

**PHYSICAL AND LEGAL SECURITY AND THE CRIMINAL JUSTICE SYSTEM:  
A REVIEW OF INEQUALITIES**

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## List of abbreviations

ABH	Actual bodily harm
ACPO	Association of Chief Police Officers <i>of</i> England Wales and Northern Ireland
BCS	British Crime Survey
BME	Black Minority Ethnic
B(S)CS	British (Scottish) Crime Survey
CJS	Criminal Justice System
COPFS	Crown Office and Procurator Fiscal Service
CPS	Crime Prosecution Service
CRE	Commission for Racial Equality
DCSF	Department for Children Schools and Families
DSVB	Domestic and Sexual Violence Board
DV	Domestic Violence
EHRC	Equality and Human Rights Commission.
EMD	Electronic Materials Database
EMF	Equality Measurement Framework
EVAW	End Violence Against Women
FGM	Female Genital Mutilation
GEO	Government Equalities Office
GBH	Grievous bodily harm
HMCIS	Her Majesty's Chief Inspector of Schools
HMCPSI	Her Majesty's Crown Prosecution Service Inspectorate
HMIP	Her Majesty's Inspector of Prisons
HO	Home Office
HO CR	Home Office Counting Rules
IPCC	Independent Police Complaints Commission
JCHR	Joint Committee on Human Rights
LD	Learning Disabilities
LGB	Lesbian Gay and Bisexual
LGBT	Lesbian Gay Bisexual and Transsexual
MH	Mental Health
MIND	Mental Health NGO
MoJ	Ministry of Justice
NGO	Non-governmental Organisation
NCRS	National Crime Recording Standard
NICL	National Incident Category List
NOMS	National Offender Management Service
NPIA	National Policing Improvement Agency
NSIR	National Standard for Incident Recording

ONS	Office for National Statistics
PRT	Prison Reform Trust
PSA	Public Service Agreements
PSD	Public Sector Duty
RTI	Road Traffic Incident
SARCS	Sexual Assault Referral Centres
SCS	Scottish Crime Survey
SCJS	Scottish Crime and Justice Survey
SCVS	Scottish Crime and Victimization Survey
Smart	Systematic Monitoring and Analysing of Race Equality Template
UKHTC	United Kingdom Human Trafficking Centre
VAW	Violence Against Women
WHO	World Health Organisation

## EXECUTIVE SUMMARY

This research report is intended to contribute to two aspects of the work of the Equality and Human Rights Commission. First, to the production of the Triennial Review in 2010 of progress towards equality, human rights and good relations. Second, to assess the challenges facing Criminal Justice System agencies in meeting the new public sector duty to promote equality, due to come into force in April 2011. This duty extends the existing duties to promote equality on race/ethnicity, gender and disability to other protected equality groups (by religion/belief, age, sexual orientation, gender identity) as part of the Equality Act 2010. The Public Sector Equality Duty is a potential tool and key driver for identifying discrimination and inequality of outcomes and taking action. The Public Sector Equality Duty provides an impetus for organisations to actually gather data and take action on inequalities.

The focus of this report is physical and legal security in relation to the Criminal Justice System. The main areas of physical security include: homicide; other violence against the person, including domestic or intimate partner violence, sexual violence and hate crime; and physical security in institutional settings. The main areas of legal security include the extent to which offences are brought to justice and equal treatment in and by the Criminal Justice System. Emphasis is placed on evidence and the analysis of objective outcomes as opposed to subjective attitudes and perceptions, primarily because of the robustness of the former in comparison to the latter, but also because the selection of outcomes corresponds to the prioritization recommended by the Equalities Review (2007).

The report addresses all the protected equality strands, as well as other disproportionately affected groups wherever there is available and relevant evidence. Due to the current unevenness in data collection and availability across the strands, the majority of evidence presented relates to gender, disability and race/ethnicity. Data on other equalities groups is drawn upon where available (often from small scale studies rather than surveys). The report addresses data and research primarily at the level of Great Britain (England, Wales and Scotland), reflecting the Equality and Human Rights Commission's geographical remit.

The report reviews the evidence of the extent to which there are inequalities in physical and legal security. The sources used include large surveys (e.g. the British Crime Survey) and administrative data (e.g. police recorded crime), as well as evidence from smaller scale research projects, including those carried out by academia, civil society organisations and governmental commissions and agencies.

The overview includes concepts and data that are relevant to both the Equality and Human Rights Commission Equality Measurement Framework and the measurement frameworks currently operating within the criminal justice system. The report presents data that has relevance to all three frameworks that guide the Commission's work: equality; human rights; and good relations.

The terms physical and legal security are used by the Equality and Human Rights Commission in the Equality Measurement Framework, drawing on a capabilities framework. The Criminal Justice System tends to use alternative concepts including violence against the person and justice, which overlap with those of physical and legal security. In the large crime surveys (the British Crime Survey and the Scottish Crime and Justice Survey), there are similar concepts used to those in the Criminal Justice System. Additional concepts are sometimes used in referring to specific forms of violence, such as intimate partner violence and elder abuse. For most of the topics examined, data is sourced from either police 'recorded crime' or from the British (and Scottish) Crime Survey, as appropriate. Where there is no relevant data from these sources, smaller scale studies and alternative administrative sources are used.

### **Physical insecurity**

The research found that there are inequalities in physical security. Amongst the key findings are the following:

#### *Homicide*

A persistent pattern in police recorded data is that domestic homicides are disproportionately committed against women. In 2008/2009 53% of all female homicide victims were killed by a partner or ex-partner, with an additional 15% killed by other family members (England and Wales); the respective numbers for men in England and Wales (2008/2009) are 7% killed by a partner or ex-partner and 8% killed by another family member. For Scotland in 2008/09, 46% of all female homicide victims were killed by a partner or ex-partner, with an additional 7% by another family member. The respective numbers for men were 7% and 13%. In total in 2008/09, domestic homicide (i.e. partner/ex-partner; family) accounts for 68% of the total number of female victims of homicide, compared with 15% for male homicide (England and Wales); and for Scotland 2008/09, the equivalent figures were 53% for females and 20% for males.

#### *Violence against women*

Violence against women (VAW), including intimate partner violence, domestic violence and sexual offences, is a persistent form of physical insecurity. Data from

crime surveys suggest a decline in domestic violence over the last decade though the extent of this is difficult to assess. Using the British Crime Survey (England and Wales), a decline in partner and domestic abuse can be found using both the face-to-face interviewing and the self-completion module. However, there is a smaller rate of decline in the British Crime Survey self-completion data than in the main British Crime Survey. Using the main British Crime Survey the decline in incidents of domestic violence is slightly greater than half between 2001/02 and 2008/09, from 514,000 to 226,000; and the decline in prevalence a third, from 0.9 to 0.6. Using data from the self-completion module, the decline in intimate partner violence is approximately a quarter, from 6 to 4.4. Given the widespread acceptance of the greater reliability of the self-completion method as compared with face-to-face interviewing for disclosure of this sensitive matter, it is the self-completion rate of decline that is the preferred measure for recent changes. This small decline may, amongst other factors such as wider social changes, be associated with the increasing number of policies developed to combat this form of violence. However, domestic violence against women remains widespread (e.g. according to the British Crime Survey for England and Wales, over 6% of females report having experienced domestic abuse in the past year). There is no equivalent decline in the prevalence of sexual assaults against women.

Evidence from smaller scale sources highlight other forms of violence against women, including forced marriage, honour crimes, female genital mutilation and trafficking. There is a wide range of estimates for the prevalence of these kinds of violence, many of which have only recently been studied relative to other forms of VAW. There is no national survey data or full administrative data to collect or assess (Home Office 2009d) or agreed definition as to what constitutes these forms of violence. The possible exception is forced marriage where a clear distinction is made between arranged marriage and forced marriage (Forced Marriage Act 2007) – though in practice the boundary is difficult to uphold (Home Office 2005c). Overall, the lack of reliable quantitative data and methods for gathering this data makes accurate assessment of the extent and changes in these forms of violence difficult. Instead, qualitative evidence and reports published by the voluntary sector, national and inter-national governmental reports, and academic research are the main sources of evidence in this area. In general, there is an agreement among academics and within the Home Office that there is no reliable or commonly accepted data on the number of incidents of forced marriage, female genital mutilation, so called ‘honour’ crimes and killings or trafficking (Home Office 2009d; Kelly and Regan 2000).

### *Hate crime*

Hate crime against equality groups based on race/ethnicity; religion/belief; disability; age; sexual orientation; gender identity is also a persistent form of physical insecurity. Data from a range of sources show considerable amounts of evidence of hate crime against each of the legally protected equality groups. More data is becoming available from the main crime surveys, as well as from administrative sources. However, due to the small size of some of the equality groups, as well as the exclusion of other groups from the sample, it remains difficult to draw reliable conclusions on both the extent of hate crimes and on any changes. Nevertheless, several smaller investigations attest to the severity and impact of these crimes. There are fluctuations in the amount of hate crime that is racially motivated that is reported to the British Crime Survey in England and Wales. The number of incidents reported changes between an estimated 179,000 in 2004/5, 139,000 in 2005/6, 184,000 in 2006/7 and to 207,000 in 2007/8. There is a need for some caution in interpreting this as a significant increase for two reasons. First, hate crime is a relatively new concept and there have been changes in recording practices over time; its recording might therefore be expected to fluctuate until it has become embedded in institutional practice. It is probable that there is continued under-reporting, but that the extent of under-reporting might vary. Second, the numbers in the sample from which these numbers of incidents are estimated are relatively small, even before further breakdowns. The conclusion drawn here is that there is not a reliable evidence base to support any claim of change.

### *Physical security in institutional settings (e.g. prisons).*

The number of deaths in custody has risen over a ten-year period, from 147 in 2000 to 168 in 2009, although there are fluctuations. The number of self-inflicted deaths has however decreased, from 81 in 2000 to 60 in 2009. However, the number of people of in prison custody has also increased over the same period, Between 1995 and 2009, the prison population in England and Wales grew by 32,500, which is equivalent to an increase of 66% (Ministry of Justice 2009c). People who live in or who are confined to institutions are potentially more vulnerable to abuse than those who are free and mobile. There has been a long-standing issue of the treatment of those in prison or police custody in particular. Data supports that prisoners who take their own lives are disproportionately drawn from certain sections of the prison population. The majority of deaths in prison occur in the 25-39 age groups. Women are disproportionately taking their own lives in prisons: women make up approximately 6% of the prison population, but account for approximately 15% of the self-inflicted deaths. According to the HM Prison Service (no year) there have been more female deaths than expected during the 2000's, given the female proportion of the prison population.

The major crime surveys, the British Crime Survey and the Scottish Crime Survey exclude the non-household population (e.g. people living in institutions or with no fixed abode), but some evidence of violence against this group is found from smaller scale studies. There is a shortage of available data on elder abuse in care homes (House of Commons 2004). This problem has been highlighted for more than a decade and some researchers have argued that general research on elder abuse has become locked into a family violence model rather than paying attention to abuse in care homes and residential settings as well (Glendenning 1999).

### **Legal insecurity**

Legal security concerns equal treatment of equality groups with others by the Criminal Justice System for both victims and for alleged perpetrators and convicted criminals. There are two main equality issues for the Criminal Justice System that concern whether there is a greater justice gap for some equality groups than others. The first is whether the attrition rate in bringing offenders of violence oriented to women and members of minority groups to justice is worse (meaning lower 'conviction' rates for such offences) than for other offences. The second is whether there is disproportionality (greater severity) in the treatment of alleged offenders by the Criminal Justice System.

#### *Attrition/Conviction rates*

The evidence shows that there are inequalities in the legal security of the equality groups as compared with others, especially but not only in that these groups experience lower conviction rates. These include: gender-based violence against women (rape, sexual assault, intimate partner violence, domestic violence, forced marriage, female genital mutilation and honour based crime) and hate crime against equality groups on the basis of race/ethnicity, religion, sexual orientation, gender identity and disability. The data for the different equality groups varies considerably in its detail and robustness. There are continuing debates rather than an authoritative consensus on the best way to measure conviction rates.

There are inequalities and variations in conviction rates. The quality of the available data varies; the best data available is for rape since this has its own crime code, which means that a wider range of robust data is placed in the public domain than for domestic violence and hate crime. The conviction rate for rape worsened from at least as far back as 1997 (10%) until around 2006 (6%), since when small improvements have been made. The conviction rate for rape is worse than for other forms of violence.

For the majority of forms of hate crime (on the basis of race, religion, sexual orientation and gender identity, but not disability or age) the period since 2006 has seen small improvements in the conviction rates from the point of prosecution, from 74% in 2005/06 to 82% in 2008/09. While there are no published attrition/conviction rates for hate crime starting from the point of police recording, there are published conviction rates from the point of charging and prosecution for racist and religiously aggravated cases, homophobic and transphobic crime and disability cases. The conviction rates for hate crime have shown some improvement between 2005/07 and 2008/09 for most groups except for disability. The rate of charging for racist and religiously aggravated crime increased from 60% to 73% between these years and from 54% to 65% for homophobic and transphobic cases, while that for disability cases fell slightly from 67% to 66% between 2006/07 and 2008/09. The conviction rate from the point of prosecution for racist and religiously aggravated crime increased from 74% to 82%, for homophobic and transphobic cases from 71% to 81% between 2005/06 and 2008/09, while that for disability cases fell slightly from 77% to 76% between 2007/08 to 2008/09. However, for these groups there is no evidence that would enable an assessment of changes in attrition rates for earlier parts of the Criminal Justice System process, nor for the longer time period of the whole decade. There remain gaps in the data available in the public domain necessary to estimate attrition rates across the Criminal Justice System as a whole.

The term 'attrition rate' refers to the 'loss' of criminal cases in the Criminal Justice System before they are brought to justice. The available data shows disproportionately high levels of attrition in cases of domestic violence and rape compared with violence against the person in general. The loss of rape cases throughout the criminal justice process is particularly high, with only around 6% of reported rapes resulting in a conviction for rape. Overall, it appears that the conviction rate for rape has declined (i.e. a higher proportion of cases being lost before being brought to justice) in the period 2002/03 to 2008/09, with a very small increase (a higher proportion of cases resulting in conviction for rape) since around 2006.

### *Disproportionality*

Disproportionality refers to the over or under representation of particular groups 'in the Criminal Justice System. Disproportionality in the treatment of alleged offenders appears to take place in relation to a number of groups at different points in the Criminal Justice System. Annual data from the Ministry of Justice indicate disproportionality in the treatment of minority ethnic groups in the Criminal Justice System. Disproportionality in stop and search procedures has been subject of much concern, with fluctuations but no major change in the disparities over time. Evidence also points to the high proportion of prisoners with learning disabilities/difficulties and

mental health disorders for whom prison may be an inappropriate response to their offending. In relation to the treatment of female offenders, the report finds reason to be concerned over their disproportionate sentencing to prison relative to their offences.

There are inequalities, that is, disproportionality, in the treatment of alleged offenders and convicted criminals between equality groups. This process potentially affects many aspects of the Criminal Justice System, but the ones on which most data and commentary are available are the use of 'stop and search' of people suspected of offences, and the use of imprisonment rather than other sentences for convicted criminals.

There is disproportional use of 'stop and search' of minority ethnic men relative to their proportion in the population. Published Criminal Justice System statistics (Ministry of Justice), as well as studies comparing the outcomes in different police force areas (Equality and Human Rights Commission 2010) show that a higher proportion of Black and Asian men than white men are subjected to 'stop and search' and there is considerable variation by geographical area. The ethnic ratios in stop and search statistics fluctuate between 1997/8 and 2007/8, showing a dip around 2002/3, but the ratios in 1997/8 and 2007/8 are not significantly different. The rate per 1000 population by ethnic appearance and ratio of white persons to minority ethnic persons in 1997/1998 was 19 for White ethnic and 139 for Black ethnic. In 2007/08, the equivalent rates were 17 and 129. This suggests that any ethnic disproportionality in stop and search has not changed to a significant degree between 1997/8 and 2007/8. However there is little data as to whether or the extent to which this might be disproportional in relation to their actual criminality. The potentially disproportional treatment of alleged offenders and convicted criminals in areas of the Criminal Justice System other than stop and search and for the full range of equality groups is hindered by lack of data in the public domain.

Disproportionality by ethnicity is a key issue in relation to legal security, with annual statistics showing that people from Black and Minority Ethnic groups are overrepresented at almost every stage in the Criminal Justice System (Ministry of Justice 2009a: 2009c). Evidence suggests at least some element of discrimination as being a factor in the overrepresentation of some groups (e.g. Equality and Human Rights Commission 2010). Whether and why young minority ethnic groups are disproportionately involved in crimes is a contested issue. In their report on differential treatment in the youth justice system, May et al (2010) argues that 'while it is possible that the over-representation of black and mixed race teenagers reflects differential reporting between victims, it is indisputable that ethnic minority groups are over-represented in the youth justice system' (p. 5). The report finds evident

disproportionality when looking at the types of crimes that young people are charged with: black teenagers are over-represented in robbery and drug offences, while Asian teenagers are under-represented in all types of crime (see also Jones and Singer 2008). The report confirms discrimination and disproportional representation of young ethnic minority offenders at all stages of the criminal justice process, including prison detention.

The majority of the male prison population is ethnic white. The second largest group is ethnic black (including Black-Caribbean, Black-African and Black-Other). However, compared to the ethnic composition of the general population, a higher proportion of male prisoners come from ethnic minority groups than from ethnic majority groups. Between 1995 and 2008 the ethnic proportions were fairly stable, ranging from 79% to 83% majority ethnic/white ethnic. Although there has been a small shift in the proportions of male white and black prisoners; since 1995 there has been a decrease in the white male prison population and a small increase in the Black male prison population. In addition to the increasing black prison population, there is severe disproportionality between the percentage of black men in prison and black men in the general population. There has also been an increase in the percentage of Asian males in prison over the past 15 years, from around 3% in 1995 to 7% in 2008. The ethnic white prison population in Scotland correspond to the ethnic white population at large, 97% and 98% respectively. The black prison population is severely overrepresented, eight times higher than the groups' proportion in the general population. The numbers are however too small to be statistically significant: 1.32% of the total prison population is ethnic black compared to 0.16% in the Scottish population at large.

Although women are a minority in the prison population despite making up half the population, there is a question as to whether they are more likely to be in prison than men for the same level of offences committed at the same state of mental ill-health. The number of female prisoners has increased over the past decade, both in England and Wales and in Scotland. The increase is mainly found in the adult female prisoner category, but in contrast to the male prison population, the number of young female prisoners has also increased. White ethnic women make up the majority of the female prison population, decreasing from 75.6% in 1995 to 70% in 2008. The second largest group is the ethnic black group, increasing from 19% in 2005 and 2007 to 23.8% in 2002, although decreasing since. The number of ethnic black women in prison has remained fairly stable over the past 15 years: in 1995 black women constituted 19.5% of the female prison population and in 2008 the number was 19.2%. The ethnic breakdown of the female prison population is thus slightly different than the ethnic breakdown of the male prison population; there is a higher proportion of white men than white women in prison, and a higher proportion of black

women than black men in prison. There are also relatively more female prisoners in the category Chinese or Other (3.4% of the prison population) than in the male prison population (1.5%). Combined, these numbers suggest that ethnic minority women are more likely to be found in the prison population than ethnic minority men, compared to the female/male white ethnic groups.

The report finds evidence of continuing concern over the treatment of female offenders by the Criminal Justice System. The issues raised include the inappropriate use of custody, with too many women imprisoned on short sentences for non-violent crimes and an over-use of remand.

The report finds reason for continuing concern over the high proportion of prisoners with learning difficulties/disabilities and mental health problems. Previous research (e.g. MIND 2007) has raised concerns that the police and the Crown Prosecution Service have made unfair judgments regarding the capacity of people with health problems and/or learning disabilities to give evidence in court, leading to fewer cases going to trial.

Data from smaller scale research highlights the difficulties experienced by specific groups in accessing justice, including: refugees and asylum seekers (Mason and Hughes 2009; Amnesty International and Southall Black Sisters 2008); traveller/gypsy communities (Cemlyn et al 2009; Mason and Hughes 2009); and people with learning disabilities and mental health problems (Lee and Charles 2008; MIND 2007). The evidence available from smaller scale research points to the under-reporting of racist incidents experienced by Travellers and Gypsy groups, the negative experiences of policing by these groups, and discriminatory treatment by courts, prisons and probation service.

