custody and upon release, might seem like a sensible solution, facilitating such vital support in practice is likely to be challenging. As part of its ambitious strategy of reducing crime and reforming the system, the Government should commit to limiting the use of short prison sentences and instead utilise

community sentences that are proven to be more effective at reducing re-offending by at least 4% in all instances.

## **Education**

The Prison Strategy recognises the importance of, and need for, an improved education service. To meet this ambition, the prison service needs to tackle head-on the current disparity of outcomes for ethnic minority prisoners in accessing education and training. Importantly the data on the access to education and training in prisons by ethnicity must be made publicly available, and the Ministry of Justice needs to clarify whether the Prison Equalities Monitoring Tool has been redeveloped to monitor these outcomes.

A thematic report into the rehabilitation of minority ethnic prisoners by HM Inspectorate of Prisons (2020)<sup>29</sup> highlighted several areas of concern regarding prison education. Ethnic minority prisoners were found to be less likely than white prisoners to say that it was easy to get access to purposeful activity and less likely to say that staff encouraged them to attend activities. However, they valued and wanted more access to purposeful activity and rehabilitative opportunities. This provides further evidence that the Prison Strategy needs to provide a bespoke approach to engaging ethnic minority prisoners in purposeful activities, including education.

## **Employment**

The White Paper commits to giving Governors the tools they need to deliver high-quality training, and a commitment to hold prisons to account for the job opportunities and outcomes they achieve for prisoners. However, there is no published data on access to employment and training in prisons amongst ethnic minority prisoners, meaning we cannot fully assess the outcomes currently achieved. HM Inspectorate of Prisons survey results for the thematic review into the rehabilitation provision for ethnic minorities gives us reason to believe that there are disparities in the experience of ethnic minority prisoners, it indicated that of those ethnic minority prisoners who expected to be released in the next three months:

- a higher proportion said they needed help on release with finding employment than white prisoners (72% compared with 61%),

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<sup>29</sup> Minority ethnic prisoners' experiences of rehabilitation and release planning, HM Inspectorate of Prisons, 2020, <https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2020/10/Minority-ethnic-prisoners-and-rehabilitation-2020-web-1.pdf>

- a higher proportion said they needed help to access education and training (57% compared with 46%).
- a lower proportion said that someone was helping them prepare for release (50% compared with 59%)”.
- are less likely than white prisoners to say that it was easy to get a prison job at their current establishment (40% compared with 53%),
- are less likely to take part in vocational or skills training (31% compared with 39%)
- are less likely to be in education (59% compared with 63%).

All of this suggests that the Ministry of Justice should be paying particular attention to racial disparities, yet it does not present anything within the strategy to suggest that it will. This must be rectified to ensure that all prisoners have equal access to rehabilitative and resettlement support.

### **Release on Temporary Licence (ROTL)**

The White Paper plans to transform the opportunities for work in prisons and on Release on Temporary Licence (ROTL) to increase job prospects for prison leavers. Academic evidence supports the argument for more and better use of ROTL placements which provide prisoners with the opportunity to prepare for their life in the community. The Government’s own 2018 assessment into the impact of ROTL states, “The greater the accessibility and availability of ROTL, the greater the chance ex-prisoners have of effectively reintegrating back into their community”<sup>30</sup>. However, HMIP thematic report on minority ethnic prisoners’ experiences of rehabilitation and release planning states that Black and mixed ethnic men were less likely than white men to have an episode of ROTL from Category C institutions, while both were more likely than white men to receive an episode of ROTL from local prisons.

For improving the employability prospect for prison leavers, better use of the ROTL opportunities is key, but to tackle racial disparities prisons need to be required to monitor and report on ethnic minority prisoners’ access to it and assess whether it is equitable to the access given to white prisoners.

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<sup>30</sup> The reoffending impact of increased release of prisoners on Temporary Licence, Ministry of Justice, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/709123/ro-rl-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/709123/ro-rl-report.pdf)

## **Accommodation**

The White Paper proposes some measures to be implemented by the Probation Service, which will include identifying tailored and early support services to prevent homelessness and relapse into criminal activity. However, again the HM Inspectorate of Prisons' survey results for their thematic review indicate that ethnic minority prisoners receive less help than their white counterparts. The report states that of the minority ethnic prisoners "who expected to be released in the next three months, 63% stated that they needed help with accommodation on release. However, only a third of this group said they had received help. In the interviews, of the BME prisoners who had received support with accommodation before release, only a small number reported that this was helpful. Uncertainty about potential homelessness was causing stress, ill-health and concern about reoffending"<sup>31</sup>.

Accommodation approaches must consider how they will ensure people from ethnic minorities can and do access accommodation support.

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<sup>31</sup> Minority ethnic prisoners' experiences of rehabilitation and release planning, HM Inspectorate of Prisons, 2020, <https://www.justiceinspectors.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2020/10/Minority-ethnic-prisoners-and-rehabilitation-2020-web-1.pdf>



## Chapter Four – A New Approach to Women’s Prisons

We welcome a more trauma-informed and trauma-responsive approach as well as the commitment to a specialised recruitment and training for staff who are better placed to support women in custody (including those from ethnic minorities). However, we strongly believe in decreasing the women’s prison population, as set out in the government’s Female Offender Strategy.<sup>32</sup> To achieve that we need the government to increase investment in the specialist community-based services that they endorsed in that strategy, including, police-led or court-based diversion from the criminal justice system, or specialist support for women on community sentences. To progress the Female Offender Strategy, we recommend the government follow the actions set out in the National Audit Office’s (NAO) recent review.<sup>33</sup> We agree with the NAO that the female offender strategy needs clear goals against which progress can be tracked, a realistic budget to make a difference, better governance, better research into women’s experiences, and to evaluate and assess what works.

Ethnic minority women in prison face multiple disadvantages, including more negative outcomes than white prisoners in some areas, notably in relation to levels of victimisation from staff and access to activities.<sup>34</sup>

ZMT is part of a new alliance of women specialist organisations, including Hibiscus Initiatives, Muslim Women in Prison, Agenda, Criminal Justice Alliance, and Women in Prison, as well as women with lived experience of the criminal justice system. This alliance, supported by Barrow Cadbury Trust, is calling on government to adopt a 10-point action plan for change.<sup>35</sup> Many of these actions could be committed to within the prison strategy; these 10 actions are:

1. Train criminal justice staff on culture, ethnicity, race, faith, gender, and anti-racism to meet the multiple and intersecting needs of Black, Asian, minoritised and migrant women.
2. Develop practical resources and guides for HO and MoJ staff on the rights of Black, Asian, minoritised and migrant women who have language

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<sup>32</sup> Female Offender Strategy, Ministry of Justice, 2018, <https://www.gov.uk/government/publications/female-offender-strategy>

<sup>33</sup> Improving outcomes for women in the criminal justice system, National Audit Office, 2022, <https://www.nao.org.uk/report/improving-outcomes-for-women-in-the-criminal-justice-system/>

<sup>34</sup> Minority ethnic prisoners’ experiences of rehabilitation and release planning, HM Inspectorate of Prisons, 2020, <https://www.justiceinspectorates.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2020/10/Minority-ethnic-prisoners-and-rehabilitation-2020-web-1.pdf>

<sup>35</sup> Tackling Double Disadvantage, Ending inequality for Black, Asian, minoritised and migrant women in the criminal justice system, 10-point action plan for change, 2022, <https://weareagenda.org/wp-content/uploads/2022/01/Double-Disadvantage-Action-Plan.pdf>

barriers and require support in different languages or in easy-to-read formats to incorporate their needs and ensure their experiences are taken into consideration throughout each stage of the CJS\

3. Recruit Black, Asian, minoritised and migrant women with lived experience of the CJS to become peer mentors and cultural mediators across the whole system.
4. MoJ to publish their report on “Women in the Criminal Justice System” on an annual basis. This report should also identify and analyse in greater depth the key racial disparities in women’s experiences, including level and type of contact with, and experiences within, the criminal justice system.
5. MoJ and HO to ensure use of diversion and out of court disposals (OOCDD) and end the use of disproportionate custodial sentencing and remands, for Black, Asian, minoritised and migrant women.
6. Identify gaps in the services for Black, Asian, minoritised and migrant women with insecure immigration statuses.
7. Improve the effectiveness of current external scrutiny bodies to identify and challenge direct and indirect race, sex, and religious discrimination.
8. Ensure Black, Asian, minoritised and migrant women and their individual circumstances are properly taken into consideration by effective legal representation and other actions in court.
9. Ensure funding and commissioning mechanisms and procedures are accessible to small and medium-sized, voluntary and specialist sector organisations to deliver specialist support for this group in all parts of the criminal justice system
10. Address issues identified in the Farmer Review around strengthening family, children, and community relationships in prison for Black, Asian, minoritised and migrant women, addressing their specific needs around contact, mediation, and risk.

We believe that if the prison strategy adopted relevant parts of this action plan, it will find ways to improve outcomes and reduce inequalities and discrimination against Black, Asian, minoritised and migrant women in contact with the criminal justice system.