### **Policy changes**

There are ongoing developments of governmental policies to address these inequalities, including cross-governmental strategies and action plans on hate crime and violence against women. There are also developments in data collection amongst the criminal justice agencies, such as the use of 'flags' to identify cases relevant to equalities issues (e.g. domestic violence and hate crime).

### **Recommended improvements to the Criminal Justice System**

Although there have been improvements, there are continuing challenges in both working to reduce these inequalities and in terms of their monitoring. In sum, this report finds that there needs to be: expansion of the evidence base, particularly for

the newer strands; alignment of definitions across Britain, the Criminal Justice System, and in administrative and survey data; improvements in recording practices such that they are consistent, comparable and transparent; setting of priority objectives based on the evidence; and implementation of policies in such a way that inequalities in physical and legal security are effectively addressed.

The inadequacy of available data needs to be urgently addressed in order to properly assess and monitor inequalities in physical and legal security. The new Public Sector Equality Duty (Equality Act 2010) requires public authorities to have due regard to the need to: eliminate discrimination, harassment and victimisation; advance equality of opportunity; and foster good relations. This suggests that the gathering and analysis of data across the protected characteristics (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation) will be central to public bodies meeting the duty.

An overall summary assessment of the data available on physical and legal security using the Office for National Statistics established criteria for quality in statistics, and corresponding recommendations for improvements, are presented below:

## **A Relevance**

*Assessment:* Data needs to be available that is relevant to all the equality strands, using pertinent crime categories.

### *Recommendations:*

1. *Definitions* need to be consistent to allow equalities issues to be identified throughout the Criminal Justice System in the same way;
2. Recorded crime categories should be the lead categorisation in administrative and survey data with the use of *flags* to identify equality groups;
3. The definition of conviction rate should be the percentage of crimes recorded by the police that end with a conviction for the offence that was reported;
4. There should be flagging of equality group status throughout the Criminal Justice System to ensure knowledge of victims, perpetrator and equality relevance;
5. *Flags* should be compulsory and uniformly and comprehensively applied;
6. Flagging should be applied to the recording of all incidents, crime-related incidents, and crimes, and performance management statistics.

## **B Accuracy**

### *Assessment:*

There have been considerable efforts to increase the consistency of police recording of crime and developments in the crime surveys. However considerable challenges remain in relation to the specific aspects of violent crime relevant to equality groups.

### *Recommendations:*

7. Reconsideration of 'standard' recording practices that have disproportionate detrimental impact on the recording of equalities issues (e.g. to count each incident of a violent crime as an incident, even if several incidents are reported together to the police; particularly important for domestic violence and hate crimes, which are often repeat offences, to prevent an underestimation of their extent).
8. Auditing of the quality of the application of these new definitions and data collection mechanisms, with the capacity of the audit body to make further recommendations if necessary.

## **C Timeliness**

### *Assessment:*

The data that is produced is timely. In analysing crime statistics this is particularly important to address, given the time lag between a crime taking place and being brought to justice. While it may be difficult to produce timely statistics when the legal processes are prolonged, annual reports presenting the most up-to-date data are useful.

### *Recommendation:*

9. A single annual publication containing data from the British and Scottish Crime Surveys, Home Office, Ministry of Justice and Crown Prosecution Service, should be produced and placed in the public domain.

## **D Accessibility and clarity**

### *Assessment:*

While data on recorded crime is accessible and clear, much relevant data that is collected for internal monitoring of the Criminal Justice System on equality issues is inaccessible to the public. The raw data needed to calculate the justice gap, attrition and disproportionality are often collected, but are rarely presented in a way that is accessible and clear.

*Recommendations:*

10. Data relevant to equalities issues to be routinely and uniformly placed in the public domain, including Criminal Justice System performance data that is relevant to equalities issues.
11. The use of flags to identify equality groups in the Criminal Justice System should have compulsory, statutory status and be reported in the same publication as recorded crime statistics.
12. Relevant statistics on all equality groups (including attrition/conviction rates and disproportionality) to be constructed from the raw data and placed in the public domain. These should include conviction rates for the Criminal Justice System as a whole (and key stages) and disproportionality for the Criminal Justice System as a whole (in addition to key stages).
13. Relevant and robust data to be collected across all equality groups, and on key groups at the point of intersection of two or more inequalities.

## **E Coherence**

*Assessment:*

The way that data is collected on equality issues is still under development and often lacks coherence. The data collected on domestic violence and intimate partner violence in the British Crime Survey uses different categories from recorded crime, so it is very difficult if not impossible to form a coherent body of knowledge to support the Criminal Justice System. The number of different terms used in the Criminal Justice System also results in a lack of transparency and accessibility for public understanding.

*Recommendations:*

14. To use *crime codes* at all times, even if other categories are used in addition.
15. Data to be collected and counted always as incidents and, where relevant and only in addition (not alternative), as prevalence (percentage of the population). This is essential in order that all violent crime against women and other equality groups enters the mainstream statistics and is not separated out into a specialised field. This requires the revision of the British and Scottish Crime Surveys so that the number of incidents of domestic violence is recorded and reported, not only its prevalence as a percentage of the population.

## **F Comparability**

*Assessment:*

Definitions of those violent crimes that are most relevant to equality issues are sometimes inconsistent across different parts of the Criminal Justice System and different definitions are often used in the crime surveys.

*Recommendation:*

16. Ideally, the recording of violence in adjacent public policy fields (e.g. health, social services, homelessness) should be brought into alignment with the use of common definitions.

# 1. INTRODUCTION

This report provides an analytical research overview of physical and legal security and the criminal justice system (CJS). It collects and analyses available evidence relating to equality groups and addresses the question of the extent to which the Criminal Justice System is likely to meet the new public sector duties (The Equality Act 2010).<sup>1</sup>

This research overview is intended to contribute to the work of the Equality and Human Rights Commission (EHRC) in producing a Triennial Review in 2010 of progress towards equality, human rights and good relations.

This overview takes place as the duty of public bodies to promote equality is proposed to be extended from ethnicity, gender and disability to other protected equality groups (The Equality Act 2010).

The existing three duties for race/ethnicity, gender and disability require public bodies to demonstrate that they are taking action to eliminate unlawful discrimination and to actively promote equality in policy making, service delivery and employment. The Equality Act 2010 harmonises and extends these into one duty covering all the 'protected characteristics' or equality strands: age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief, sex and sexual orientation. Although the earliest the duty will come into full force is April 2011, public bodies need to ensure they continue to meet their existing obligations as well as begin gathering information across all the strands to prepare for the extended duty (EHRC 2009; Government Equalities Office 2009a; Government Equalities Office 2010).

According to Part 11, Chapter 1 'Public Sector Equality Duty' of the Equality Act 2010:

- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
  - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

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<sup>1</sup> The evidence for this report was collected prior to the change in government in May 2010. Since this date there have been some changes proposed (e.g. the removal of anonymity for rape complainants, (Almandras 2010) which have important implications for the issues under discussion here.

- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- (2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).
- (3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
  - (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
  - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
  - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- (4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
- (5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
  - (a) tackle prejudice, and
  - (b) promote understanding.
- (6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.
- (7) The relevant protected characteristics are:
  - age;
  - disability;
  - gender reassignment;
  - pregnancy and maternity;
  - race;
  - religion or belief;
  - sex;
  - sexual orientation.

In addition, the Equality Act 2010 introduces a specific public duty on socio-economic inequalities. According to Part I, Chapter 1 'Public sector duty regarding socio-economic inequalities':

(1) An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.

The Public Sector Equality Duty (PSD) is a potential tool and key driver for identifying discrimination and inequality of outcomes and taking action. The PSD provides an impetus for organisations to actually gather data and take action on inequalities.

This report includes concepts and data that are relevant to both the EHRC Equality Measurement Framework (Alkire et al 2009) and the measurement frameworks currently operating within the criminal justice system. It presents data that has relevance to all three frameworks that guide the Commission's work: equality; human rights; and good relations.

This report sets out to cover all seven protected equality strands of age, disability, race/ethnicity, gender, religion or belief, gender identity, sexual orientation as well as other disproportionately affected groups wherever this is feasible and relevant. Due to the unevenness in data collection across the strands, the main equalities in focus are those of gender, disability and race/ethnicity. Where data on other equalities groups is available, whether from large scale data sets or smaller research projects, this is drawn upon. Ongoing developments in the CJS and larger surveys to address information collection across the groups are also discussed.

The main areas of physical security that the review focuses on are homicide and other violence against the person, including domestic or intimate partner violence, sexual violence and hate crime as well as physical security in institutional settings. The main areas of legal security that are focused on are the extent to which offences are brought to justice and equal treatment in and by the CJS.

The selection of topics reflects the priority attributed to *objective outcomes* rather than subjective assessments of these; in other words, whether people *are* treated equally, as opposed to whether they *feel* they are treated equally. This is not to say that these subjective assessments are unimportant or do not have 'objective' effects, since they do, (e.g. in relation to people's use of public space), only that these are not the focus here.

The sources used include large surveys and administrative data, as well as evidence from smaller scale research projects. The data selected is guided by considerations of geographical coverage (Great Britain where possible), robustness of sources, and where possible, the availability of data over time.

The research presented here identifies existing inequalities, changes over time, emerging patterns of inequality and persistent inequalities. Trends are identified and analysed, where the data allows in terms of being sufficiently comprehensive (i.e. available, accessible, robust).

The analysis is focused so as to assist the EHRC in its selection of priority areas in its Triennial Review. The report identifies difficulties and 'good practices' in the CJS agencies, which may be important in helping them to meet the new Public Sector Duty to promote equality. This includes identifying gaps in criminal justice statistics that may need to be addressed to enable this duty to be monitored. Recommendations relating to the collection of data, policy and procedures concerning the agencies of the CJS are made on the basis of the evidence presented in the report.

The report begins by clarifying the scope of the report and the main methods of data collection (Chapter 2). Definitions and data sources in the areas of physical and legal security are then discussed (Chapter 3). The data is presented and analysed for physical and legal security separately (Chapters 4 and 5 respectively). Ongoing developments of policies to tackle violence and address inequalities in legal security are identified, together with the remaining challenges and potential solutions (Chapter 6). The report concludes by offering a series of recommendations based on the evidence and analysis presented (Chapter 7).

## **2. METHODOLOGY**

### **2.1 Introduction**

The discussion of the review methodology is divided into two sections. First, there is the clarification of the scope of the report. Second, there is a review of the methods of data collection.

### **2.2 Clarifying the scope of the analysis**

The report addresses the seven protected equality strands: age, disability, gender, gender identity, race/ethnicity, religion or belief and sexual orientation. Adjacent terms are sometimes used where this has been the practice of the body that we are discussing. Sometimes gender is referred to as sex and vice versa. 'Race/ethnicity' is adopted as a generic term to capture the varying terminology between different bodies, while noting that legislation tends to use the term race. The term learning disabilities/difficulties is adopted at times given its wide usage in this field, even though this terminology is not consistent with the preferred social model of disability (i.e. an individual may have an impairment but becomes disabled by the social environment). In some instances data categories are combined, for example religion and ethnicity as this is the format in which the data is available. The terms transgender or gender identity are used to be as inclusive as possible of various groups, reflecting the widely preferred terminology (e.g. Mitchell and Howarth 2009). The legal definition however, following the Equality Act 2010, appears more restrictive, referring to 'gender reassignment' and 'transsexual persons', defined as those people who are proposing to undergo, are undergoing or have undergone a process to reassign their sex by changing physiological or other attributes of sex.

The report prioritises *objective* outcomes and processes, such as levels of violence and the number of people in prison. This means a degree of overlap with those topics that form part of the Equality Measurement Framework (Alkire et al 2009). More 'subjective measures' concerned with attitudes or perceptions, such as fear of crime and satisfaction with CJS agencies, are not considered here for several reasons. Perhaps most importantly, such data is often not a stable reflection of 'actual' experiences since it is susceptible to fluctuations in external factors. For example, reported fear of crime may be associated with media coverage (Fletcher and Allen 2003) and levels of anxiety about other social and moral issues (Farrall 2007). Data such as reported levels of satisfaction may also offer a spurious portrayal due to the way in which people's expectations can adapt to circumstances. Hence, disadvantaged groups may report high levels of satisfaction with public services such

as the police due to low expectations. As Donovan et al (2001) claim, expectations are associated with several factors, such as previous experience, the media, and, crucially, the characteristics (e.g. social class, ethnicity, age) of the service user. This means that there is 'no simple relationship between increasing the performance and quality of services and increased level of user satisfaction' (Donovan et al 2001: 12).

The report addresses data and research primarily at the level of Great Britain (England, Wales and Scotland). The different legal systems of England and Wales on the one hand, and Scotland on the other, as well as the different data sources (e.g. the major crime surveys), at times necessitates separate presentation of data. There are also some rare occasions when the UK as a whole is the unit for analysis.

### **2.3 Data Collection**

The report draws on a wide range of evidence including survey data, qualitative evidence, trends analysis, and reports published by the voluntary sector, and other national and international governmental reports. Where there are gaps, other potential sources of information are discussed, and remaining gaps identified.

There are many potential approaches to the collection and analysis of data, which range from 'broad scale' to a 'focus on detailed categories'. The former predominantly utilises large scale data sets and looks at the 'bigger picture', while the latter uses smaller scale studies and attends to more in-depth complexities. The path taken here is the 'middle route': the report draws on evidence from large scale surveys and official administrative data sets; at the same time, the data collected from smaller scale research is also considered, particularly where there is a lack of evidence available from the larger data sources.

The report builds on the *Review of Equality Statistics* (Walby et al 2008) by this team for the EHRC, the EHRC *Developing the Equality Measurement Framework: Selecting the Indicators* (Alkire et al 2009), the *Equalities Review* (2007) and the Office for National Statistics (ONS 2007) review of equality data. It expands on these reviews by considering evidence from a wider range of sources, including smaller scale studies and surveys, to produce an up-to-date overview of the most relevant issues confronting various disadvantaged groups.

In order to provide a fuller and more comprehensive picture of the most urgent issues, data from projects pinpointing particular problems is included. These projects include studies of attrition in the CJS, following the ways particular offences 'drop out' of the CJS at various stages, meaning that few are brought to justice. Using evidence

from smaller studies is necessary since such issues are currently difficult to explore using the limited amount of data available from larger administrative sources.

Careful attention is paid to equality groups that are less well covered or excluded from larger surveys, and to small groups at the intersection of inequality strands. These people include: refugee population, people resident in institutions, people detained in prisons and groups at the point of intersection of one or more of the inequality strands, including for example minority ethnic women. Data relating to these social groups, often relatively small, is discussed mindful of the difficulties of drawing firm conclusions on the basis of small sample sizes.

Data on physical and legal security are presented in Chapters 4 and 5. The following chapter discusses definitions and sources of data in the areas of physical and legal security.

### 3. DEFINITIONS AND SOURCES OF DATA

#### 3.1 Introduction

There are various ways in which physical and legal security may be defined. Four sources are the most important here. The first set of definitions is provided by the EHRC *Equality Measurement Framework*, which offers both conceptual definitions and suggestions as to how physical security and legal security may be measured and captured in indicators. Secondly, the Criminal Justice System has its own definitions of violence, physical and legal security. These are usually embedded in law and in institutional processing and recording practices. Thirdly, there are multiple definitions of violence used in surveys, of which the most important are the British Crime Survey (England and Wales) and the Scottish Crime Survey (Scotland), some of which align with crime codes. Fourth, there are specialised definitions of physical and legal security within institutional and other small or specific settings.

#### 3.2 EHRC Equality Measurement Framework

The EHRC *Equality Measurement Framework* separates the definitions of physical and legal security, and articulates each within a capabilities framing.

Within the *Equality Measurement Framework*, physical security refers to: ‘The capability to live in physical security’ including, for example, being able to:

- be free from violence including sexual and domestic violence and violence based on who you are
- be free from cruel, inhuman or degrading treatment or punishment
- be protected from physical or sexual abuse (especially by those in positions of authority)
- go out and to use public spaces safely and securely without fear (Alkire et al 2009)

Legal security is defined within the *Equality Measurement Framework* as: ‘The capability of knowing you will be protected and treated fairly by the law’ including, for example, being able to:

- know you will be treated with equality and non-discrimination before the law
- be secure that the law will protect you from intolerant behaviour, and from reprisals if you make a complaint
- be free from arbitrary arrest and detention
- have fair conditions of detention
- have the right to a fair trial

- access to affordable and high-quality information and advocacy as necessary
- have freedom of movement
- have the right to name, gender and nationality
- own property and financial products including insurance, social security, and pensions in your own right
- know your privacy will be respected. (Alkire et al 2009)

### **3.3 Criminal Justice System data**

The concepts of physical and legal security are not used in the collection of data and its analysis in the CJS. The CJS uses alternative concepts which have some important parallels and overlaps.

The CJS concept of ‘violent crime’ is close to the EMF concept of physical security. It includes homicide and other forms of violence against the person as well as sexual offences. The CJS uses some additional adjacent concepts, such as harassment, where the abuse is not directly physical, and ‘incident’, for when the event is not severe enough to be a crime. The offence classes of particular relevance to this review are: Violence against the person (Home Office 2009a), and Sexual Offences (Home Office 2008a). Violence against the person includes murder, attempted murder, threats to kill, wounding, assault, harassment, grievous, and actual bodily harm. In addition, common assault is an important category. There is separate recording of racially or religiously aggravated violence against the person (Crime and Disorder Act 1998; Anti-Terrorism, Crime and Security Act 2001).

Also relevant to the EMF capability physical security are ‘hate crimes’.<sup>2</sup> In England and Wales ‘monitored hate crimes’ are defined, by the Association of Chief Police Officers of England and Wales and Northern Ireland (ACPO) and the CPS as ‘a criminal offence which is perceived, by the victim or any other person, to be motivated by a hostility or prejudice based on a person’s religion or perceived religion, race, disability, sexual orientation, or transgender’ (HM Government 2009a). In Scotland, legislation on aggravated offences covers race, religion, disability, sexual orientation and transgender identity (Scottish Government 2010a).

The term ‘hate crime’ is widely disputed (see Iganski 2008 for further discussion) and debate over the most appropriate term continues (HM Government 2009a: 4). While

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<sup>2</sup> While VAW has occasionally been included within the broader categories of hate crime and/or targeted violence, this report follows the more conventional practice of retaining VAW as a category distinct from that of hate crime.

'hate crime' may have popular resonance, the law uses other concepts including 'hostility' or 'aggravated' to describe offences (e.g. as in racially or religiously aggravated offences or hostility based on a person's sexual orientation). Elsewhere, the phrase 'targeted violence and hostility' is preferred (e.g. see Sin et al 2009 for further discussion).

Sometimes detailed distinctions are made dependent on the precise circumstances of an incident. For example, in cases involving an offender and a disabled person, a disability hate crime describes an offence aggravated by hostility based on disability. It does not refer to those cases in which an offender preys upon a disabled person's perceived vulnerability or unequal access to safety (CPS 2007). However, in view of a tendency towards too readily assuming the vulnerability of disabled people, recent guidance has been issued by the CPS (2010a) further detailing the meanings of the terms. The guidance cautions against making such assumptions at the same time as promoting a comprehensive definition of hostility. Overall, a greater focus on the victim's right to justice and the offender's behaviour is encouraged. The CPS also notes that vulnerability and hostility need not be mutually exclusive; investigation can reveal evidence of both.

Some forms of religious or racist hate crimes (e.g. assault and harassment) are named in the crime code and can be specifically prosecuted as religiously or racially aggravated offences (CPS 2010b). For other offences where there is evidence of racial or religious aggravation, and for any offence aggravated by hostility based on the victim's sexual orientation (or presumed sexual orientation) or based on the victim's disability (or presumed disability), the courts have a duty to increase the sentence under section 146 of the Criminal Justice Act 2003 and to declare in court that they are doing so. This does not currently cover hostility based on the victim's gender identity (or presumed gender identity) unless one of the other strands is also present.<sup>3</sup> Identifying these forms of hate crime without crime codes is dependent on these offences being 'flagged' by the criminal justice agencies such as the police.

Different terms are thus used in considering incidents of violence against the person, depending on the circumstances of the crime and the characteristics of those involved. The Sentencing Guidelines Council, which issues guidelines to assist courts in England and Wales, also use a range of terms. For example, the guidelines on sentencing in cases of domestic violence discuss 'aggravating factors' (Sentencing Guidelines Council 2006). These are factors that may arise by virtue of an offence being committed in a domestic context which increase the seriousness of

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<sup>3</sup> Schedule 21 of this Act, with regard to the 'Determination of Minimum Term in relation to Mandatory Life Sentence', also provides for consideration of aggravation in relation to race, religion and sexual orientation, but does not specify disability or gender identity.

such offences, including: abuse of positions of trust and power that indicate higher culpability; a victim's particular vulnerability; the impact on children; and a proven history of violence.

In the lead up to the Offences (Aggravation by Prejudice) (Scotland) Act 2009, the inclusion of aggravation by gender<sup>4</sup> was considered by a Parliamentary Committee (Equal Opportunities Committee 2008). In its submission to the Committee, the Scottish prosecution body COPFS stated that domestic violence is regarded as an aggravated form of assault, flagged up to the court. The Committee concluded against inclusion, but recommended further consideration to the way domestic abuse aggravation might be framed in legislation.

Matters of definition and the implications of particular distinctions raise important questions. For example, does the term 'vulnerability' necessarily imply lack of agency, or does it continue to be a useful descriptor of particular circumstances? Is there a case for the 'levelling up' in terms of the treatment of the various offences (e.g. creating new offences of 'aggravated' crimes in the crime code across the equality strands which would also make the collation of data for monitoring purposes easier)? Or would this sacrifice important distinctions between the different equality groups, or even have a potential unintended consequence of being seen as a 'token gesture' such that 'aggravated' offences come to be perceived as *less* rather than *more* serious relative to those offences that are not so aggravated?

Changes to both the Crime Code (e.g. the creation of new offences in law) and to the rules used in counting crime impact upon crime recording practices and, by implication, the availability of data and whether it is possible to conduct analyses over time. For example, since 1 April 1996 the police force (England and Wales) has been required to record the ethnic origin of those who die during or directly after police custody (Home Office, 2000). Recording practices changed with the introduction of the National Crime Recording Standard in 2002 (England and Wales) (Home Office 2009b). The recording of sexual offences was modified by the Sexual Offences Act 2003, slightly widening the definition of rape (Home Office 2008a), and in April 2008, the counting rules changed introducing greater distinction between some violent offences (Home Office 2009a). The Annual Data Requirement (ADR) has not yet been extended to cover crime data disaggregated by the five hate crime strands though it is expected that this data will be collected as part of the ADR from April 2011 (Hansard 2010).

The CJS concept of legal security is close to that of 'justice', while its absence is captured by the concepts of 'justice gap', 'attrition' and 'disproportionality'. The 'justice gap' is defined by the House of Commons Justice Committee (2009: 11, note

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<sup>4</sup> Including age within the bill was also considered by this Committee.

28) as: 'the difference between the number of crimes which are recorded and the number which result in their perpetrator being brought to justice.' However, it could be argued that the 'true' starting point of the gap is possibly 'earlier' in the process, i.e. the number of crimes committed, as estimated by surveys, as opposed to the number recorded.

These statistics on the number of crimes committed relative to those brought to justice are used to calculate the extent of attrition which can be used as a measure of the 'justice gap'. Attrition refers to those cases dropping out of the criminal justice process. Cases may 'drop out' for a number of reasons at various stages, including the decision of the victim not to report a crime and discontinuance by the prosecutors (Kelly et al 2005).

Disproportionality is another element in the justice gap. As defined by the Government in Public Service Agreement 24 (HM Government 2009b), 'Particular minority groups may be more or less likely to be the subject of an action by a Criminal Justice Agency, and sometimes this involvement is disproportionate to their representation of that minority group in the resident population as a whole.' Disproportionality then is concerned with the over-representation of some groups in the CJS. Some degree of disproportionality may be explained by, for example, the greater proportion of crimes committed by particular groups in comparison to others, implying the observed disproportionality is 'fair' or 'just', at least at one level. However, to a certain degree it may be the outcome of unfair or unjust processes, such as bias in terms of which social groups are likely to be arrested relative to others.

In order to measure the extent of violent crime and access to justice, the Criminal Justice System collects data using units that are defined predominantly in crime codes. These are embedded in law and institutional practice, with manuals specifying the definitions together with instructions as to coding practice. In addition, there are a number of areas where the CJS is beginning to distinguish specific forms of violence that are associated with equality strands, which are much less often embedded in crime codes. There is emerging, though still inconsistent, practice in identifying these forms of violence (see Chapter 6 for further discussion).

In addition to the data produced and placed in the public domain on the extent of the violent crime that it processes, the CJS also collects data in order to monitor its own performance and as a means of meeting the PSDs. As the CJS has been engaged in reform of its procedures to meet the needs of the equality strands, large amounts of data have begun to be collected that measure performance on these matters. For example, police forces in England and Wales use markers (or 'qualifiers') to flag

reported events of domestic abuse and hate crime. Requests (e.g. under the Freedom of Information Act) may result in the release of this data. However, most of these data are not routinely placed in the public domain and remain somewhat inaccessible to those outside the CJS. The reasons for this are not entirely clear, though it may be that procedures for collating data are still under development; practices across police forces may not yet be consistent meaning that data is not yet likely to be adequately comparable.

*Recorded crime and the police:*

Data on the extent of violent crime offences, that are defined by crime codes and recorded by police are reported on by the Home Office and placed in the public domain as 'recorded crime'.

Few crime codes, with the exception of rape, have traditionally distinguished between equality groups. There has been innovation in the development of new categories and practices to address this, but this is highly uneven across equality strands and by types of crime. Innovations include the introduction of 'racially aggravated' as a specific type of crime, the 'flagging' of violent crimes as 'domestic', and the introduction of a category of 'domestic incident' (which is not regarded as severe enough to count as a crime).

The recorded crime data is a source of data only on those offences that are reported to and recorded by the police. Many instances of violence are not reported to the police (Walby and Allen 2004). Events that are reported are variously recorded: as incidents, crime-related incidents, or crimes. In some instances, events that may be considered crimes are recorded as incidents (see Chapter 6). This means that these data do not constitute a reliable estimate of the full extent of violence, but rather an under-estimate.

*Crown Prosecution Service:*

The Crown Prosecution Service (CPS) is responsible for the prosecution of criminal cases in England and Wales and, in all but minor cases, determines the charge. The CPS has increasingly collected statistics on the extent to which cases of violence against equality groups, especially domestic violence and hate crime, are prosecuted successfully (e.g. CPS 2008b, 2009a, 2009b). This provides evidence on the extent of legal security. The comparable body in Scotland is the Crown Office and Procurator Fiscal Service.

### *Performance Management Statistics*

The CJS is subject to performance management for which data collection is required. These include the Public Sector Duty (discussed in Chapter 1), together with: HM Treasury-led Public Service Agreements (PSAs) (England and Wales); the Scottish Government framework of purpose targets and national indicators (Scottish Government 2010b); policing standards analysis (Home Office 2009c); as well as performance frameworks in which the police are one of several other agencies (e.g. the National Indicator Set for Local Government, Department for Communities and Local Government 2008). Some of these include data that is relevant to equalities, while others do not currently do so although there are aspirations to do so in the future.

The key Public Service Agreements for this review are 23 'Make Communities Safer' and 24 'Deliver a more effective, transparent and responsive CJS for victims and the public' (HM Government 2009b; 2009c). The former relates to physical security, and includes an indicator on the level of serious violence with injury. This indicator uses police recorded crime data for all serious violence except for serious sexual offences. Although serious sexual offences are discussed within this indicator, police recorded crime is not used as a measure of these offences due to the extent to which they are under-reported.

PSA 24 addresses legal security, or 'justice'. One of the indicators within this agreement assesses the extent to which offences are brought to justice using Courts and Police data on convictions, cautions, offences taken into consideration, penalty notices, warnings and recorded crimes. Another addresses race disproportionality at key stages in the CJS using administrative data from CJS agencies including police forces and the Crown Prosecution Service. These indicators overlap substantially with those used in other frameworks, such as those used by the police.

Performance frameworks are, however, subject to change. The police performance framework 'Analysis of Policing and Community Safety' (previously named 'Assessment of Policing and Community Safety') is no longer set in statute. There is now only one national top down numerical target for the police service on increasing public confidence. This shift appears to follow a wider movement towards reducing 'the data burdens' associated with policing (e.g. Normington 2009; Berry 2009).

Some statistics relevant for equalities issues are routinely published by the Ministry of Justice. Section 95 of the Criminal Justice Act 1991, states that: 'The Secretary of State shall in each year publish such information as he considers expedient for the purpose of ... facilitating the performance of those engaged in the administration of

justice to avoid discriminating against any persons on the ground of race or sex or any other improper ground' (Riley et al 2009: 1).

The geographical coverage is uneven across Britain. For example, the above performance frameworks apply to England or England and Wales; the Scottish Government sets its own performance targets; and section 95 of the Criminal Justice Act requiring publication of statistics on race and sex applies to England and Wales only.

### **3.4 Measuring physical and legal security in the Criminal Justice System**

The definitions used by the CJS have a wide resonance for the EMF capabilities of physical and legal security. The measurement and analyses of legal security is underpinned by police and CPS data, which enable an analysis of CJS functions that provide legal security. Analyses of police and CPS data are carried out both by the CPS and by independent academics, including studies of 'attrition' through the CJS of rape (Kelly et al 2005) and domestic violence (Hester et al 2008). However, these data are less reliable for the measurement and analysis of physical security, since they severely under-estimates the extent of violence, even if the definitions still hold sway.

#### *British (and Scottish) Crime Survey*

In recognition that recorded crime statistics do not include all crimes committed, there has been the development of population surveys commissioned by the government, in particular the Home Office. These surveys, the British Crime Survey (England and Wales) and Scottish Crime Survey (Scotland) (variously named over time) ask a nationally representative sample of the population whether they have suffered a crime in the last year. They include both crime code definitions and other definitions of violence. These surveys are in two parts: the first uses face to face interviewing and crime codes; the second is a self-completion section comprising different modules that vary from year to year, including a module on inter-personal violence. Self-completion encourages a higher rate of disclosure of domestic and sexual violence, and the module uses a wider range of definitions. The level of domestic violence disclosed in the self-completion module is five times higher than that in the face-to-face part of the survey (Walby and Allen 2004). A self-completion module on domestic violence was included in 1996; 2001; 04/05; 05/06; 06/07; 07/08. In some years, there have been questions on sexual victimisation, which include asking about the relationship of the offender to the victim.

In relation to hate crimes, the British Crime Survey (face-to-face) includes questions asking whether the respondent believes that the incident was racially motivated, and whether the respondent believes that the incident was motivated by the offender's attitudes towards the respondent's religion / religious belief; sexuality or sexual orientation; age; disability; motivation by the offender's attitude to gender identity is not included (BCS Questionnaire 2008-09).

There is a separate survey in Scotland, the Scottish Crime Survey. This was first conducted in 1993, and repeated in 1996, 2000 and 2003. It was replaced in 2004 and 2006 by the Scottish Crime and Victimisation Survey (SCVS), which was replaced in 2008 by the Scottish Crime and Justice Survey (SCJS). Like the British Crime Survey (BCS), the core survey provides information relating to violence by type (assault or robbery), age and sex of the victim, while the self-completion module provides more reliable data on partner abuse. The SCS included questions on domestic violence in a self-completion module for the first time in 1996. The self-completion module was included again in the 2000 SCS, with modifications (Macpherson 2002), and in the 2003 SCS, 2004 SCVS, and the 2006 SCVS.

Thus the source of the most reliable data on the extent of sexual and domestic violence, and hate crime is the British Crime Survey (BCS) (for England and Wales) including its self-completion module that addresses domestic violence and sexual assault, and the Scottish Crime and Justice Survey (for Scotland). These survey data are more reliable than recorded crime data because of the low rate of reporting such crimes to the police, although even survey data may still underestimate the extent of crime.

However, the self-completion modules have been running for less than a decade, so only the face-to-face survey provides data on changes over a long period of time. A further disadvantage of using such data is the exclusion of certain groups from the overall sample. These groups include those in the non-household population (e.g. homeless people; those living in communal institutions; gypsies and travellers) though work by the Office for National Statistics is beginning to address this issue (e.g. Joloza 2009). The computer assisted self-completion technique used in the self-completion module is also not equally accessible to all respondents (e.g. older people and disabled people, some of whom may require assistance in completing the module which may discourage disclosure).

### **3.5 Physical and legal security in institutions and other specific settings**

Data on the (un)equal treatment of alleged offenders by the police and CJS is collected within routine CJS administrative statistics for a limited range of protected equality groups (especially ethnicity) and is partly presented in the public domain, for example annual reports on *Race and the CJS* and *Women and the CJS* (e.g. Ministry of Justice 2009a; 2009d; 2010a).

Data on the physical security of those resident or detained in public and private institutions are less readily available but have been sought from administrative sources. The Independent Police Complaints Commission (IPCC), the HM Prison Service, the Home Office and the Ministry of Justice provide the main sources of data. The IPCC produces annual reports with data covering such fatalities by gender, age and ethnicity. In addition, the non-governmental organisation INQUEST produces its own data sets partially derived from numbers produced by the Home Office. However, data are disaggregated for only a limited range of protected equality groups with varied public availability. Data from other sources, including small scale ad hoc studies is also drawn upon.

Data on the prison population is published by the Ministry of Justice (England and Wales) and the Scottish Government (Scotland), and on immigration detainees in the UK by the Home Office. Conditions in prisons and immigration detention centres are also reported on (HM Inspectorate of Prisons, England and Wales, and Scotland). Evidence relating to individual custodial establishments is available through the reports of inspectorate bodies. Also useful in exploring prison conditions is the Prison Reform Trust reports, including the regular 'Bromley Briefings Prison Factfile' publication, which collate information on the prison population across the UK using statistics from various sources (e.g. Home Office; Ministry of Justice; NOMS; the Scottish Government).

The importance of physical security in institutions is emphasised by some civil society groups (such as INQUEST, and Age Concern), placing on the agenda the experiences of those excluded from conventional crime surveys. These groups include prisoners and older people. Here the key issues include the number of deaths from non-natural causes in custody and 'elder abuse' (IPCC 2009b; O'Keefe et al 2007) (see for example tables 4.23-4.25).

Some data on other forms of physical and sexual violence is available from smaller scale studies (e.g. Dorkeeno et al 2007; Kelly and Regan 2000). This evidence is included in the review where data is not available from national surveys. For example, there is a lack of robust data on the extent of forced marriages, female genital mutilation (FGM), trafficking, and so-called 'honour crimes and killings. A

further difficulty in producing estimates of these forms of violence relates to the lack of agreement on definitions.

In the following chapters the data is presented, firstly for physical security (Chapter 4), and then for legal security (Chapter 5). The data is analysed so as to identify inequalities and trends over time in violence and treatment of different social groups in the CJS.

## 4 IDENTIFICATION AND ANALYSIS OF INEQUALITIES AND TRENDS IN PHYSICAL SECURITY

### 4.1 Introduction

This chapter presents and reviews the evidence relating to physical security. It focuses on inequalities in the extent of violence and other breaches of physical security, and identifies trends and emerging issues, as well as changes over time where possible.

Data is presented on the following types of violence: homicide, intimate / domestic violence, sexual offences, hate crime, and physical security in institutions. The selection of these topics for analysis was made on the basis of the Equality Measurement Framework capabilities (Alkire et al 2009), a review of equality statistics (Walby et al 2008) and other data (recorded crime and smaller scale projects). The selection was further informed by previous research and the actions of various groups (including governmental; civil society organisations such as Stonewall; the legacy equality commissions for gender, race/ethnicity and disability; and major inquiries such as the Stephen Lawrence Inquiry). These types of violence cover violence oriented towards equality groups because of who they are, rather than all forms of violence experienced by these groups. The focus is thus on gender-based violence towards women, including intimate partner and domestic violence, sexual assault, stalking, female genital mutilation, forced marriage, honour crime, and trafficking, and hate crime towards groups identified in terms of ethnicity, religion, sexual orientation, gender identity and disability, as well as age-related violence.

For each of the above topics the focus is on *outcomes*. This corresponds with the prioritization suggested by others, including the Equalities Review (2007) and Government Equalities Office (2010) that in considering the new public duty attention needs to be directed towards achieving results and narrowing equality gaps.

Data on each is provided below. For most of the topics data is sourced from either police 'recorded crime' or from the British (and Scottish) Crime Survey, as appropriate. Where there is no relevant data from these sources, smaller scale studies and alternative administrative sources are used. For each table the specific sources are cited and technical notes are added as appropriate. Where possible and relevant, data is disaggregated by equality groups and presented for a series of years. References cited in the text are included in the main reference section.

For some types of violence, and for some equality groups, the numbers are too small for statistically significant conclusions to be drawn. In these cases, evidence from smaller scale studies is also included, although due to the small numbers this is not a robust basis for drawing statistically significant conclusions, especially as to whether or not changes have occurred over time.

One important question is whether there are changes and trends in the extent of equality group oriented violence. This section reviews changes over time in equality group oriented violence where there is robust evidence. With the exception of homicide, police recorded crime data is not reliable as a source of information about changes, because change may occur in directions that are not related to the 'real' level of violence but as a consequence of changes in the way data is collected. For example, an increase in reporting may be the result of increased confidence in the CJS. The only reliable source of data of changes over time is the BCS. Data from this survey are used to assess whether there has been change or stability, trends or fluctuations in the extent of inequalities in physical security. However, not all issues have sufficiently long time series data for reliable analysis; for example, data on hate crime with variation across the strands have been collected only relatively recently.

**4.2 Homicide**

The tables below (4.1 for England and Wales and 4.2 for Scotland) show that domestic homicides are disproportionately committed against women. In 2008/2009 53% of all female homicide victims were killed by a partner or ex-partner, with an additional 15% killed by other family members (England and Wales); the respective numbers for men in England and Wales (2008/2009) are 7% killed by a partner or ex-partner and 8% killed by another family member. For Scotland in 2008/09, 46% of all female homicide victims were killed by a partner or ex-partner, with an additional 7% by another family member. The respective numbers for men were 7% and 13%.

In total in 2008/09, domestic homicide (i.e. partner/ex-partner; family) accounts for 68% of the total number of female victims of homicide, compared with 15% for male homicide (England and Wales); and for Scotland 2008/09, the equivalent figures were 53% for females and 20% for males.

**Table 4.1 Homicide by relationship of victim to principal suspect, England and Wales, all victims, (Recorded crime)**

		1998/ 99	% of all homici des	2003/ 04	% of all homici des	2008/ 09	% of all homici des
		N		N		N	
<b>Relationship</b>	Sex of victim						
Partner/ex-partner	m	27	6.3	26	4.7	31	6.8
	f	77	36.0	96	43.2	101	52.6
Family (parent, son, daughter, other)	m	46	10.7	57	10.4	38	8.3
	f	42	19.6	34	15.3	28	14.6
Friend / acquaintance	m	169	39.5	166	30.2	160	34.9
	f	38	17.8	26	11.7	17	8.9
<b>Total known</b>	m	242	56.5	249	45.4	229	49.9
	f	157	73.4	156	70.3	146	76.0
<b>Total unknown</b> (stranger/no suspect)	m	186	43.5	300	54.6	230	50.1
	f	57	26.6	66	29.7	46	24.0
Total known and unknown	m	428	100	549	100	459	100
	f	214	100	222	100	192	100
<b>TOTAL</b>		<b>642</b>		<b>771</b>		<b>651</b>	

Notes:

These data include all victims, including those less than 16 years of age.

Numbers for 'family': includes parent, son / daughter, other family, (excluding partners).

It is possible to exclude son/ daughter, on grounds that the concern is with adults in this report, but as noted by others, a more accurate solution would be to exclude son/daughter only if children (see Alkire et al, 2009: 72-72).

Source:

Smith et al (2010)

Comments:

Domestic homicides in England and Wales are disproportionately committed against women. In 2008/2009 53% of all female homicide victims were killed by a partner or ex-partner, with an additional 15% killed by other family members (England and Wales). The respective numbers for men in England and Wales (2008/2009) are 7% killed by a partner or ex-partner and 8% killed by another family member.

**Table 4.2 Homicide by relationship of victim to principal suspect, all victims, Scotland (Recorded crime)**

		1998/ 99		2003/ 04		2008/ 09	
		N	% of all	N	% of all	N	% of all
<b>Relationship</b>	Sex of victim						
Partner/ex-partner	m	8	11.3	1	1.1	5	7.4
	f	9	42.9	4	28.6	13	46.4
Relative (parent, son, daughter, other blood relative)	m	8	11.3	9	9.7	9	13.2
	f	2	9.5	5	35.7	2	7.1
Acquaintance	m	42	59.2	55	59.1	44	64.7
	f	6	28.6	2	14.3	8	28.6
<b>Total known</b>	m	58	81.7	65	69.9	58	85.3
	f	17	81.0	11	78.6	23	82.1
<b>Total unknown (Stranger/ relationship not known)</b>	m	13	18.3	28	30.1	10	14.7
	f	4	19.0	3	21.4	5	17.9
Total known and unknown (solved cases)	m	71	100	93	100	68	100
	f	21	100	14	100	28	100
<b>TOTAL</b>		92		107		96	

Notes:

In the most recent published statistical report (2010c) the data is not disaggregated by gender for the relationship of victim to principal suspect. This data was obtained on request.