## Chapter Five – Our People

### **Ethnic minority staff recruitment and retention**

The White Paper focuses on prison officers' recruitment without whom none of the proposed strategies would be delivered. It proposes a more bespoke approach to recruitment, retention, and training for those working with specific cohorts across the women's and men's estates. Whilst we recognise the importance of targeted recruitments for staff, we are not sure how the recruitment process will differ between prison officers working with female and male prisoners.

The recruitment of 5,000 additional prison officers is welcome. Prisons have been drastically under-funded and under-staffed for more than a decade, which has been further exacerbated by staff shortages caused by the Covid-19 pandemic.

On 31 March 2020, 92.3% of prison officers in England and Wales were White, and 7.7% were from Asian, Black, Mixed and Other ethnic groups. At the time of the 2011 Census, 85.6% of working-age people were White, and 14.4% were from the combined Asian, Black, Mixed and Other ethnic groups<sup>36</sup>. The workforce needs to become more diverse.

The latest HMPPS data does not provide the ethnicity breakdown of newly recruited ethnic minority staff. However, HMPPS recruitment diversity experimental statistics show that around one-fifth of applicants in the period Q3 2019 to Q2 2021 were from ethnic minority background. Among Prison Officer and Operational Service Grade (OSG) applicants there is evidence of a disparity in outcomes when comparing BAME applicants to white applicants<sup>37</sup>. We need transparent data on the ethnic makeup of prison staff over time, and clear targets to make prison staff more representative of the general working population.

The White Paper recognises the increasing difficulty prisons have in retaining staff. The proposed introduction of a retention framework, including a programme of work to analyse data from surveys and examine case studies to identify why officers leave, must include attention paid to the retention rate of prison officers from minority ethnic backgrounds and whether their reasons for leaving the service differ. The prison service must track the experiences of staff from ethnic minorities to explore what influences a person's decision to either apply for, attain, or remain in any given post. For example, in 2019/20, the leaving rate was higher

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<sup>36</sup> Prison Officer Workforce, Gov.uk, 2021, <https://www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/workforce-diversity/prison-officer-workforce/latest>

<sup>37</sup> Recruitment Diversity Statistics, Ministry of Justice, 2021 <https://www.gov.uk/government/statistics/her-majestys-prison-and-probation-service-workforce-quarterly-june-2021/recruitment-diversity-statistics-june-21>

for ethnic minority staff, at 9.8%, compared to White staff, at 8.9%. The exact percentage of exit interviews with staff is not known, and it is not clear whether the reasons for ethnic minority staff differ from white staff's experiences.

There is a lack of recent academic research on ethnic minority staff's experiences, however, based on the existing studies<sup>38</sup> ethnic minority staff report experiences of racial discrimination, including from their colleagues. They also illustrate negative outcomes in several key areas, including grievances, appraisals, and promotions. A similar trend can be observed in 2019/2020 staff equalities data<sup>39</sup>:

- The proportion of BAME staff investigated was higher than the proportion of White staff investigated.
- A larger proportion of BAME staff were subject to conduct and discipline action than White staff.
- In the 12 months ending 31 March 2020, BAME staff had a slightly lower promotion rate at 4.9% than the White staff at 5.1%. Within the BAME groups, those identifying as mixed ethnic had the highest rate at 6.2%. In relation to grades, band 3-5 officers and OSGs were the only grades where BAME staff had lower promotion rates than white staff. In all other grades, BAME staff had higher promotion rates than white staff.
- Staff appraisal outcomes were worse for male staff, staff aged under 30 and over 60, Black staff, and disabled staff. BAME staff had worse outcomes than their White counterparts in terms of 'Outstanding' markings awarded.
- The rate of bonuses awarded to BAME staff was lower compared to White staff. There were differences between the rates and average value of bonuses awarded to different groups of BAME staff, although numbers tend to be too low to draw meaningful conclusions.
- The raising of grievances was higher for BAME staff compared to White staff.
- The rate of the investigation was higher amongst; BAME staff (at 3.5 per 100 staff) compared to White staff (at 2.5 per 100 staff).