This table includes all victims, including those under 16 years. The figures are of solved cases.

Prior to 2000/01, ex-partner does not necessarily include ex-boyfriend/girlfriend as these may have been recorded as simply acquaintances.

Source:

Scottish Government (2007, 2010c).

Comments:

Domestic homicides in Scotland are disproportionately committed against women. For Scotland in 2008/09, 46% of all female homicide victims were killed by a partner or ex-partner, with an additional 7% by another family member. The respective numbers for men were 7% and 13%.

#### **4.3 Intimate / domestic violence and sexual offences**

Gender-based violence against women is a widespread form of violence against an equality group. The most common forms are intimate partner violence, domestic violence, rape and sexual assault. Other forms of violence against women include forced marriage, 'honour' crimes, trafficking, and female genital mutilation.

Three types of data are reported here. First, data from the British Crime Survey and Scottish Crime Survey<sup>5</sup>, second, police recorded crime, and third, data from small studies. The crime surveys, which ask a random sample of the population about their experiences of crime, provide the most robust data on the extent to which certain forms of violence against women are committed. Data from police records are used with caution, and only in the absence of other data, as they are likely to be a serious underestimate of the actual number of crimes committed since substantial numbers of people do not report such violence to the police. Data from small studies is used where these are the only data source, but there must be caution about any claim to representativeness or accurate knowledge about the national extent of any issue.

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<sup>5</sup> The current survey launched in April 2008 as the Scottish Crime and Justice Survey (SCJS) represented a major shift in design, methodology and sample size from previous surveys (MacLeod et al 2009: 31), making any comparison with earlier survey results difficult.

According to the British Crime Survey, 1 in 4 women and 1 in 6 men in the UK will experience domestic violence at some point in their lives. Almost 1 million women in Britain experience one incident of domestic violence or abuse each year and approximately 10,000 women are sexually assaulted every week (BCS self-completion 2007/2008). The majority of serious and recurring violence is perpetrated by men towards women (Home Office 2009d; House of Commons 2008). Tables 4.3 to 4.18 show evidence that gender-based violence against women is a widespread and persistent form of gender inequality.

In some forms of this violence there is evidence of changes over time. In the case of intimate partner and domestic violence against women there has been a major decline over time. The extent of the decline varies according to the method of interview and definitions used, of which there are three main instances.

Table 4.4 shows that there has been an overall decline in violent crime between 1997 and 2007/8, as well as in domestic violence.

First, according to the face-to-face interviewing part of the BCS, the percentage of women who were victims of domestic violence in the last year in England and Wales declined from 1.1 in 1997 to 0.6 in 2007/8 and 2008/9 (Table 4.3), while the number of incidents declined from 582,000 in 1997 to 226,000 in 2008/9, as shown in Table 4.4. Second, according to the BCS self-completion module, the percentage of women experiencing non-sexual abuse from a current or former intimate partner (defined narrowly as instances where only threat or force is used) declined from 4.2 in 2001 to 2.7 in 2008/9 (Table 4.7). Third, again from the self completion module from the same survey, the percentage of women who were victims of non-sexual partner abuse but including additional forms of abuse (*any* non-sexual abuse, threats or force), declined from 6 in 2001 to 4.4 in 2008/9 (Table 4.7). Also from the self-completion module, but using a wider definition of partner abuse to include sexual abuse (excluding stalking), the percentage of women who were victims declined from 5.4 in 2004/05, to 4.3 in 2008/09 (Table 4.8).

Slight variations in numbers associated with variations in definitions, and between Scotland and England/Wales are shown in Tables 4.6, 4.8, 4.9, 4.10 and 4.11, but these do not change the overall account presented here. Table 4.11 using data from the Scottish crime survey shows the breakdown by different types of abuse. While the statistics for some types of violence show relatively narrow differences between men and women (e.g. the experience of having something thrown at you), it is important to highlight the wide inequalities in the experience of more severe types of abuse. For example, in relation to the form of physical abuse 'choked, or tried to

strangle or smother you', 21% of women reported that they had experienced this form of abuse since the age of 16, in contrast to only 3% of men.

Since confidentiality facilitates greater disclosure, the data from the self-completion module constitutes a more reliable estimate of the extent of domestic violence. The higher percentages of women reporting abuse through this methodology are likely to be more accurate than the lower percentages reported using face-to-face interviewing. However, as the time series data from the face-to-face interviewing covers more years than that for the self-completion modules (although there are some variations in questions between years), both are used to assess changes in trends over time.

A decline in partner and domestic abuse can be found using both the face-to-face interviewing and the self-completion module. However, there is a smaller rate of decline in the BCS self-completion data than in the main BCS. Using the main BCS the decline in incidents of domestic violence is slightly greater than half between 2001/02 and 2008/09 (Table 4.4), and the decline in prevalence a third (Table 4.3). Using data from the self-completion module, the decline in intimate partner violence is approximately a quarter (Table 4.7). The data collected through the self-completion method is widely accepted as being more reliable than face-to-face interviewing because of the sensitive nature of the questions respondents are asked to give, and so the self-completion rate of decline is the preferred measure for recent changes. However, when a longer time series is required, only the BCS face-to-face is available since the self-completion modules on these topics did not begin until 1996, and 2001 in comparable form. Inconsistencies in definitions and different methods of calculation continue to make comparisons over time difficult.

There is no decline in sexual assault to match the decline in domestic violence. There are small fluctuations in the percentage of women who suffer sexual assault, rather than a change in any one direction, as shown in Table 4.5. According to the BCS self-completion, this varies between 2.1% in 2000/1, 2.7% in 2004/5, 3% in 2007/8 and 2.5% in 2008/9.

There are several possible explanations for the decline in partner and domestic violence against women. The potentially relevant factors cluster into three main types (although these sometimes overlap): changes in policies directed at this form of violence; changes in policies that are not specifically directed at this form of violence but which nevertheless have consequences for it; and wider social changes.

There has been extensive development of policies directed at partner and domestic violence. These have included guidance issued by the Crown Prosecution Service to

assist in the prosecution of domestic violence cases, the rolling out of specialist courts for domestic violence, and the development of a cross government strategy to tackle Violence Against Women and Girls (e.g. CPS 2008a; HM Government 2009e, 2009f). It is hard to make a specific quantitative assessment of the extent to which these policies have contributed to the decline in domestic violence, since the quantitative evaluations of such policies are rare. However, whenever evaluations have taken place, the policies have been considered to make an important difference (Hester et al 2008). Hence it should be expected that this development of policy to reduce partner and domestic violence constitutes a major part of the explanation of its reduction.

There has been extensive development of policies directed at violent crime in general as well as of intimate partner and domestic violence. There has been a fall in the rate of violent crime, see Table 4.3, Povey et al (2009) and Walker et al (2009), at the same time as the fall in the rate of partner and domestic violence. However, violent crime has fallen at about only half the rate of the fall in intimate partner and domestic violence suggesting that there are other reasons for the decline that are specific to these gendered forms of violence. Thus, while perhaps half of the fall in intimate partner and domestic violence is likely to be for the same reasons as for other forms of violent crime, the other half of it is likely to be for reasons specific to these *gendered* forms of violence.

**Table 4.3 Proportion of adults (16-59) who were victims of violence by type of violence and sex %, England and Wales (British Crime Survey)**

		1997	2001/02	2004/05	2007/08	2008/09
Violence type						
	Sex					
Domestic	M	0.6	0.3	0.2	0.2	0.2
	F	1.1	0.9	0.7	0.6	0.6
Acquaintance	M	2.8	1.9	1.5	1.4	1.3
	F	1.4	0.8	0.8	0.8	0.8
Stranger	M	2.2	2.5	2.3	2.1	2.4
	F	0.6	0.7	0.6	0.6	0.5
Mugging	M	1	0.9	0.9	0.9	0.9
	F	0.6	0.7	0.6	0.5	0.6
Total	M	6.1	5.2	4.7	4.1	4.4
	F	3.6	2.8	2.6	2.3	2.1

Notes:

These data are from the BCS core module, using face-to-face interviewing. Up to 2001, the BCS was conducted biennially. Since April 2001 it has been conducted annually and reported on by financial year rather than calendar year.

Sources:

Walker et al (2010) Kershaw et al (2008); Nicholas et al (2005); Simmons et al (2002); Mirrlees-Black et al (1998)

Comments:

There has been a fall in the rate of violent crime; the decline in prevalence is approximately a third. The face-to-face interviewing part of the BCS shows that the percentage of women who were victims of domestic violence in the last year in England and Wales declined from 1.1 in 1997 to 0.6 in 2007/8 and 2008/9.

**Table 4.4 Number of violent incidents against men and women by type of violence, England and Wales (British Crime Survey)**

Incidents		1997	2001/02	2004/05	2007/08	2008/09
		N (1000s)	N (1000s)	N (1000s)	N (1000s)	N (1000s)
Type of violence	Sex					
Domestic	M	234	122	92	52	67
	F	582	514	308	288	226
Acquaintance	M	992	596	494	445	421
	F	499	297	335	321	270
Stranger	M	568	755	654	581	703
	F	139	164	184	167	148
Mugging	M	232	252	223	247	244
	F	164	189	124	145	131
Total		3410	2889	2414	2246	2210

Notes:

The source is the main part of the BCS, with face-to-face interviewing. Up to 2001, the BCS was conducted biennially. Since April 2001 it has been conducted annually and reported on by financial year rather than calendar year.

Sources:

Walker et al (2010) Kershaw et al (2008); Nicholas et al (2005); Simmons et al (2002); Mirrlees-Black et al (1998)

Comments:

There has been an overall decline in violent crime between 1997 and 2007/8, including domestic violence. A decline in partner and domestic abuse can be found using both the face-to-face interviewing and the self-completion module. However, there is a smaller rate of decline in the BCS self-completion data than in the main BCS. Using the main BCS the decline in incidents of domestic violence is slightly greater than half between 2001/02 and 2008/09.

**Table 4.5 Prevalence of sexual violence among adults aged 16-59 in the last year, England and Wales, %, (British Crime Survey)**

	sex	2001	2004/5	2007/8	2008/9
<b>Sexual assault (any assault including attempts) %</b>	M	0.2	0.6	0.4	0.4
	F	2.1	2.8	2.9	2.5
By type:					
serious sexual assault including attempts	M	0.1	0.1	0.1	0.1
	F	0.5	0.5	0.6	0.5
serious sexual assault excluding attempts	M	<0.1	0.1	0.1	0
	F	0.3	0.3	0.4	0.3
rape including attempts	M	<0.1	0.1	0.1	0.1
	F	0.3	0.4	0.5	0.4
rape excluding attempts	M	<0.1	0.1	0.1	0
	F	0.2	0.2	0.3	0.3
assault by penetration including attempts	M	<0.1	0.1	0	0
	F	0.3	0.2	0.3	0.3
assault by penetration excluding attempts	M	<0.1	0	0	0
	F	0.2	0.2	0.2	0.1
less serious sexual assault	M	0.2	0.5	0.3	0.4
	F	1.9	2.6	2.7	2.3

Notes:

For 2001 'rape 2003' definition is used. The term 'prevalence', used in the original tables, means the percentage of the relevant population (here those aged 16-59 in England and Wales) that are affected.

Up to 2001, the BCS was conducted biennially. Since April 2001 it has been conducted annually and reported on by financial year rather than calendar year.

These data are of the percentages experiencing sexual assault, by type, including and excluding attempts in the last year

Sources:

2004/5-2008/09: Walker et al (2009); 2001: Finney (2006)

Comments:

There are small fluctuations in the rates of women who suffer sexual assault, but no decline to match the decline in domestic violence. The BSC self-completion module shows that the rates of sexual assault against women vary between 2.1% in 2000/01, 2.7% in 2004/05, 3% in 2007/08 and 2.5% in 2008/09.

**Table 4.6 Prevalence of stalking and sexual victimisation %, Scotland, (Scottish Crime Survey)**

2008-09	Age	Any stalking and harassment in last year	Any less serious sexual assault since age 16	Any less serious sexual assault in last year	Any serious sexual assault since age 16	Any serious sexual assault in last year
Male	16-24	8	7	5	2	1
	25-44	8	3	1	1	0
	45-59	5	3	0	1	0
	60+	2	1	0	0	0
	total male	6	3	1	1	0
Female	16-25	13	13	5	5	1
	25-44	9	19	2	7	0
	45-59	5	17	1	7	0
	60+	1	9	0	2	0
	total female	6	15	2	5	0

Multiple deprivation	15% most deprived areas	8	8	2	4	1
	Rest of Scotland	6	10	1	3	0
ALL		6	9	1	3	0

Notes:

The report (MacLeod 2009) uses the following definitions:

*Stalking and harassment*: receiving obscene or threatening correspondence; receiving obscene, threatening, nuisance or silent telephone calls; someone waiting outside the home or workplace; being followed around or watched.

*Less serious sexual assault*: indecent exposure; sexually threatening behaviour; touching sexually when it was not wanted.

*Serious sexual assault*: forcing / attempting to force someone to have sexual intercourse or forcing / attempting to force someone to take part in other sexual activity when they did not want to.

Source:

MacLeod et al (2009)

**Comments:**

Women and men in Scotland appear to be victims of stalking and harassment (any form) to a similar degree. However, women are more likely to be victims of sexual assault (both less serious and serious) than men since the age of 16. In the case of serious sexual assault, women are five times as likely as men to be victims. Women in the age group 16-25 are most likely to be victims, whereas for men the 16-24 and 25-44 are equally likely to be victims of stalking and harassment.

**Table 4.7 Prevalence of intimate violence in the last year (partner abuse, non-sexual; sexual assault; and stalking) %, England and Wales, (British Crime Survey)**

		2001	2004/05	2008/09
Partner abuse (non-sexual)				
-any abuse, threat or force	M	4.5	3.6	2.7
	F	6	4.7	4.4
-threat or force	M	2.3	2	1.2
	F	4.2	3.2	2.7

-threat	M			0.1
	F			1.2
-force	M	2.2	2	1.2
	F	3.4	1.7	2.2
-force minor	M	1.1	1	0.5
	F	2.6	1.8	1.6
-force severe	M	1.2	1.5	0.9
	F	1.6	1.7	1.5
Sexual assault				
-any, including attempts	M	0.2	0.6	0.4
	F	2.1	2.7	2.5
-serious including attempts	M	0.1	0.1	0.1
	F	0.5	0.5	0.5
-serious excluding attempts	M	<0.1	0.1	0
	F	0.3	0.3	0.3
-rape 1994 including attempts	M	<0.1	0.1	
	F	0.3	0.3	
-rape 1994 excluding attempts	M	<0.1	0.1	
	F	0.2	0.2	
-rape 2003 including attempts	M	<0.1	0.1	0.1
	F	0.3	0.3	0.4
-rape 2003 excluding attempts	M	<0.1	0.1	0
	F	0.2	0.2	0.3
-assault by penetration 2003 including attempts	M	<0.1	0.1	0
	F	0.3	0.2	0.3
-assault by penetration 2003 excluding attempts	M	<0.1	<0.1	0
	F	0.2	0.1	0.1
-less serious sexual assault	M	0.2	3.6	0.4
	F	1.9	4.7	2.3
Stalking	M	5.8	8.7	2.8
	F	7.8	8.7	4.4

Notes:

Intimate violence is the collective term used to describe domestic violence (carried out by current or former partner or other family member), sexual assault and stalking. There are small differences in the tables for the self-completion data in the published reports for the different years making it difficult to draw comparisons.

Sources:

2008/09: Walker et al (2009); 2001 and 2004/05: Finney (2006)

Comments:

The data from the BCS self-completion module show that the percentage of women experiencing non-sexual abuse from a current or former intimate partner declined from 4.2 in 2001 to 2.7 in 2008/9. The percentage of women who were victims of non-sexual partner abuse but including additional forms of abuse (*any* non-sexual abuse, threats or force), declined from 6 in 2001 to 4.4 in 2008/9. Using data from the self-completion module, the decline in intimate partner violence is approximately a quarter.

**Table 4.8 Prevalence of intimate violence % in the last year, *excluding* stalking, including sexual assault, England and Wales, (British Crime Survey)**

			2004/05	2005/06	2006/07	2007/08	2008/09
In last year (excluding stalking)	Any domestic abuse	M	5	5	5.2	4.7	3.7
		F	7	7.1	6.8	6.1	5.8
	Any partner abuse	M	4.1	4	4.2	4.1	2.6
		F	5.4	5.6	5.3	4.8	4.3
	Any family abuse	M	2	1.8	1.9	1.3	1.8
		F	3.1	2.9	2.9	2	2.3

Notes:

'Any domestic abuse' includes partner or family abuse

'Any partner abuse' includes non-physical abuse, threats, force, and sexual assault

Source:

Walker et al (2009)

Comments:

The data from the self-completion module of the BCS gathered by using a wider definition of partner abuse to include sexual abuse (excluding stalking), show that the percentage of women who were victims declined from 5.4 in 2004/05, to 4.3 in 2008/09.

**Table 4.9 Prevalence of intimate violence %, including stalking, including sexual assault, England and Wales (British Crime Survey)**

			2004/05	2008/09
In last year (including stalking)	Any domestic abuse	M		3.9
		F		6.3
	Any partner abuse	M	4.7	2.9
		F	5.9	4.8
	Any family abuse	M	2	1.7
		F	3.1	2.3

Notes:

'Any domestic abuse' includes partner or family abuse

'Any partner abuse' includes non-physical abuse, threats, force, and sexual assault

There are small differences in the tables for the self-completion data in the published reports for the different years making it difficult to draw comparisons.

Sources:

Walker et al (2009); Finney (2006)

Comment:

Women in England and Wales are more likely than men to be victims of any form of domestic abuse, any partner abuse, and any family abuse.

**Table 4.10 Partner abuse, prevalence by sex %, Scotland (Scottish Crime Survey)**

2008-09 Experience of partner abuse	In last 12 months		Since age 16	
<b>Type of abuse</b>	female	male	female	male
Any psychological	4.5	4	18.8	10.9
Any physical	2.4	2.9	15.3	10.9
Any psychological or physical	5	5.3	20.9	15.3

Both psychological and physical	1.8	1.6	13.3	6.5
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Source:

MacLeod et al (2009)

Comment:

Women are more likely than men to experience psychological partner abuse; the difference in prevalence is higher when looking at the prevalence since the age of 16 rather than in the last 12 months.

**Table 4.11 Partner abuse, prevalence by sex and by different types of abuse %, Scotland (Scottish Crime Survey)**

<b>Form of abuse: experienced since 16</b>	<b>Female total %</b>	<b>Male total %</b>
<b>Psychological</b>		
Behaved in jealous or controlling way e.g. restricting what you can do, who you can see, what you wear	59	43
Repeatedly put you down so that you felt worthless	58	19
Threatened to hurt you	43	14
Stopped you from seeing friends and relatives	30	23
Stopped you from having your fair share of household money or taken money away from you	26	6
Threatened you with a weapon, e.g. ashtray or bottle	19	11
Threatened, attempted or actually hurt themselves as way of making you do something or stopping you from doing something	18	11
Threatened to hurt your other / previous partner	18	8
Threatened to kill or attempt to kill themselves as way of making you do something or stopping you from doing something	17	8
Threatened to kill you	17	5
Threatened to hurt someone close to you, such as your children, family members, friends or pets	16	4
Forced you to view material which you considered to be pornography	2	1
No psychological abuse	8	27
Any psychological abuse	91	71
<b>Physical</b>		
Thrown something at you	46	57
Kicked, bitten, or hit you	40	29

Pushed you or held you down	47	11
Used a weapon against you, e.g. an ashtray or bottle	17	12
Choked or tried to strangle / smother you	21	3
Forced you or tried to force you to have sexual intercourse when you did not want to	20	3
Forced you or tried to force you to take part in another sexual activity when you did not want to	6	1
No physical abuse	25	28
Any physical abuse	73	71

Source:

MacLeod et al (2009)

Comments:

Data from the Scottish crime survey shows the breakdown by different types of abuse. While the statistics for some types of violence show relatively narrow differences between men and women (e.g. the experience of having something thrown at you), it is important to highlight the wide inequalities in the experience of more severe types of abuse. For example, in relation to the form of physical abuse 'choked, or tried to strangle or smother you', 21% of women reported that they had experienced this form of abuse since the age of 16, in contrast to only 3% of men.