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<sup>38</sup> Perceptions of race and conflict: perspectives of minority ethnic prisoners and of prison officer, Home Office, <http://nomsintranet.org.uk/roh/official-documents/HomeOfficeOnlineReport1104.pdf> ; See also: Experiences of Minority Ethnic Employees in Prisons, Prison Reform Trust, <http://www.prisonreformtrust.org.uk/Portals/0/Documents/experiences%20of%20minority%20ethnic%20employees%20in%20the%20prison%20service.pdf>

<sup>39</sup> Her Majesty's Prison and Probation Service (HMPPS) Annual Staff Equalities Report 2019/20 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/938131/hmpps-staff-equalities-report-2019-2020.doc.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/938131/hmpps-staff-equalities-report-2019-2020.doc.pdf)

- The rate of conduct & discipline cases was higher for BAME staff compared to White staff.
- The proportion of BAME staff investigated in 2019/20 was higher than the proportion of White staff investigated. The percentage of cases with further action recommended was also higher for BAME staff (64.6%, an increase from 63.4% in 2018/19) than for White staff (62.5%, a decrease from 64.3% in 2018/19).

Prison officers play a vital role in enabling effective rehabilitation and resettlement for prisoners in their care. A role of a supportive prison officer in developing constructive relationships, fostering positive behaviours, and building prisoner trust, confidence, hope and commitment to change should never be underestimated. Similarly, ethnic minority staff play a unique role in reducing disproportional negative outcomes for ethnic minority prisoners and this role should be better highlighted in the future strategy of the service.

As the White Paper aims to enable everyone to be their best, foster diversity and inclusion at all ranks of senior leadership and develop and expand its workforce, **we believe that the Paper should acknowledge the existing challenges and disparity in outcomes experienced by ethnic minority staff. Therefore, we urge HMPPS to commission independent research into the workplace experiences of ethnic minority staff to better understand and address workforce development. This should feed into a clear strategy that supports the recruitment, retention, and development of staff from ethnic minorities.**

## **Training**

We welcome the focus on improved training that enable prison officers to work safely and effectively. The Ministry of Justice commits to the development of a suite of learning modules to support the needs of our diverse prison population and identified areas for improved training, including in mental health and neurodiversity. Supplementing the 10-week Prison Officer Entry Level Training (POELT), which is arguably far too simplistic to prepare someone for the complex role of prison officer.

More time and resource must be put into the professional development of prison officers. Therefore, it would be helpful for the Prison Strategy to clarify whether newly developed training be mandatory modules part of the existing 10-week POELT course, and how this would work as part of the ‘Advance into Justice’

programme, which can “fast track from assessment day to employment and prison officer paid training (POELT) in as little as four to six weeks”.<sup>40</sup>

Disappointingly there is no mention of equality and diversity or cultural competence training. Staff need this training to better understand the people in their care and build positive relationships with them. Ethnic minority people in custody represent 28% of the prison population, and prison officers of all grades need to have the skills to understand and engage people from different cultures, free of bias or judgment.

Better and more training for staff, including diversity and equality issues, that would support them in establishing positive and right relationships with ethnic minority prisoners, a cornerstone in improving safety in prisons and achieving effective rehabilitation. The thematic review conducted by HM Inspectorate of Prisons stated that one-third of ethnic minority prisoners reported that their ethnicity had directly influenced their experience of rehabilitation and release planning. Of these, most said the impact on their experience had been high or very high. Prisoners referred to a lack of understanding about their cultural backgrounds and individual differences, the diversity of prisoners and the lack of diversity of prison staff, previous experiences of discrimination and unfair access to jobs<sup>41</sup>.

There is anecdotal evidence that equalities related training is no longer mandatory for staff. Yet, the government’s own Prison Service Instruction (PSI32/2011) on ensuring equality<sup>42</sup> expects all members of staff to work and behave in a way that is consistent with the equality policy statement and the legal responsibilities. Prison staff need appropriate support and guidance on their legal duties and practical competencies (knowledge, skills, and attitude) to meet the expectations of existing prison service operational policy. **Therefore, the White Paper should commit to mandatory equality and diversity training module for prisoner officers on POELT and in-depth refresher courses as part of ongoing professional development.**

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<sup>40</sup>Advance into Justice, HM Prison and Probation Service, <https://advance-into-justice.service.justice.gov.uk/?fbclid=IwAR2zZxBoa92y2on-YOpvyJf2lzympGK3yfRzm29m10UtmMKGfNEtixbn28>

<sup>41</sup> Minority ethnic prisoners’ experiences of rehabilitation and release planning, HM Inspectorate of Prisons, 2020, <https://www.justiceinspectors.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2020/10/Minority-ethnic-prisoners-and-rehabilitation-2020-web-1.pdf>

<sup>42</sup> Ensuring equality: PSI 32/2011, Ministry of Justice, 2020, <https://www.gov.uk/government/publications/ensuring-equality-psi-322011>

## Chapter Six - Delivering Better Outcomes in Prisons

### Governors' autonomy

The White Paper, in line with the previous commitments to empowering governors, intends to set Key Performance Indicators (KPIs), measure progress against them, and provide transparency by publishing prison level performance data. We welcome the ambition to empower Governors so they might innovate locally, whilst still operating within clear performance target that align to national standards. To design these new approaches, it is essential that the prison system learn from the previous 'reform prisons' programme, launched in 2016, with the intention to give governors unprecedented operational and financial authority. The Prison Strategy provides no learning or evidence regarding the outcomes of pilots which provided greater freedoms to a small number of prisons.