**Table 4.12 Police recorded crime statistics on sexual offences, England and Wales**

Year	1997	1998/ 99	2000/ 01	2002/ 03	2004/ 05	2006/ 07	2008/ 09
Rape of a female	6281	7132	7929	11445	12869	12624	12165
Rape of a male	347	504	664	850	1144	1150	968
<b>Total most serious sexual crime</b>	31334	33424	35152	45317	47542	43738	40787
<b>Other sexual offences</b>	1756	12948	10726	13573	15320	13784	10701
<b>Total sexual offences</b>	33090	46372	45878	58890	62862	57522	51488

Notes:

Total most serious sexual crime: includes, e.g. rape of female / male; sexual assault on male / female; gross indecency; unlawful sexual activity with child; trafficking for sexual exploitation. Other sexual offences: includes, e.g. incest; abduction of female; exposure or voyeurism; exploitation of prostitution.

Changes in recording limit analysis of trends over time: from calendar to financial year 1998 and introduction of National Crime Recording Standard in 2002.

Source:

Walker et al (2009)

Comment:

Police recorded crime statistics show an increase in the number of most serious sexual crime and sexual offences recorded over the past eleven years. The number recorded rapes have more than doubled. However, changes in recording practices limit the analysis over time; further limitations include the introduction of National Crime Recording Standard in 2002; and the nature of the crime and reporting: rape and sexual offences are severely underreported.

**Table 4.13 Police recorded crime statistics on crimes of indecency, Scotland**

	1999-00	2002-03	2005-06	2008-09
<b>Sexual assault</b>				
Rape	586	743	975	821
Assault with intent to rape	169	181	186	142
Indecent assault	1139	1354	1508	1640
<b>Lewd and indecent behaviour</b>				
Lewd and libidinous practices	1384	1970	1835	1616
Indecent exposure	935	800	816	786
<b>Other</b>				
Incest	40	36	29	19
Illegal homosexual acts	179	130	98	97
Sexual intercourse with girl under 16	205	269	365	411
Offences relating to prostitution	1204	1092	684	533

Other crimes of indecency	41	48	62	266
<b>TOTAL</b>	<b>5882</b>	<b>6623</b>	<b>6558</b>	<b>6331</b>

Notes:

Other crimes of indecency includes a new crime code following creation of a new offence under the Prostitution (Public Places) (Scotland) Act, 2007.

Source:

Scottish Government (2009a)

Comments:

In Scotland, the number of rapes recorded by the police has increased over the past decade; simultaneously the number of reported assaults with the intent to rape has decreased. Sexual intercourse with girls under the age of 16 has also increased, whereas the number of police recorded cases of incest has decreased over the same time period. .

**Table 4.14 Police recorded incidents and crimes/offences, *domestic abuse*, Scotland**

	2000-1	2004-5	2008-9
<b>Total incidents</b>	35126	43632	53681
Total crimes and offences	13947	21833	29283
Of which reported to PF	9436	14180	18691
<b>Non-sexual crimes of violence</b>	613	607	634
Homicide	19	11	16
Serious assault	345	351	382
Other	249	245	236
<b>Crimes of indecency</b>	72	110	128
Sexual assault	67	107	128
Lewd and libidinous practices	1	-	-
Other	4	3	-
<b>Crimes of dishonesty</b>	65	327	504
<b>Fire-raising, vandalism, etc.</b>	944	1656	1901
Fire-raising	7	17	22
Vandalism, etc	937	1639	1879
<b>Other crimes</b>	603	1983	3177

Crimes against public justice	550	1896	3070
Handling an offensive weapon	43	48	66
Drugs	10	34	40
Other	-	5	1
<b>Misc offences</b>	11649	17141	22919
Minor assault	6352	9544	12518
Breach of peace	5233	7269	9650
Drunkenness	1	8	9
Other	63	320	742
<b>Motor vehicle offences</b>	1	9	20
<b>Behaviour not leading to crime or offence</b>	21171	21799	24398
<b>Not recorded</b>	8	-	-

Notes (from original table):

Different police forces record domestic abuse information in differing ways. Police practice in deciding when a behaviour justifies the recording of a crime or offence may also differ. These differences influence the proportion of incidents which lead to the recording of a crime or offence, as well as the proportion of crimes and offences reported to the procurator fiscal.

Source:

Scottish Government (2009b)

Comments:

Police recorded incidents and crimes/offences in Scotland have increased during the 2000's, from a total of 35126 in 2000/01 to 53681 in 2008/09. Homicide is the only recorded crime that shows a decrease.

#### **Data on other forms of violence against women (tables 4.15 - 4.18)**

Data on specific forms of violence, such as forced marriage and 'honour' crimes, draw on research estimates; there is no national survey data or full administrative data to collect or assess (Home Office 2009d). Instead, qualitative evidence and reports published by the voluntary sector, national and inter-national governmental reports, and academic research are the main sources of evidence in this area. In general, there is an agreement among academics and within the Home Office that there is no reliable or commonly accepted data on the number of incidents of forced marriage, female genital mutilation (FGM), so called 'honour' crimes and killings or

trafficking (Home Office 2009d; Kelly and Regan 2000). Data on honour related violence, honour crimes, are based on estimates: 'There are no published statistics on numbers of "honour" crimes in the UK, but it is widely quoted that there are around 12 honour murders per year' (Home Office 2009d) (see table 4.18). According to the Government, the Metropolitan Police Service recorded 265 incidents of honour based violence and 132 offences in 2008/2009 (HM Government 2009d). The Home Office claims that the Metropolitan Police state that there are no available statistics on honour based violence: 'the Metropolitan Police note that there are no available statistics on 'honour' – based violence' (Home Office, 2009d: 14) (see table 4.18).

The majority of cases of forced marriage reported to date in the UK involve South Asian families (FCO 2010). However, forced marriage is not solely a South Asian problem. There have been cases involving families from East Asia, the Middle East, Europe and Africa. In 2008, over 1,600 incidents of suspected forced marriage were reported to the Forced Marriage Unit (FMU) (see table 4.18). In 2009, the FMU gave advice or support to 1682 cases. More women than men seek support or advice from the FMU: 86 percent of the cases involved females and 14 percent involved males (FCO 2010). The number of annual forced marriage cases dealt with by the FMU range from 250-300. In total, 1600 annual cases are reported to the FMU (see table 4.18). Research show that this number does not reflect the number of actual annual cases of forced marriage; an estimated 5000-8000 cases are reported by research (Kazimirski et al 2009; DCSF 2009). An estimate of the national prevalence, made by civil society organisation Karma Nirvana and the Forced Marriage Unit suggest that there are somewhere between 5000-8000 cases of annual forced marriages in England and Wales (see table 4.18). The estimate is based on the number of forced marriage cases encountered by local organisations within ten local authorities (Forced Marriage Unit, no year; HM Government 2009d). Civil society organisation Women's Aid reports receiving 194 phone calls regarding forced marriage in 2007 (Women's Aid website 2009).

Data on the actual number of women refugees fleeing from forced marriage is not available from any official survey, although Women's Aid reports 870 refugee women fleeing forced marriage annually (Women's Aid 2007). However, 35 cases of forced marriage were prosecuted over a nine month period in four CPS areas (CPS 2008c). All defendants were male and Asian, most were spouse or ex-spouse (all were spouse or ex-spouse when there was only one defendant). Victims were equally likely to be male as female (CPS 2008c).

Estimates on Female Genital Mutilation (FGM) are equally varied (see table 4.18). For example, estimates of the total prevalence of FGM in England and Wales range

from 66,000 (Home Office 2009d) to 273,500 (Dorkenoo et al 2007). The estimated number of girls under 15 at risk of FGM range from 16,000 (Kelly et al 2007) to 240,000 (GEO no date). In between those numbers, Dorkenoo et al (2007) estimate that 22,000 girls under the age of 15 are at risk of becoming victims of FGM. The data is thus very variable. Some suggestions as to why this is the case, why the estimates differ, include: the use of different sample sizes; the inclusion of more countries practising FGM in some studies; and whether or not second generation immigrants are included in the sample. Dorkenoo et al apply a method where they: 1) identify countries in which FGM is practised and from which there is considerable migration to England and Wales; 2) identify published data on the prevalence of FGM in those countries; 3) apply that data to the Census and birth registration data for England and Wales to estimate the number of FGM cases. . Kwateng-Kluytse (2004), whose estimation of the total prevalence of FGM is similar to Dorkenoo et al, derives the numbers by applying the World Health Organisation's estimates of the prevalence of FGM figures in FGM practicing countries to estimates of numbers of women reporting FGM from six of these countries of origin. Studies are, according to Dorkenoo et al, producing underestimates of the prevalence of FGM as they omit the second generation of women, women who were born in the UK but who may have undergone FGM. Secondly, Dorkenoo et al suggest that the UK Labour Force Survey, which has previously been used to derive the estimates of females affected by FGM, was not large enough to produce relevant estimates; previous estimates were subject to sampling variability.

There is a lack of reliable data on the number of women (and men) trafficked for the purpose of sexual exploitation in the UK (see table 4.15 and 4.18). In 1998, research carried out by Kelly and Regan (2000) identified 71 women victims being trafficked into prostitution in the UK but they describe the estimation as problematic. Key problems in estimating the number of victims include, firstly, defining what counts as trafficking since there is no commonly agreed definition, and secondly that there is a vast number of 'hidden' cases of trafficking for sexual exploitation. The average annual number of trafficking cases between 2005-2009, according to recorded crime statistics, is 42 (see table 4.15); Kelly and Regan (2000) identify 71 cases. Estimations of the extent of trafficking cases vary from 1450 (Kelly and Regan 2000) to 4000 (Zimmerman et al 2006a; 2006b; Home Office 2007; HM Government 2009d). There is reason to believe that trafficking for sexual exploitation is increasing in the UK (Kelly and Regan 2000; HM Government 2009d; JCHR 2006; Zimmerman et al 2006a; 2006b).

In addition to the governmental departments, the UKHTC, End Violence Against Woman and the Women's National Commission, the Poppy project is a main actor in the field. The project offers accommodation and services to victims. Between March

2003 and May 2006, 489 referrals were made to the Poppy project, 99 women were accepted for accommodation and support, and 25 women were provided with outreach services. The scheme operates mainly in London, has tightly focused criteria, and depends upon self or official referral. As a result, there is reason to suspect that the number of victims nationwide will be considerably higher, and indeed may well be higher than the estimated 4,000 provided by the Home Office. The suggestion that the number of women being trafficked for prostitution into the UK is on the increase seems to be corroborated by the fact that 'whereas 10 years ago 85% of women in brothels were UK citizens, now 85% were from outside UK.' (JCHR 2006 Q14).

To further exemplify the difficulty in estimating the prevalence of these forms of violence, see Tables 4.15 to 4.18, which collate numbers from academic research, the voluntary sector, government reports and specialised governmental units.

**Table 4.15 Police recorded crime statistics on specific forms of violence 2002/2003-2008/2009, England and Wales.**

Year	Exploitation of prostitution	Abduction of female	Trafficking for sexual exploitation	Poisoning or FGM
2002/03	127	291	-	-
2003/04	186	403	-	-
2004/05	117	86	21	-
2005/06	153	36	33	-
2006/07	190	21	43	-
2007/08	184	4	57	-
2008/09	174	4	54	159

**Notes:**

The category 'poisoning or FGM' is the way the crime is recorded in the original crime statistics. This data was not collected prior to 2008/2009.

**Source:**

Home Office Recorded Crime Statistics 2002/03-2008/09

**Table 4.16 Forced marriage protection order applications made since implementation in November 2008 to end of October 2009.**

Location	Total Applications	Adult Victims	Child Victims	Third Party Applicants	Other Applicants	Outside Jurisdiction
England and Wales	83	18	39	15	11	13

Source:

Ministry of Justice (2009e)

Comments:

The majority of protection order applications are made for child victims, approximately 47%. This data has only been recorded for one year; any analysis of changes over time are thus not possible to make.

**Table 4.17 Forced marriage protection orders made since implementation in November 2008 to end of October 2009**

Location	Total Disposals	Withdrawn	Refused	Under-taking Made	Order Made	Dealt with Ex-parte	Orders with POA
England and Wales	94	4	1	1	86	55	71

Source:

Ministry of Justice (2009e)

**Table 4.18 Estimates for forced marriage, FGM, 'honour' crimes / murders, and trafficking: overview**

Form of violence	Highest estimate	Lowest estimate
Forced marriage	5.000-8.000 <sup>1</sup>	1600 <sup>2</sup> 159 <sup>3</sup>
<15 FGM risk	24.000 <sup>4</sup>	16.000 <sup>5</sup>
FGM annual cases	3.000-4.000 <sup>6</sup>	3.000-4.000 <sup>6</sup>
FGM total	279.500 <sup>7</sup> 273.500 <sup>9</sup>	66.000 <sup>8</sup>
Honour crimes	18 <sup>11</sup>	18 <sup>11</sup>

Incidents/Offences:	256/132 <sup>10</sup>	256/132 <sup>10</sup>
Honour murders	12 <sup>12</sup>	10 <sup>13</sup>
Trafficking	4000 <sup>14</sup> 1450 <sup>15</sup>	164 <sup>16</sup> 71 <sup>17</sup> 42 <sup>18</sup>

Sources:

- 1) DCSF (2009). Numbers refer to estimated prevalence.
- 2) FMU (no year); HM Government (2009d). Number refers annual number of cases reported to the Forced Marriage Unit.
- 3) Home Office recorded crime statistics 2008/2009.
- 4) Dorkenoo, E. et al 2007. Number refers to girls under 15 at risk of FGM in the UK
- 5) EVAW (2007).
- 6) Sleator (2003).
- 7) Kwateng-Kluyitse (2004).
- 8) HM Government 2009d; Home Office 2009d.
- 9) Dorkenoo et al 2007
- 10) Home Office 2009d.
- 11) CPS (2008c). Prosecuted cases over a nine month period in four CPS areas
- 12) Home Office (2009d).
- 13) Meeto and Mirza (2007).
- 14) HM Government (2009d); Zimmerman et al (2006a); Zimmerman et al (2006b). Estimated number of trafficked women in the UK 2003.
- 15) Kelly and Regan (2000); HM Government (2009d). Estimated numbers in 1998
- 16) UKHTC (2009).
- 17) Kelly and Regan (2000).
- 18) Home Office (2009h).

Comments (see section 'Data on other forms of violence against women') on sources:

*Forced marriage*

The Forced Marriage Unit presents data but only on the number of reported cases per year. For estimations of the prevalence, Kazimirski, et al (2009) is one of the key sources referred to by academia, NGOs and governmental departments, as are reports by the NGO Karma Nirvana.

*Female genital mutilation*

Dorkeeno et al (2007) appears to one of the most widely cited sources on the number of victims of FGM, referred to in both governmental and civil society publications, including Home Office, the Government Equality Office and End Violence Against Women (EVAW) as well as by other researchers.

### *Honour crimes*

There seems to be an agreement that there is no reliable data or source on honour crimes (according to the Metropolitan Police, the Home Office and within academia).

### *Trafficking*

The UK Human Trafficking Centre (2009) provides information on the number of defendants and victims in trafficking cases. In terms of estimating the number of actual trafficked women, Kelly and Regan (2000) and Zimmermann (2006) seems to be the most reliable sources and are widely cited within academia, by NGOs and used by the Home Office.

#### 4.4 Hate crime

There is robust evidence from various sources to show that hate crimes are widespread, though currently the available evidence of major changes is not sufficiently robust to support arguments about trends.

The British Crime Survey provides data on crimes perceived to be racially motivated and on the risk of racially motivated crime (see Tables 4.19 and 4.20). For example, Table 4.20 shows that people from White ethnic groups less likely to be victims of racially motivated crimes than people from Black and minority ethnic groups. There is data on police recorded crime that is religiously or racially aggravated, see Tables 4.21 and 4.22.

There are fluctuations in the amount of hate crime that is racially motivated that is reported to the BCS in England and Wales. The number of incidents reported to the BCS changes between an estimated 179,000 in 2004/5, 139,000 in 2005/6, 184,000 in 2006/7 and to 207,000 in 2007/8. There is a need for some caution in interpreting this as a significant increase for two reasons. First, hate crime is a relatively new concept and there have been changes in recording practices over time; its recording might therefore be expected to fluctuate until it has become embedded in institutional practice. It is probable that there is continued under-reporting, but that the extent of under-reporting might vary. Second, the numbers in the sample from which these numbers of incidents are estimated are relatively small, even before further breakdowns. The conclusion drawn here, that there is not a reliable evidence base to support any claim of change is shared with Jansson et al (2007).

Estimates of the extent of hate crime amongst other groups are under development in the BCS. The BCS (2007-08) has started to ask separate questions relating to hate crimes by race, religion or religious belief, disability, age, sexuality or sexual orientation (i.e. whether respondent believes an incident was motivated by the offender's attitudes towards any of the factors, which are listed separately). Previously race and religion were addressed separately but other factors were grouped together in one question. Similarly, in the 2006 Scottish Crime and Victimization Survey respondents were asked whether they believed an incident might have been racially and or religiously motivated, and whether a respondent believes s/he was specifically targeted by an offender because of their age, gender, sexual orientation, asylum / refugee status, or disability (these are listed separately). Transgender was not included in the survey. Smaller scale studies provide substantial evidence as to the nature of this violence.

There are a number of small studies on a wide range of forms of hate crimes, including religiously and racially motivated hate crimes, homophobic and transphobic hate crime, and disability hate crime. However, it is not possible from these to draw conclusions about the extent of the crimes nor whether they are significantly increasing or decreasing. There is a paucity of quality evidence to support analyses of changes over time of most hate crime, so in most cases there is no evidence on which to assess whether or not there have been statistically significant changes.

**Table 4.19 Crimes perceived to be racially motivated, England and Wales (British Crime Survey)**

	2004/05	2005/06	2006/07	2007/08
Estimated racially motivated crimes (British Crime Survey)	179000	139000	184000	207000

**Notes:**

Data is available on racially aggravated incidents over a longer period from the BCS 2002/03 (but not prior to this date, see Jansson 2006: 15).

Crimes include household and personal crimes.

Jansson, K. et al (2007: 7, note 3) state that it is not possible to calculate the statistical significance for change in all racially motivated crimes.

**Sources:**

These data are from the British Crime Survey.

Ministry of Justice (2009a); Jansson (2006); Jansson et al (2007)

**Comments:**

The British Crime Survey provides data on crimes perceived to be racially motivated and on the risk of racially motivated crime. (Crimes perceived to be racially motivated in England and Wales have increased from 2004/05 to 2007/08, with a temporary decrease in 2005/06. Whether or not this change is significant is not possible to say; it is not possible to say whether this increase reflects an increase in crimes committed; changes in perception or a change in actual crime. Hate crime is a relatively new concept and there have been changes in recording practices over time and the numbers in the sample from which these numbers of incidents are estimated are relatively small. There is not a reliable evidence base to support any claim of change (see Jansson et al 2007).

**Table 4.20 Risk of racially motivated crime by ethnicity, England and Wales (2007/08 BCS)**

Percentages	Household crime	Personal crime	All BCS crime
White	0	0.1	0.1
Mixed	0.7	2.3	3
Asian	1.2	0.9	2.3
Black	1.7	1	2.2
Chinese and other	1.3	0.5	1.9

Notes:

The term 'risk', used in the original table, means the likelihood of experiencing this crime.

Source:

Jansson et al (2007)

Comment:

The British Crime Survey provides data on crimes perceived to be racially motivated and on the risk of racially motivated crime. Table 4.20 shows that people from White ethnic groups are less likely to be victims of racially motivated crimes than people from Black and minority ethnic groups. Caution needs to be made when interpreting these numbers. Hate crime is a relatively new concept and there have been changes in recording practices over time and the numbers in the sample from which these numbers of incidents are estimated are relatively small. There is not a reliable evidence base to support any claim of change (see Jansson et al 2007).

**Table 4.21 Police recorded crime by offence: Religiously or racially aggravated offences, violence against the person, with and without injury, England and Wales**

	1999/00	2001/02	2003/04	2005/06	2007/08	2008/09
<b>With Injury-</b>						
Inflicting GBH without intent						378
Less serious wounding	2687	3463	4930	6107	4826	

ABH or other injury						3936
<b>Without Injury</b>						
Harassment/public fear etc	10758	14975	20975	26605	26494	
Harassment						2390
Public fear, alarm or distress						23365
Assault without injury	4275	5164	4161	3945	4323	4180

Notes:

Offence classifications changed from 1 April 2008.

Change in definitions relating to injuries in assault / woundings applied from 1 April 2002.

Religiously aggravated offences were added from April 2002. In the published data, racially and religiously aggravated offences are combined into one category.

Source:

Walker et al (2009)

Comments:

Caution is needed when interpreting these numbers; hate crime is a relatively new concept and there have been changes in recording practices over time and the numbers in the sample from which these numbers of incidents are estimated are relatively small, There is not a reliable evidence base to support any claim of change (see Jansson et al 2007).

**Table 4.22 Racist incidents / crimes recorded by the police, Scotland**

	2004/05	2005/06	2006/07	2007/08
Racist incidents	4519	5111	5321	5243
Crimes	5734	6445	6653	6672

Definitions:

*Incident* - an incident is any communication by whatever means about a matter which comes to the police attention which they may be required to act upon.

*Crime* - an act committed in violation of the law (common law or statute). Any single incident may include a number of crimes, or there might be no criminal element.

Source: Scottish Government (2009c)

## **Data on hate crime from smaller scale projects**

In the absence of estimates based on large scale studies for the number of hate crimes and incidents committed for specific equality strands, data from smaller scale projects can provide some insight into the extent of such crimes, as well as adding to evidence of the extent of racially aggravated incidents found in large crime surveys (e.g. Mason and Hughes 2009). A recent Home Office funded survey (Stonewall 2008; Dick 2009) of 1721 LGB respondents highlighted the extent of homophobic crimes and incidents. Based on findings from a sample, the report finds that out of the approximately 3.6 million LGB people in Britain, three in five gay, lesbian and bisexual people have been victims of a homophobic hate crime or incident over the last three years, and one in eight during the last year (2008). The incidents often occur repeatedly and around people's homes. Homophobic crimes are not necessarily exclusively directed towards just lesbian and gay people, but also to their families and friends. Physical assault is more commonly experienced by black and minority ethnic gay and lesbian people than by all lesbian and gay people; eight per cent of all black and minority ethnic lesbian and gay people have experienced a physical assault as a homophobic hate incident, compared to four per cent of all lesbian and gay people. In addition, these figures are an underestimate, since there is an underreporting of homophobic hate crimes: three in four of those experiencing hate crimes or incidents did not report them to the police. (Dick 2009).

Quarmby (2008) and Sin et al (2009) have drawn attention to the extent and severity of targeted violence and hostility against disabled people. As with homophobic crimes, violent crimes against disabled people are underreported. Disabled people are more likely to report to a third party than to the police, although levels of reporting to third parties are still lower than the actual number of incidents (Sin et al 2009). In another study, disabled women were found to be twice as likely to experience domestic violence as non-disabled women (Hague et al 2007). Women with learning disabilities have been identified specifically as being at risk, with levels of violence against women reported to be greater than against men with similar impairments (McDonagh et al 2006; Sin et al 2009). Women with disabilities are twice as likely to experience domestic violence as non-disabled women (BSC 1995). According to an EHRC research report carried out by Sin et al (2009) disabled people are reported to be four times more likely to be victims of sexual violence than non-disabled people; four times more likely to have their property stolen with the threat or use of violence and twice as likely to be victims of burglary than non-disabled people. Sin et al based their study on literature reviews, semi-structured interviews with nine stakeholders from key organisations and agencies, and interviews with 30 disabled people with learning disabilities and/or mental health conditions from England, Wales and

Scotland (Sin et al 2009). Though it should not be assumed that disabled women are more vulnerable than non-disabled women (CPS 2010a) data shows that disabled women may be more likely to be victims of domestic violence than non-disabled women because of their particular vulnerability. The abuser is likely to be the carer; the woman may be less able to physically remove herself from the abusive situation; because of her disability the woman may be socially isolated to a larger extent than a non-disabled woman; the woman may find it harder to report the abuse because of a lack of opportunity to see health or social care professionals without the abuser being present and the abuser may remove mobility or sensory devices needed for independence (Women's Aid 2005; UK Disability Forum 2010).

Other work has examined victimisation amongst specific groups of people, such as adults with mental health problems and/or learning difficulties (e.g. MIND 2007; see also KM Research and Consultancy 2009); gypsy and traveller communities (see Cemlyn et al 2009); and migrants (see Kofman et al 2009). Among the gypsy and traveller community, a small scale study referred to by Cemlyn et al reported that 61 per cent of married English Gypsy women (and 81 per cent of married Irish Traveller women) interviewed for the study had experienced domestic abuse. The main finding of Cemlyn et al is that there is a need for prevalence studies to explore the extent of violence and hate crimes against this group.

### **Elder abuse- physical security institutions**

Elder abuse is defined as 'a single or repeated act or lack of appropriate action occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person' (World Health Organisation 2002). The definition has been adopted by Age Concern, and is used in the study from which the data below is drawn. 'Mistreatment' is used to describe both abuse and neglect. There are four types of abuse: psychological, physical and sexual abuse (sometimes referred to collectively as 'interpersonal abuse') and financial abuse (Age Concern). In this report, the main focus is on physical abuse. Data on sexual abuse is included where such data is available. There is a shortage of available data on elder abuse in care homes (House of Commons 2004). This problem has been highlighted for more than a decade and some researchers have argued that general research on elder abuse has become locked into a family violence model rather than paying attention to abuse in care homes and residential settings as well (Glendenning 1999).

In 2007, a national prevalence study was carried out in the UK (O'Keeffe et al, 2007). 2,111 people in England, Scotland, Wales and Northern Ireland took part in the survey which was carried out between March and September 2006 and asked for experiences of mistreatment in the past year. The survey included people aged 66

and over living in private households (including sheltered accommodation). Data from this study is summarised in Table 4.23 below.

A major actor in this field is Action on Elder Abuse. Based on the number of annual phone calls to the organisation’s helpline, the prevalence is slightly higher than the number suggested in O’Keeffe et al (2007), namely 5% (AoEA 2007)

**Table 4.23 One year prevalence of mistreatment of people aged 66 and over living in private households 2005-2006, United Kingdom**

	Trust relationship(1)	Trust, neighbours & acquaintances
Prevalence reporting mistreatment (%)	2.6	4.0
Estimated total number	1 in 40 227,000	342,400

Notes:

(1) Trust relationship includes mistreatment by a family member, close friend or care worker.

Source:

O’Keeffe et al (2007)

Comments:

As shown in the table overall 2.6% of people aged 66 and over living in private households reported that they had experienced some form of mistreatment involving a family member, close friend or care worker (i.e. those in a traditional expectation of trust relationship) during the past year. Approximately 227,000 people aged 66 and over in the UK had been neglected or abused in the past year. When the definition of who perpetrates is broadened to include incidents involving neighbours and acquaintances, the overall prevalence increases from 2.6% to 4.0%. Extrapolating this percentage of those aged 66 and over to the UK population indicates that approximately 342,400 older people are subject to some form of mistreatment. The most common perpetrator is a partner (35%) closely followed by neighbours and acquaintances (33%) and other family members (33%). Six per cent of those who had experienced mistreatment in the past year reported having been subjected to two forms of mistreatment, e.g. both financial and sexual mistreatment. Women were more likely to say that they had experienced mistreatment than men (3.8% of women vs. 1.1% of men). The overall prevalence of abuse increases with age for men, but

decreases with age for women (O'Keefe et al 2007). Caution about the potential underestimate of the prevalence and incidents of elder abuse should be made. Firstly, the self-completion part of the British Crime Survey has a cut-off of 59, the reason being that a too high a proportion of people over that age needed assistance with the computer, thus defeating the purpose of the self-completion. There has been experimentation with increasing the age of the cut-off, but the results meant that they have gone back to the cut off first used. Secondly, some of the most vulnerable older people, for example those with dementia, are not likely to have taken part in the study (O'Keefe 2007). The estimates for physical abuse by O'Keefe et al (2007) are in alignment with the results of the British Crime Survey (2005/2006) which found virtually no domestic violence among men and women aged 65 and over. The BCS has a weighted sample size of 12,000 older people.

#### **4.5 Physical security in criminal justice institutions**

People who live in or who are confined to institutions are potentially more vulnerable to abuse than those who are free and mobile. There has been a long-standing issue of the treatment of those in prison or police custody in particular. This section reviews the evidence on the extent to which those in criminal justice institutions are subject to violence.

Prisoners who take their own lives are disproportionately drawn from certain sections of the prison population. The majority of deaths in prison occur in the 25-39 age groups. Women make up approximately 6% of the prison population, but on average 15% of the self-inflicted deaths. A disproportionate number of self-inflicted deaths occur amongst white prisoners. Those who take their own lives in prison are more likely than the general prison population to be imprisoned for violence-related offences; violence against the person is the most common offense type among those who take their own life in prison. Un-sentenced prisoners are more likely to take their own lives than sentenced prisoners.

#### **Deaths during or following contact with the police**

Deaths 'during or following contact with the police' includes road traffic fatalities, deaths in or following police custody, fatal shootings and 'other deaths following police contacts'. Road traffic fatalities refer to fatalities arising from road traffic incidents (RTI) involving a police vehicle. The Independent Police Complaints Commission claims that the category makes up the largest single group of deaths following police contact (IPCC 2010; Docking et al 2007) although data published by the Ministry of Justice shows that the number of self-inflicted deaths in prison is approximately twice the size of RTIs (Ministry of Justice 2010). Approximately 40

people die each year in RTIs involving the police; the majority of the deaths is the result of a police pursuit (Docking et al 2007; Teers and Bucke 2005; Teers and Menin 2005) whereas approximately 80 people die in custody from self inflicted deaths (Ministry of Justice 2010). Deaths ‘in or following police custody’ includes deaths of people who have been arrested or otherwise detained by the police. It includes deaths which occur during or following police custody where injuries which contributed to the death were sustained during the period of detention. It includes deaths which occur in or on the way to hospital (or other medical premises) following or during transfer from police custody. It includes deaths which occur as a result of injuries or other medical problems which are identified or develop while a person is in custody and it includes deaths which occur while a person is in police custody having been detained under Section 136 of the Mental Health Act 1983 or other legislation. The subcategory does not include deaths (including suicides) which occur after a person has been released from police custody, except those that meet the criteria outlined above and deaths of individuals who have been transferred to the care of another agency and subsequently die while in their care.

Since 1 April 2004, the Prisons and Probation Ombudsman have investigated all deaths in prison custody (MoJ 2009b).

**Table 4.24 Deaths during or following contact with the police by ethnic origin and gender 1998/1999-2008/2009 (England and Wales)**

Year	1998 /99	1999 /00	2000 /01	2002 /03	2003 /04	2004 /05	2005 /06	2006 /07	2007 /08	2008 /09
<b>Total</b>	67	70	70	104	100	106 <sup>(1)</sup>	118	82	75	92
<b>White</b>	55	58	63	82	90	96	101	65	61	75
<b>Asian</b>	2	3	2	4	2	3	5	7	1	4
<b>Black</b>	7	3	4	17	7	4	7	9	7	9
<b>Other<sup>(2)</sup></b>	3	3	1	1	1	3	5		5	3
<b>Unknown</b>								1	1	1
<b>Female</b>		3	3			20	24	16	15	18
<b>Male</b>		64	67			86	94	66	60	74
<b>Total</b>	<b>67</b>	<b>70</b>	<b>70</b>	<b>104</b>	<b>100</b>	<b>106</b>	<b>118</b>	<b>82</b>	<b>75</b>	<b>92</b>

Notes:

1 The IPCC (2009b) report states there were 107 deaths in 2004 and refers to the 2005 report whereas the report from 2005 states that there were 106 deaths in the financial year 2004/2005.

Category 'other': includes categories: mixed white and black Caribbean and Chinese  
 2 'Other' includes mixed white and black Caribbean and Chinese

Sources:

Home office (1997-2004); Independent Police Complaints Commission (2009b).

Comments:

The number of deaths during or following police contacts have increased in England and Wales between 1999 and 2009, from 67 to 92 in total. There has however been a decrease since 2002. In sum, whether or not there has been a decrease or increase depends on what year is taken as starting point. The peak year over the past decade is 2005/06, when there were 118 deaths following police contacts. Compared to the population at large, men are heavily overrepresented. The majority of the increase from 1999 is found in the majority ethnic group (from 55 to 75), although during the same time period, the number of deaths in the Asian group have doubled, from 2 to 4.

**Deaths and assaults in prison custody**

Prisoner 'self-inflicted deaths' includes all deaths where it appears that a prisoner has acted specifically to take their own life. The Prison Service uses the term "self-inflicted death" rather than 'suicide' when referring to those prisoners who take their own lives while imprisoned. The Prison Service does not differentiate between the occasions where there is an official Coroner's verdict of suicide and other occasions where people die at their own hand, for example through misadventure. As a result, the Prison Service records around a third more self-inflicted deaths than it would if it measured only suicide verdicts given by Coroners. Natural deaths include those dying in prison custody from old age or sickness. The category 'other non natural causes' was introduced by the Ministry of Justice and includes deaths which are not a result of self-harm, but which might have been caused by the person who died, for example deaths due to drug overdoses

**Table 4.25 Deaths and assaults in prison custody 2000-2009 (England and Wales)**

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
<b>Prison Population<sup>1</sup></b>	64,602	66,301	70,778	73,038	74,657	75,979	78,127	80,216	82,572	83,461
<b>Deaths in prison custody<sup>2</sup></b>	147	142	164	183	208	174	153	185	165	168
Self-inflicted	81	73	95	95	95	78	67	92	60	60
Natural Causes	62	68	66	86	102	88	83	91	99	105

Other non-natural	1	1	3	1	9	5	3	0	3	3
Homicide	3	0	0	1	2	3	0	2	3	0
<b>Self-harm incidents<sup>3</sup></b>	-	-	-	-	19,550	23,776	23,395	22,875	24,686	-
<b>Assault incidents<sup>4</sup></b>	9,423	10,695	11,515	11,835	12,558	14,406	15,054	15,231	15,847	-
<b>3-year rolling average per 1,000 prisoners<sup>5</sup></b>										
<b>Deaths in prison custody<sup>2</sup></b>	-	-	2.24	2.32	2.54	2.53	2.34	2.18	2.09	2.11
Self-inflicted deaths	-	-	1.23	1.25	1.31	1.20	1.05	1.01	0.91	0.86
Natural cause deaths	-	-	0.97	1.05	1.16	1.23	1.20	1.12	1.13	1.20
<b>Self-harm incidents</b>	-	-	-	-	-	-	291.41	299.18	294.53	-
<b>Assault incidents<sup>4</sup></b>	-	-	156.62	162.01	164.31	173.28	183.50	190.72	191.49	-

Notes:

(1) Population statistics are derived from the Ministry of Justice- Offender Management Caseload Statistics. The prison population figure shown for 2009 is provisional.

(2) Deaths in prison custody statistics are derived from the National Offender Management Service (NOMS) deaths in the custody database which contains details of all deaths in prison custody for England and Wales from 1978.

(3) Self-harm statistics are derived from the NOMS incident reporting system. A new system for monitoring self-harm was introduced in December 2002 and as a result recording improved throughout 2003. Statistics collected before 2004 are not comparable with more recent figures. Due to the large number of incidents to process the final figures for 2009 will not be available until later in 2010.

(4) Assault statistics are also derived from the NOMS incident reporting system. As with self-harm, the final assault figures for 2009 will not be ready until later in 2010.

Source:

Ministry of Justice (2010d)

Comments:

The number of deaths in custody has risen over a ten year period, although there are fluctuations. Rises and falls from one year to the next are not necessarily good indicators of underlying trends, the most reliable guide to trends is the three-year average annual rate. Deaths in prison custody currently (2009) stands at 168 and the three year rolling average per 1000 prisoners is 2.11; for self-inflicted deaths the corresponding numbers are 60 and 0.86. The three year rolling average of self

inflicted deaths has decreased from 1.23 in 2002 to 0.86 in 2009 (see table 4.25 below).

### **Self inflicted deaths in prison custody by gender, ethnicity and age (tables 4.26a and 4.26b)**

#### *Gender*

Women in prison represent a very small proportion of the total prison population at about 5.7% of a total of 77982 in England and Wales (June 2006) (HM Prison Service no year). There has been a rise in the numbers of women in prison from 1560 in 1993 to around 4463 in June 2006. According to the HM Prison Service (no year) there have been more female deaths than expected during the 2000's, given the female proportion of the prison population (see chapter 5 on prison population). In 2007, there were eight self inflicted female deaths compared to one in 2008 and 3 in 2009 (see table 4.26 below).

#### *Ethnicity*

A disproportionate number of self-inflicted deaths occurred amongst ethnic white prisoners (table 4.26b). In 1995, 86% of the prisoners who died in prison through self-inflicted deaths had an ethnic white background and 14% a Black ethnic minority background. The corresponding figures for the prison population in 1995 was 82.9% ethnic white and 17.4% Black ethnic minority. In 2009 the corresponding percentages were 92% and 8% for self-inflicted deaths, whereas the prison population breakdown was 72.5% ethnic white and 26.8% Black ethnic minority (2008) (see table 4.20 for ethnic breakdown of the prison population). The figures on self inflicted deaths by ethnicity are consistent with previous research findings which indicate that white prisoners are more likely to take their own lives than prisoners from other ethnic groups (JCHR 2005).

BME deaths accounted for 14% of all deaths in prison in 1995 and 8% of all deaths in prison in 2009 (see table 4.26b below). The past ten years has seen an increase in the number, but not in the proportion of, self-inflicted deaths by black ethnic minority prisoners compared to the total number of deaths. 2007 stands out, black and ethnic minority people counted for 33% of all self-inflicted deaths in prisons

INQUEST also produces data on the total number of self-inflicted deaths in prison. INQUEST's data is almost identical to that of the Ministry of Justice's, with the main differences found in 2009 where the Ministry of Justice reports 60 deaths and INQUEST reports 55 deaths (see table 4.26a below)

**Table 4.26a Self-inflicted deaths in prison custody by gender, age and ethnicity, and whether on remand 1995-2009 (England and Wales)**

Year	Total	Remand	Population	Male	Female	Rate/100	BM E	Under 22
1995	59	23	51084	57	2	115	8	12
1996	65	33	55256	62	3	118	9	14
1997	68	30	61467	65	3	111	6	16
1998	83	31	65727	80	3	126	9	15
1999	91	30	64529	86	5	141	9	19
2000	81	38	65194	73	8	124	9	18
2001	73	25	66403	67	6	110	6	15
2002	95	31	71218	86	9	133	11	16
2003	94	34	73657	80	14	128	9	13
2004	95	36	74488	82	13	128	12	6
2005	78	30	76190	74	4	102	17	13
2006	67	18	77962	64	3	86	9	3
2007	92	27	80689	84	8	114	23	8
2008	61	20	83240	69	1	73	12	8
2009	60	22	83611	57	3	72	5	9

Notes:

Definitions: The Ministry of Justice defines 'Prisoner self-inflicted deaths' as including all deaths where it appears that a prisoner has acted specifically to take their own life. Approximately 80% of these deaths receive a suicide or open verdict at inquest (Ministry of Justice 2009b).

Sources:

Ministry of Justice (2009b)

INQUEST (2010)

**4.26b Breakdown of deaths by gender and ethnicity as proportion of all deaths 1995-2009 (England and Wales)**

Year	Total	Male	Female	BME	Female proportion %	BME proportion %
1995	59	57	2	8	3	14
1996	65	62	3	9	5	17
1997	68	65	3	6	4	9

<b>1998</b>	83	80	3	9	4	11
<b>1999</b>	91	86	5	9	3	10
<b>2000</b>	81	73	8	9	10	11
<b>2001</b>	73	67	6	6	8	8
<b>2002</b>	95	86	9	11	9	12
<b>2003</b>	94	80	14	9	15	10
<b>2004</b>	95	82	13	12	14	13
<b>2005</b>	78	74	4	17	5	22
<b>2006</b>	67	64	3	9	4	13
<b>2007</b>	92	84	8	23	9	33
<b>2008</b>	61	69	1	12	2	20
<b>2009</b>	60	57	3	5	5	8

Notes:

The numbers in table are derived from table 4.26.

## 4.6 Conclusions

The above sections have reviewed the evidence on violence against the equality groups, including homicide, violence against women and hate crimes committed against those identified on the basis of race/ethnicity, religion, age, sexual orientation, gender identity (transgender), and disability.