The White Paper proposes KPIs against the following priorities: security and stability; substance misuse and mental health; and resettlement and family ties. Disappointingly, there is no specific performance indicator on whether prisons achieve equitable outcomes for ethnic minority prisoners. This must be a central part of driving forward equality in our prison system.

HM Inspectorate of Prisons thematic review of rehabilitation and release planning states that approximately one-third of ethnic minority prisoners reported that their ethnicity had influenced their experience of rehabilitation and release planning, and two-thirds of this number said the impact on their experience had been high or very high. There were no notable differences between responses given by prisoners from different ethnic groups. BME prisoners gave a range of explanations for why they believed they were discriminated against. The dominant themes were staff having a lack of understanding about the prisoner's cultural background and the diversity of prisoners and lack of diversity of prison staff.

Given the importance of understanding equality and diversity issues and having confidence and competencies to work with ethnic minority prisoners, **we urge the Ministry of Justice to commit to a measure on the equality of outcomes for ethnic and non-ethnic minority prisoners (as per the Lammy Review recommendation 30)**. The results must also be publicly available to allow scrutiny.

In the past, the Prison Service Key Performance Target (KPT) on race equality was effective in focusing attention on the issue and driving up performance.

Therefore, we call for the re-introduction of this target, monitor performance against it and support establishments in improving performance through service delivery interventions.

### **Independent scrutiny of prisons**

We strongly support the independent and robust scrutiny of prison, it is an essential part of maintaining transparency, improving standards, and ensuring accountability, whilst also identifying good practice. We welcome the recognition of the PPO and HM Inspectorate of Prisons, and their respective remits in legislation as intended in the Prisons and Courts Bill 2017. However, we will carefully monitor the proposed plans in the White Paper for a comprehensive review of prison and detention scrutiny.

### **Other areas:**

#### **Trauma-informed approach**

The White Paper proposes tailored, trauma-responsive approaches to women in custody, including specific support for pregnant prisoners. We strongly support the strengthening of specialist support for women in custody and in the community. However, we believe that the trauma-informed approach needs to be extended across the female and male estate.

#### **Young Adult Prisoners**

The White Paper needs to recognise the specific needs of young adults remanded or serving sentences in adult establishments and commit to bespoke approaches, supported by extra resources. We welcome the acknowledgement that young men transitioning from the youth to the adult estate can be particularly difficult, and that they require additional support. The specific needs of Young Adults (18–25) should be explicitly identified and addressed through a dedicated strategy, as recommended by the recent HM Inspectorate of Prisons report into young adults in custody<sup>43</sup>. This strategy should be delivered in parallel to the young adult strategy being developed for women that was announced in the White Paper.

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<sup>43</sup>A short thematic report by HM Inspectorate of Prisons Outcomes for young adults in custody, HMI Prisons, 2021, <https://www.justiceinspectors.gov.uk/hmiprisons/wp-content/uploads/sites/4/2021/01/Young-adults-thematic-final-web-2021.pdf>



## Conclusion

The government must recognise and respond to the needs and challenges of the rising and diverse prison population. However, the Prison Strategy White Paper does not reference the existing racial disparity in prisons, and it has not provided a vision or any ambition to reduce the disproportionately negative outcomes experienced by prisons from ethnic minorities, who represent 28% of the entire prison population.

We do not doubt that the Ministry of Justice and HM Prison and Probation Service is committed to treating all people fairly, as outlined in its Equality Statement<sup>32</sup>. However, such sentiment will not make a material difference to the experiences of people in prison without an overt strategic commitment, tangible actions, and clear measures designed to tackle racial disparity. Work on race equality is too often undertaken behind the scenes, with very little information on what is happening, progress, or even an up-to-date equalities strategy. This lack of transparency undermines trust in the system. To address the chronic racial disparities that pervade in our prisons we need leadership, transparency, and accountability from national government to local prison governors.

This 10-year Prison Strategy presents an opportunity to change course, and really tackle the racial disparities in our prison system. We are prepared to support the Ministry of Justice to make those revisions and set out a long-term vision to tackle inequality head on.