While the police recorded data on homicide is robust, the numbers in any one year are too small for analysis by equality group to be statistically significant, except for the largest of the equality groups. Domestic homicides are disproportionately committed against women.

Data on intimate partner violence and domestic violence is best provided by the British and Scottish Crime Surveys, in particular from the confidential self-completion modules. Since there is no specific crime code for intimate partner and domestic violence, data from police records depends on its being 'flagged' as such; this data is not yet available in the public domain at a national level, although some police forces do make their local data available. The BCS and SCS both show high levels of violence against women from partners and in domestic settings. The gender asymmetry in this violence is seen most clearly when measuring the extent of the violence as incidents (which are also the unit usually used in crime statistics), though

it can also be seen when the measurement is in terms of prevalence. There has been a fall in the rate of intimate partner and domestic violence in the last decade.

Data on rape and sexual assault is best provided by the confidential self-completion modules in the British and Scottish Crime Surveys. This evidence again shows a large degree of gender asymmetry in that women experience these forms of abuse to a far higher extent than do men. . There is no evidence of any decline in rape and sexual assault that might parallel that in domestic violence.

Data on other forms of violence against women, such as forced marriage, honour crimes, female genital mutilation and trafficking, is not available from the crime surveys. However, there are some estimates as to its extent from small scale studies by academics and NGOs, as well as police records and forced marriage protection orders. These are important variations in data on various forms of violence against women, often occurring at the intersection with other inequalities such as religion and race/ethnicity. There are large differences between different sources as to the extent of intersectionalised violence: there is no agreed clear and exact data in this field of violence. For example, the reported number of trafficking cases ranges from 4000 (HM Government. 2009d) to 42 (Home Office 2009h). Given the nature of this data it is not possible to make an absolute statement as to whether this violence is increasing or not, though some of those in the field suggest that some forms of intersectionalised violence against women, in particular trafficking, are increasing.

The BCS provides some data on racially motivated hate crime, but it does not provide sufficient data on hate crime directed at other groups. There is police recorded crime data on religiously or racially aggravated hate crime. Small scale studies provide data on hate crimes against other equality groups including on grounds of sexual orientation, gender identity (transgender), age, and disability, including those with mental health and learning difficulties, as well as on specific ethnic minority groups such as migrants, gypsies and travellers. Taken together, there is thus a substantial, and growing, amount of evidence of hate crime being committed against each of the legally protected equality groups.

These forms of violence can take place in public, in the home and in institutions. The major government surveys used here only address the population that lives in settled residential accommodation, and so omits those living in institutions or without a fixed abode. There are some data from the Ministry of Justice and small scale studies on the physical security of those living in institutions, from prison and police custody to homes for the elderly, which provide evidence of violence against these vulnerable populations.

There is a large body of evidence showing that there is violence oriented towards each of the equality groups because of their status. These are important forms of inequality. However, there is very little data that has been collected for a sufficiently long period and is sufficiently robust in order to support analyses of changes over time.

## **5. IDENTIFICATION AND ANALYSIS OF INEQUALITIES AND TRENDS IN LEGAL SECURITY**

### **5.1 Introduction**

This chapter reviews the evidence on the extent of justice gaps in legal security; in other words, whether some groups are treated less well than others in the criminal justice system (CJS). There are two main types of justice gaps: attrition and disproportionality.

The first type of gap, attrition, concerns the extent to which reported crimes ‘fall out’ of the criminal justice system before they have been brought to justice. Attrition can be used to assess whether crimes against equality groups, such as rape, sexual offences, domestic violence and hate crime, are addressed by the CJS as effectively as other crimes. In other words, whether cases where victims are women or from minorities are less likely than others to conclude with conviction.

The second issue, disproportionality, is concerned with whether or not alleged perpetrators and convicted criminals from equality groups are treated equally or worse than others by the CJS. Disproportionality concerns the extent to which there is unjustified differential treatment of different groups in the criminal justice process, from stop and search procedures to the composition of the prisoner population. The concept of disproportionality builds on and goes further than the human rights notion of a ‘fair trial’ since it includes processes before and after trial, as well as the trial itself.

### **5.2 Offences brought to justice: attrition/conviction rates**

#### **Conceptualising and measuring attrition and conviction rates**

The ‘attrition rate’ is the rate at which cases drop out of the criminal justice system so that only a proportion of crimes lead to the criminal ‘conviction’ of its perpetrator. There is an attrition rate for all crimes; the equality issue considered here is whether the ‘drop out’ rate, or attrition rate, is greater in cases of domestic/intimate partner violence, sexual offences and hate crimes.

The terms ‘attrition’ and ‘conviction’ are sometimes used interchangeably or at least confused in debates over ‘attrition rates’ and ‘conviction rates’.

The conviction rate refers to the proportion of crimes committed that result in conviction. Following this definition, a higher or increased rate of conviction implies improvement (i.e. a greater proportion of cases are resulting in conviction) while a lower rate implies deterioration (i.e. a lower proportion of cases are resulting in conviction).

If the meaning of attrition is the fall out or the extent to which cases are lost before being brought to justice, then strictly speaking, the attrition rate refers to the proportion of cases that 'fall out' over the course of the criminal justice process. Using this definition, then we would refer to say a '70% attrition rate' where we mean that 70% of crimes are not brought to justice. A decline in the attrition rate to 60% would imply an improvement, in that a lower proportion of cases were dropping out; an increase in the attrition rate to 80% would imply deterioration, in that a higher proportion of cases were dropping out. Following this definition, we can use 'points of attrition' to refer to those stages at which cases are lost, for example, between reporting and prosecution for reasons such as insufficient evidence. However, in some studies (e.g. Lovett and Kelly, 2009), the figure attached to the term attrition is the same as the figure that others call 'conviction'. This is a little confusing, so we adopt the practice outlined here.

Conviction rates can be defined differently depending on the start and end points of their measurement, and there is currently no agreement on how they should be calculated. This leads to various figures being used as 'conviction rates'. There are at least three potential starting points for measuring conviction rates. The most commonly practiced method is to start with the number of crimes that are recorded by the police. A second method, and one recommended by most of those consulted by Alkire et al (2009) for the Equality Measurement Framework is the number of crimes reported in the British (or Scottish) Crime Survey. The third is the number of crimes prosecuted by the Crown Prosecution Service, a method used by the CPS (2009) and recommended by the Stern Review (2010). There are also different potential end points of the process. These include: 'conviction' as charged (e.g. conviction for rape following a charge for rape), which is the most commonly understood meaning (and used by e.g. Lovett and Kelly, 2009); and conviction which includes convictions for a related offence, for example where someone charged with rape is convicted for the lesser crime of sexual assault. This end point is used by the CPS (e.g. CPS, 2009). In addition there is the category of 'sanction/detection' which is a police category for when offences are 'cleared up', and includes, in addition to the formal charging of a suspect, police cautions and offences that have been taken into consideration (Walker et al 2009).

The most comprehensive way to calculate the conviction rate would be to use the earliest possible point at which the numbers of crimes are measured: the national surveys of crime victims. The next most comprehensive would be to use the number of crimes recorded by the police. A narrower way is to measure it from the point of prosecution. The first produces the worst (or lowest) conviction rate, the last the best (or highest). There are a number of issues that are relevant to the selection of the starting point. These include: the relatively small number of some of the specific crimes against women and minority groups so that the numbers in the B(S)CS do not always constitute a statistically reliable base; differences between the concepts and categories that are used to measure crime at different points within the CJS (and B(S)CS); whether data is collected and disaggregated by equality groups; and the different responsibilities of different agencies in the CJS.

In selecting the end point, the strictest (and probably the most popularly understood) way to calculate the conviction rate is to limit it to convictions as charged. This produces the lowest conviction rate. The inclusion of conviction for lesser offences loosens the meaning, and 'improves' the conviction rate. The category of 'sanction detection' is a much wider one. Including convictions for lesser offences in the conviction rate is common practice across the CJS, and not only for equality issues; the differences in the way conviction rates are calculated often reflect the different priorities of different CJS agencies. Feist et al (2007: 91) note that 'the oft-reported conviction rate for rape offences of approximately 6% is, in itself, accurate in that it correctly compares convictions for *rape* against offences *for rape*'. They also note that 'There is, of course, a debate to be had about whether it is more or less appropriate to include convictions for lesser offences in the calculation of a conviction rate for rape.' They conclude by recommending moving to 'report on both figures to give the public as informed a picture as possible.'

The figures on rape conviction rates published by the Scottish Government follow a recommendation in the Review of Sexual Offences (COPFS 2006: 44). This review discusses the various points of attrition in cases of rape, and the potential influence of different types of legal system (e.g. the use of juries given the wider societal context of lack of knowledge regarding circumstances of rape):

'Crown Office and the Procurator Fiscal Service should commit to the annual publication of information relating to conviction rates in rape cases as a proportion of cases reported to the Procurator Fiscal. This should take place as part of a wider programme of work across the criminal justice system designed to monitor and respond to attrition and should be undertaken with key partners to ensure that the data is comprehensive and can be interpreted in meaningful ways.'

## Rape conviction rates

### *Recent conviction rates for rape*

Several different figures have been offered as the conviction rate for rape.

**Table 5.1 Reports, prosecutions and convictions for rape, England and Wales**

	1997	2000	2003	2006
Reports	6281	8593	12760	14047
Prosecutions	1880	2046	2790	2567
% of cases leading to prosecution	30	24	22	18
Convictions	599	598	673	863
% of prosecutions leading to conviction	32	29	24	34
Conviction rate (convictions as % of reports)	10	7	5	6

Notes (in original table):

These data include cases with minors. Data are collated on the principal offence rule.

Source:

Table calculations from: Lovett and Kelly (2009)

Comments:

Table 5.1 shows that the conviction rate for rape, calculated by Lovett and Kelly (2009) as the percentage of recorded crimes of rape that end with a conviction for rape, was 6% in 2006 in England and Wales (although Lovett and Kelly prefer to call this attrition).

Our own calculations, drawing on data published by the Home Office on the number of recorded crimes (Walker et al 2009) and by the Ministry of Justice (2010b) on the number of offenders found guilty or cautioned, show that the percentage of rapes recorded as crimes that led to a conviction for rape in 2007 was 7.0% and in 2008 was 7.6% (see Table 5.2).

**Table 5.2 Rape of a female: number of offences, sanction detections and number of offenders found guilty or cautioned for rape of a female, England and Wales**

	2007/08	
Number of offences	11631	
Number of sanction detections	2899	
	2007	2008
Offenders found guilty or cautioned for rape of a female	818	880
Offenders found guilty or cautioned for rape of a female as % of total offences	7.0	7.6

Notes:

Difference in use of financial and calendar year between sources.

Difference in use of offence as the unit, to use of offender.

Sources:

Walker et al (2009); Ministry of Justice (2010b)

Comments:

When the 'conviction' rate includes convictions for a lesser offence (e.g. for sexual assault following a charge of rape) the figure is higher, as shown by the rate of 12% calculated by Feist et al (2007) for 2003/4.

Conviction rates calculated using the wider concept of 'sanction detection', which includes processes that conclude a case within the CJS but without a formal conviction (e.g. caution), are higher again, as shown by the figures in Table 5.3.

**Table 5.3 Sanction detection rates by offence group and selected offence types, percentages and percentage point change between 2007/08 and 2008/09**

<b>Offence</b>	2002 /03	2003 /04	2004 /05	2005 /06	2006 /07	2007 /08	2008 /09	% change
Violence against the person - with injury	34	32	32	38	39	41	41	7
Violence against the person - without injury	37	34	40	47	53	55	53	16
<b>Total violence against the person</b>	<b>36</b>	<b>33</b>	<b>36</b>	<b>42</b>	<b>46</b>	<b>49</b>	<b>47</b>	<b>11</b>
Most serious sexual crime	31	29	27	29	28	28	30	-2
<i>of which:</i>								
Sexual assault on a female	30	28	27	29	28	28	30	0
Rape of a female	30	26	25	25	25	25	26	-4
Other sexual offences	34	33	32	35	35	38	38	4
<b>Total sexual offences</b>	<b>32</b>	<b>30</b>	<b>28</b>	<b>31</b>	<b>30</b>	<b>30</b>	<b>31</b>	<b>-1</b>

Notes:

Percentage point change based on unrounded figures.

**Detections** are those crimes that have been ‘cleared up’ by the police; this category includes not only convictions but also other outcomes. Detections fall into two categories of sanction detections and non-sanction detections

“ **‘Sanction detections’** include offences which are cleared up through a formal sanction, i.e. by an offender: being charged or summonsed; being cautioned, reprimanded or given a final warning; having an offence taken into consideration; receiving a penalty notice for disorder; or receiving a warning for cannabis possession (those aged 18 and over who are caught in simple possession of cannabis can be eligible for such a warning).

Not all sanction detections will necessarily result in a subsequent conviction. In cases detected by ‘charge/summons’, the CPS may not take forward proceedings; or the offender might be found not guilty.

**‘Non-sanction detections’** comprise those where the offence was counted as cleared up but no further action was taken. From 1 April 2007 non-sanction detections can only be claimed for ‘indictable-only’ offences (those offences which must be tried in a Crown Court) where a Crown Prosecutor is satisfied there is enough evidence to provide a realistic prospect of conviction but has decided not to proceed with the case, or the case cannot proceed because the offender has died.

Prior to April 2007 there were various reasons for claiming non-sanction detections

including: offender, victim or essential witness is dead or too ill; victim refuses or is unable to give evidence; offender is under the age of criminal responsibility; police or Crown Prosecution Service (CPS) decides that it would not be in the public interest to proceed; time limit of six months for commencing prosecution has been exceeded.” (Walker et al 2009: Box 6.1, p.132).

Source: Walker et al (2009)

Comments:

The highest conviction rates for rape are calculated by the Crown Prosecution Service (2009), using the percentage of rape cases that were prosecuted as a starting point, and the percentage that led to a conviction for rape or a related and lesser offence as an end point. In 2008-9 this figure was 58% for England and Wales (see Table 5.4, and 5.5 for sexual offences excluding rape).

**Table 5.4 Rape crime<sup>6</sup>: pre-charge decisions and completed convictions by outcome, England and Wales**

Pre-charge decisions	2006-07		2007-08		2008-09	
	Volume	%	Volume	%	Volume	%
Charged	1963	29.8	2220	38.8	2565	38.9
Request for further evidence	110	1.7	55	1	43	0.7
No prosecution	3559	54	3025	52.9	3511	53.2
All other decisions	958	14.5	422	7.4	478	7.2
Total	6590		5722		6597	

<sup>6</sup> Rape crime includes: any defendant charged with one or more of the following offences –

- S1 Sexual Offences Act 1956
- S5 Sexual Offences Act 1956
- An attempt to commit one of the above offences under the Criminal Attempts Act 1981
- S1 Sexual Offences Act 2003
- S5 Sexual Offences Act 2003
- S30(3) Sexual Offences act 2003
- An attempt to commit one of the above offences under the Criminal Attempts Act 1981
- Incitement or conspiracy to commit any of the above offences

Completed convictions by outcome	2006-07		2007-08		2008-09	
	Volume	%	Volume	%	Volume	%
Convictions	1778	54.5	2021	57.7	2018	57.7
Unsuccessful	1486	45.5	1482	42.3	1477	42.3
Total	3264		3503		3495	

Source:  
CPS (2009a)

**Table 5.5 Sexual offences excluding rape: completed convictions by outcome, England and Wales**

Completed convictions by outcome	2006-07		2007-08		2008-09	
	Volume	%	Volume	%	Volume	%
Convictions	5675	68.3	5976	73.5	5955	75.1
Unsuccessful	2630	31.7	2154	26.5	1976	24.9
Total	8305		8130		7931	

Notes:

Principal offence category allocated only at conclusion of prosecution proceedings thus lack of record of pre-charge decisions for sexual offences.

Source: CPS (2009a)

Comments:

The data for Scotland in relation to convictions for rape is presented in Tables 5.6 to 5.8.<sup>7</sup> The conviction rate for rape as the percentage of recorded crimes that end with conviction has been variously estimated as: 3% by the independent researchers Burman et al (2009), (see Table 5.6), 5% by an earlier EHRC report (Walby et al 2008) (see Table 5.7), and 8% by the Scottish prosecution body (COPFS 2009a) (see Table 5.8). In Scotland, the COPFS produced data as a result of a recommendation in a review of the investigation and prosecution sexual offences (COPFS 2006). There are several technical reasons for these differences in the conviction rates including: whether 'attempted rapes' are included or not; different

<sup>7</sup> The legal system in Scotland is slightly different to that in England and Wales (for further discussion of the different roles of the police and prosecution bodies, see the report of the House of Commons Justice Committee, 2009).

sources; and the time lag between recording and offences being brought to justice. The conviction rate for rape as the percentage of rape charges indicted for trial leading to convictions was 31% in Scotland 2006-7 (Table 5.8).

**Table 5.6 Reports, prosecutions and convictions for rape, Scotland**

	1997	2000	2003	2006
Reports	570	562	794	981
Prosecutions	68	51	86	69
% of cases leading to prosecution	12	9	11	7
Convictions	31	28	47	29
% of prosecutions leading to conviction	46	55	55	42
Conviction rate (convictions as % of reports)	5	5	6	3

Notes (in original table):  
Analysis based on calendar year.

Source:  
Figures calculated from Burman et al (2009)

**Table 5.7 Reports and convictions for rape, Scotland**

	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07
Reported rape and attempted rape	755	690	788	924	1037	1109	1161	1123
Convictions for rape and attempted rape	48	52	67	55	58	70	61	58

% of reported rapes resulting in convictions	6.4	7.5	8.5	6.0	5.6	6.3	5.3	5.2
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Notes:

This table was constructed by the authors of this report from data on the number of reports and convictions published by the Scottish Government. This method of estimating the percentage of reported rapes resulting in convictions has been used in a previous report (see Walby et al 2008).

Sources:

Scottish Government (2009d); Scottish Government (2009a)

**Table 5.8 Number and outcomes in rape cases 2006-2007, Scotland**

Reports submitted to PF including at least one charge of rape		515	
Number of charges of rape reported to PF		656	
Number of charges of rape indicted for trial		172	
Charges indicted as % of charges reported to PF			26%
<b>Outcomes</b> in rape charges	Found guilty of charge	32	
	Pled guilty to charge	13	
	Pled guilty to alternative sexual charge	6	
	Found guilty of alternative sexual charge	1	
	Found guilty of alternative non-sexual charge	1	
Total convictions		53	
Convictions as % of rape charges indicted			31%
Convictions as % of rape charges reported by the police			8%
	Found not proven	45	
	Found not guilty	31	

	No further action by prosecution	17	
	Withdrawn from jury by judge or prosecutor	7	
	Plea of not guilty accepted by prosecutor	4	
	No case to answer	3	
	<b>Total non convictions</b>	<b>107</b>	
	Non convictions as % of rape charges indicted		62%
	Non convictions as % of rape charges reported by the police		16%
	<b>Total not concluded</b>	<b>12</b>	
	<b>Total</b>	<b>172</b>	

Notes:

Rape charges (any charge containing allegation of rape, not including charges of attempted rape or assault with intent to rape) reported by police to procurator fiscal by outcome. There number of reports is smaller than the number of charges since one report can contain more than one charge and relate to more than one accused.

Source:

Crown Office and Procurator Fiscal Service (2009a)

Comments (tables 5.1 to 5.8):

*Changes in rape attrition/conviction rates*

In the period 1997-2006, the rate of convictions for rape, as a percentage of police recorded rapes, declined from 10% in 1997 to 6% in 2006 in England and Wales,, according to Lovett and Kelly (2009) (Table 5.1) and from 9% to 8% according to Feist et al (2007). If convictions for lesser offences are also counted, then the conviction rate fell from 18% to 12% between the same years (Feist et al 2007).

There is a similar pattern evident in Scotland. Using rates calculated from the point of police recorded crime to conviction for rape, the conviction rate declined from 5% in 1997 to 3% in 2006 (Burman et al 2009) (Table 5.6) and from 6% to 5% (Walby et al 2008) (Table 5.7).

In the more recent period, 2006/7-2008/9, the rate of charging of alleged rapists and the rate of convictions of those prosecuted have risen slightly in England and Wales. The rate of charging rose from 30% to 39%; while the rate of conviction (including for

lesser offences) of those prosecuted rose slightly from 55% to 58% (see Table 5.4 CPS 2009).

For the period 2002/3 to 2008/9, the sanction detection rate for 'rape of a female' fell from 30% to 26%, the lowest point being 25% between 2004/5 and 2007/8 (Table 5.3, Walker et al 2009).

In order to understand these changes several cross-cutting processes need to be separated, together with a distinction between the pre- and post- 2003/6 periods.

Throughout the period 1997-2009 (and stretching further back in time) there has been an increase in the willingness of women coming forward to report rape to the police. The number of rapes recorded by the police more than doubled, increasing from 6281 in 1997 to 14047 in 2006 (Table 5.1, Lovett and Kelly 2009). Women appear to have demonstrated an increased confidence in the police and CJS to address the crime of rape; however the increased reporting has not been matched by an increased rate of convictions (for discussion of the potential reasons for attrition in the criminal justice process, see Feist et al 2007).

Between 1997 and 2006, there was a decline in the percentage of cases that led to prosecution, from 30% to 18%. Between 1997 and 2003, there was a decline in the percentage of prosecutions that led to conviction, from 32% to 24% (Table 5.1 Lovett and Kelly 2009).

When looking at conviction rates from the point of prosecution, the pattern is reversed from 2003. Lovett and Kelly's (2009) data set (Table 5.1), shows an increase in the percentage of prosecutions that led to conviction for rape from 24% in 2003 to 34% in 2006. Another data set (Table 5.4, CPS 2009) shows an increase in the percentage of prosecutions that led to conviction for rape or some related lesser offence from 55% in 2006/7 to 58% in 2008/9.

In addition, between 2006/7 and 2008/9, there is an improvement in the percentage of recorded rape cases which resulted in defendants being formally charged, increasing from 30% in 2006/7 to 39% in 2008/9 (Table 5.4).

There have been many changes in policy by the CPS since 2003 or so, and these appear to have effects. In particular, the CPS took over the decision-making on prosecution. Without specialised in-depth study the specific impacts of these changes cannot be identified.

It would be useful to be able to investigate whether attrition (or the proportion of cases falling out) from the point of police recording to conviction had declined (implying improvement) during the recent period, 2006/7 to 2008/9. Unfortunately, the way the CPS (2009) presents data for the public domain does not allow an attrition rate to be calculated for the CJS as a whole since there is a major discontinuity in the data provided by the CPS for the pre-charge and prosecution parts of the CJS process. There are many possible reasons for this, for example one set of data may refer to defendants and the other to offences, but these do not appear to be noted by the CPS in their report. So, while separate stages in the process can be investigated, it is not possible from the CPS to produce a summary attrition rate for the CJS overall.

In summary, it would appear that the attrition rate for rape appears to have got worse (i.e. a higher proportion of cases being lost before being brought to justice) in the period 2002/3 to 2008/9, with a very small improvement (a higher proportion of cases resulting in conviction for rape) since around 2006.

### **Comparative attrition/conviction rates**

While the rates of charging and rate of conviction after the start of the prosecution no longer give rise to the same level of concern as was noted in the past (Stern Review 2009), there is still serious concern about other points of attrition. A high proportion of cases are being lost between reporting to the police and charging (Feist et al 2007), and from the point of recording by the police (Baird 2009). In order to make an assessment of the extent to which these attrition rates from the point of police recording are worse for equality groups than for non-equality groups it is necessary to make comparisons.

Table 5.3 (above) shows that the sanction detection rate for 'rape of a female' was 26% in 2008/9 as compared with 47% for 'violence against the person' and 41% for 'violence against the person with injury' (Walker et al 2009). The attrition rate is thus considerably worse for rape than for other violent crimes.

Similarly, of the offenders proceeded against, guilty verdicts were handed down in 38% of the cases involving 'rape of a female', and 69% in the cases involving 'violence against the person' (Table 5.9 below). This again shows that the attrition rate is considerably worse for rape than for other violent crimes.

**Table 5.9 Total offenders proceeded against and total found guilty all courts England and Wales**

	2008
<b>Violence Against the Person</b>	
Total proceeded against	59943
Total found guilty	41519
% of proceeded against found guilty	69%
<b>Sexual Offences</b>	
Total proceeded against	8440
Total found guilty	5135
% of proceeded against found guilty	61%
<b>Rape of a female</b>	
Total proceeded against	2233
Total found guilty	855
% of proceeded against found guilty	38%

Source:

Ministry of Justice (2010c)

Comments:

Rape of a female has a considerably lower conviction rate than other forms of violence against the person, including sexual offences.

## **Domestic violence attrition/conviction rates (tables 5.10 – 5.14)**

Conviction rates for domestic violence might potentially be calculated in similar ways, using as the starting point either the number of police recorded crimes or the number of crimes that are prosecuted. However, there is less data for domestic violence from which to calculate rates of attrition/conviction, at least partly because unlike rape it does not have a unique crime code.

### *Recent domestic violence conviction rates*

There are no routinely collated national figures for the conviction rate for domestic violence using recorded crime as the starting point in either England and Wales or Scotland. However, specific police forces in England have allowed data into the public domain. In one such police force (South Tyneside), the conviction rate was 3% in 2007; and in another (Croydon) it was 2% in 2007, according to independent researchers funded by the Ministry of Justice (Hester et al 2008), see Table 5.13.

In the London Metropolitan Police Force (the 'Met') a rate is calculated as a percentage of recorded crimes that result in a 'sanction detection'. A 'sanction detection' is a broader concept than 'conviction' since it includes, in addition to convictions, cases which ended in police cautions. The rate for domestic violence calculated in this way was 46% in 2008/9, according to the Metropolitan Police Authority (2010), see Table 5.14.

In England and Wales, the conviction rate for domestic violence, as the percentage of prosecuted crimes that led to conviction for some offence, was 72% in 2008-9, according to the Crown Prosecution Service (2009a), see Table 5.10.

There are no parallel figures for Scotland, although there is data to show the number of incidents reported to the police that are recorded as crimes or offences, and the number that are referred to the Procurator Fiscal (table 5.11). This data shows an increase in the incidents reported, and in 2008/09, just over half of the incidents recorded led to the recording of a crime or offence. Data detailing the action taken by the police on incidents of domestic abuse recorded as crimes or offences is shown in table 5.12.

An evaluation of a pilot domestic abuse court in Glasgow (Reid Howie Associates, 2007; Glasgow Domestic Abuse Court Feasibility Study Group, 2008) found, amongst other changes, a higher rate of conviction as compared to cases heard in

other summary courts in Glasgow (86% compared with 77%), as well as a lower rate of attrition (10% compared with 18%).

*Changes in domestic violence attrition/conviction rates*

While there are no national conviction rates from the point of police recording to conviction available for partner and domestic violence routinely placed in the public domain, researchers have produced rates for two police forces. In one (South Tyneside), the conviction rate dropped from 6% in 2005 to 3% in 2007; in the other (Croydon) there was a fluctuation between 3% in 2005, 5% in 2006, and 2% in 2007 (Hester et al 2008), see Table 5.13. For both forces the numbers of recorded incidents fluctuated, but was slightly higher in the later year. While there are perhaps some indications of a worsening of the attrition rate in these figures, the numbers of cases are so small that there should be considerable caution taken before drawing any conclusions.

More recently, CPS data shows that there has been a small increase in the proportion of alleged perpetrators of domestic violence being charged, up from 56% in 2006-7 to 65% in 2008-9 together with an increase in the percentage of prosecutions leading to convictions, up from 60% in 2005-6 to 72% in 2008-9 (CPS 2009), see Table 5.10. However, CPS data is not presented in a way that allows for the calculation of a conviction rate from police recording through to conviction.

These changes have occurred alongside a large increase in the number of cases of domestic violence recorded by the police, rising from 66,630 in 2006/7 to 80,423 in 2008/9 (CPS 2009). This increase in recording of cases by the police does not indicate an increase in the actual number of cases; the BCS shows a significant fall in cases. The increase in recording by the police is due to an increase in the willingness of people to report these cases to the police and possibly an increase in the proportion of those cases appropriately identified by the police as domestic abuse/violence.

**Table 5.10 Domestic violence: pre-charge decisions and completed convictions by outcome, England and Wales**

Pre-charge decisions	2006-07		2007-08		2008-09	
	Volume	%	Volume	%	Volume	%
All defendants						

Charged	36957	55.5	47115	63.6	52418	65.2
Request for further evidence	787	1.2	510	0.7	467	0.6
No prosecution	18140	27.2	20088	27.1	20466	25.4
All other decisions	10755	16.1	6352	8.6	7072	8.8
Total	66639		74065		80423	

Completed convictions by outcome	2005-06		2006-07		2007-08		2008-09	
	Volume	%	Volume	%	Volume	%	Volume	%
Convictions	29719	59.7	37383	65.2	43977	68.9	48465	72.2
Unsuccessful	20063	40.3	19978	34.8	19842	31.1	18629	27.8
Total	49782		57361		63819		67094	

Source:  
CPS (2009a)

**Table 5.11 Percentage of recorded incidents of domestic violence that are recorded as crimes / offences, reported to Procurator Fiscal, and percentage not recorded as crime / offence, Scotland**

	2000-01	% of total incidents	2004-05	% of total incidents	2008-09	% of total incidents
<b>Total incidents</b>	35126		43632		53681	
Total crimes and offences	13947	39.7	21833	50.0	29283	54.6
Of which reported to Procurator Fiscal	9436	26.9	14180	32.5	18691	34.8
<b>Behaviour not</b>	21171	60.3	21799	50.0	24398	45.4

<b>leading crime offence</b>	<b>to or</b>						
<b>Not recorded</b>		8	0.02	-	0.00	-	0.00

Notes (in original table):

Different police forces record domestic abuse information in differing ways. Police practice in deciding when a behaviour justifies the recording of a crime or offence may also differ. These differences influence the proportion of incidents which lead to the recording of a crime or offence, as well as the proportion of crimes and offences reported to the procurator fiscal.

Source:

Scottish Government (2009b)

**Table 5.12 Action taken by police against identified perpetrators of crimes and offences of domestic abuse cleared up by police by financial year, Scotland**

	2000-1	% of total	2004-05	% of total	2008-09	% of total
Referral to Procurator Fiscal	9436	67.7	14180	64.9	18691	63.8
Police warning	1348	9.7	1174	5.4	291	1.0
Other action (e.g. referral to support groups such as victim support)	1415	10.1	5008	22.9	6663	22.8
No further action	1707	12.2	1178	5.4	3631	12.4
Not recorded	41	0.3	293	1.3	7	0.0
<b>Total</b>	<b>13947</b>	<b>100.0</b>	<b>21833</b>	<b>100.0</b>	<b>29283</b>	<b>100.0</b>

Source:

Scottish Government (2009b)

**Table 5.13 Convictions as percentage of incidents of domestic violence recorded by police, South Tyneside and Croydon**

	Incidents recorded by police	Convictions	% of recorded incidents leading to conviction
South Tyneside			
2005	211	12	6
2006	274	11	4
2007	247	8	3
Croydon			
2005	374	12	3
2006	296	16	5
2007	378	7	2

Source:  
Hester et al (2008)

**Table 5.14 Incidents, crimes and sanction detections for domestic violence, rape and serious sexual offences, Metropolitan Police Service**

<b>Metropolitan Police Service</b>	2008/09
Incidents of domestic violence	118920
Number recorded as crimes	53726
Number resulting in criminal justice outcome (sanction detection: conviction or caution)	24757
Sanction detection rate %	46
Offences of rape	2400
Rape offences with sanction detection	752
Rape sanction detection rate %	31
Crimes recorded as serious sexual offences	6786
Serious sexual offences with sanction detection	1838
Serious sexual offences sanction detection rate %	27

Source: Metropolitan Police Authority (2010)

## **Hate crimes (tables 5.15 to 5.18)**

### *Recent conviction rates for hate crime*

Since 2005, the CPS has reported on the prosecution of racially and religiously aggravated crimes, and homophobic (including transphobic) crimes. It has reported on the prosecution of disability incident crimes since 2007. In July 2008, the CPS launched their crimes against older people public policy and prosecution guidance. There are two categories of completed prosecutions: convictions (guilty pleas, convictions after trial and cases proved in absence of the defendant; and unsuccessful outcomes (all other outcomes, including discontinuances, dismissals and acquittals).

While there are no published attrition/conviction rates for hate crime starting from the point of police recording, there are published conviction rates from the point of charging and prosecution for racist and religiously aggravated cases, homophobic and transphobic crime and disability cases. The rate of charging was 73% for racist and religiously aggravated cases, 65% for homophobic and transphobic cases, and 66% for disability cases, in England and Wales in 2008-9 (see Table 5.15). The rate of conviction was 82% for racist and religiously aggravated cases, 81% for homophobic and transphobic cases and 76% in disability cases, in England and Wales, see Table 5.16.

There are no comparable figures for Scotland, though see the available data in Tables 5.17 and 5.18. This data shows an increased number of charges for both race crimes and religiously aggravated crimes in 2008/09 in comparison to the number in 2003/04, with some fluctuation in the period between.

### *Changes in hate crime attrition/conviction rates*

The conviction rates for hate crime have shown some improvement between 2005/7 and 2008/9 for most groups except for disability. The rate of charging for racist and religiously aggravated crime increased from 60% to 73% between these years and from 54% to 65% for homophobic and transphobic cases, while that for disability cases fell slightly from 67% to 66% between 2006/7 and 2008/9 (see Table 5.15). The conviction rate from the point of prosecution for racist and religiously aggravated crime increased from 74% to 82%, for homophobic and transphobic cases from 71% to 81% between 2005/6 and 2008/9, while that for disability cases fell slightly from 77% to 76% between 2007/8 to 2008/9 (CPS 2009b, see Table 5.16).

**Table 5.15 Pre-charge decisions: Racist and religious hate crime; homophobic crime; and disability crimes, England and Wales**

<b>Racist and religiously aggravated cases</b>	2006-07		2007-08		2008-09	
<b>Pre-charge decision</b>	volume	%	volume	%	volume	%
Charge	7886	59.7	9115	70.1	8673	73.2
Request for further evidence	274	2.1	134	1.0	84	0.7
No prosecution	2704	20.5	2426	18.7	1836	15.5
All other decisions	2337	17.7	1321	10.2	1252	10.6
<b>Total</b>	<b>13201</b>		<b>12996</b>		<b>11845</b>	

<b>Homophobic and transphobic Cases</b>	2006-07		2007-08		2008-09	
<b>Pre-charge decisions</b>	volume	%	volume	%	volume	%
Charge	504	54.1	758	62.2	710	65.1
Request for further evidence	23	2.5	14	1.1	6	0.6
No prosecution	215	23.1	272	22.3	222	20.4
All other decisions	190	20.4	175	14.4	152	13.9
<b>Total</b>	<b>932</b>		<b>1219</b>		<b>1090</b>	

<b>Disability cases</b>	2007-08		2008-09	
<b>Pre-charge decisions</b>	volume	%	volume	%
Charge	187	67.0	292	65.8
Request for further evidence	2	0.7	5	1.1
No prosecution	75	26.9	109	24.5
All other decisions	15	5.4	38	8.6
<b>Total</b>	<b>279</b>		<b>444</b>	

**Table 5.16 Prosecution outcomes: Racist and religious hate crime; homophobic crime; disability crimes, crimes against older people, England and Wales**

<b>Racist and religiously aggravated cases</b>	2005-06		2006-07		2007-08		2008-09	
<b>Prosecution outcomes</b>	volume	%	volume	%	volume	%	volume	%
Convictions	6577	74.2	9017	77.0	10398	79.9	9576	82.4
Unsuccessful	2291	25.8	2696	23.0	2610	20.1	2048	17.6
<b>Total</b>	<b>8868</b>		<b>11713</b>		<b>13008</b>		<b>11624</b>	

<b>Homophobic and transphobic cases</b>	2005-06		2006-07		2007-08		2008-09	
<b>Prosecution outcomes</b>			volume	%	volume	%	volume	%
Convictions	426	71.0	604	73.5	778	78.2	815	80.5
Unsuccessful	174	29.0	218	26.5	217	21.8	198	19.5
<b>Total</b>	<b>600</b>		<b>822</b>		<b>995</b>		<b>1013</b>	

<b>Disability cases</b>	2007-08		2008-09	
<b>Prosecution outcomes</b>	volume	%	volume	%
Convictions	141	77.0	299	76.1
Unsuccessful	42	23.0	94	23.9
<b>Total</b>	<b>183</b>		<b>393</b>	

<b>Crimes against older people</b>	Male		Female		Unknown	
2008-09	Volume	%	Volume	%	Volume	%
Convictions	601	79.1	188	77.4	1	100
Unsuccessful	159	20.9	55	22.6	0	
<b>Total</b>	<b>760</b>		<b>243</b>		<b>1</b>	

Sources: CPS (2009b); CPS (2009a)

**Table 5.17 Race crime statistics, Scotland**

<b>Race crimes</b>	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09
Number of charges	3322	4019	4287	4367	4394	4319
% charges where courts proceedings taken	85	85	86	89	88	88
% charges dealt with by alternative direct measure (e.g. warning, fine)	9	9	9	7	6	6
% not proceeding or awaiting Decision	*	*	*	*	6	6
* missing						

Notes:

This information is taken from police reports submitted to Procurators Fiscal in Scotland. The figures relate to the number of charges.

Source:

Crown Office and Procurator Fiscal Service (2009b)

**Table 5.18 Religiously aggravated crime statistics 2003-2009, Scotland**

<b>Offences aggravated by religious prejudice</b>	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09
Number of charges	272	479	704	699	608	669
% charges where courts proceedings taken	96	96	96	95	91	93
% charges dealt with by alternative direct measure (e.g. warning, fine)	4	4	3	3	5	3
% not proceeding or awaiting decision			*	*	4	4
* missing						

Notes:

This information is taken from police reports submitted to Procurators Fiscal in Scotland. The figures relate to the number of charges.

Source: Crown Office and Procurator Fiscal Service (2009c)

## **Bringing offences to justice: smaller scale projects on specific groups**

Data from smaller scale research highlights the difficulties experienced by specific groups in accessing justice, including: refugees and asylum seekers (Mason and Hughes 2009; Amnesty International and Southall Black Sisters 2008); traveller/gypsy communities (Cemlyn et al 2009; Mason and Hughes 2009); and people with learning disabilities and mental health problems (Lee and Charles 2008; MIND 2007).

Campaigns have drawn attention to the particular problems experienced by women who are victims of gender-based violence and who have 'no recourse to public funds' due to their insecure immigration status (Amnesty International and Southall Black Sisters, 2008). This means that these women lack guaranteed access to safe accommodation and specialised support, vital to escaping a violent relationship. Such support is also crucial in enabling these women to access justice; for example, without a place of safety to go to, reporting domestic violence to the police becomes difficult if not impossible. Following continuous campaigning by several groups (e.g. Imkaan, Refuge, Southall Black Sisters, the Women's Resource Centre, Women's Aid), with a mass lobby of Parliament in November 2009 demanding an exemption of this rule for women fleeing violence, the Home Office announced a pilot scheme ('the Sojourner project'). This scheme will fund a woman's refuge place for up to 40 days and enables access to the support required by survivors of domestic or other violence. The scheme received a cautious welcome by groups such as Amnesty International UK (2009), which emphasise that a more permanent solution is required.

Other work has drawn attention to the difficulties in examining the experience of Gypsy and Traveller communities' within the CJS given the lack of monitoring of these groups as specific white minority groups (Cemlyn et al 2009; Mason and Hughes 2009). The evidence available from smaller scale research points to the under-reporting of racist incidents experienced by Travellers and Gypsy groups, the negative experiences of policing by these groups, and discriminatory treatment by courts, prisons and probation service. .

Lee and Charles (2008) conducted research to explore CPS decision making in cases involving victims and key witnesses with mental health problems and/or learning disabilities (MH/LD). Previous research (e.g. MIND 2007) has raised concerns that the police and CPS have made unfair judgments regarding the

capacity of people with MH/LD to give evidence in court, leading to fewer cases going to trial. The CPS study reviewed 45 cases that did not go to trial ('no prosecution' or discontinued) and consulted stakeholders involved in supporting victims and witnesses with MH/LD (e.g. VOICE UK). The study, amongst other findings, suggested scope for improvement in the information gathering for such cases, while at the same time noting the barriers to this; it also highlighted the crucial role of the police in providing sufficient information for prosecutors to make informed prosecution decisions. The report makes a number of recommendations, including the need for prosecutors to seek specific information on the impact of an individual's MH/LD condition on cognitive abilities and the development of training materials to raise understanding amongst prosecutors.

### **5.3 Equal treatment by the CJS: disproportionality**

#### **Concept and measurement of disproportionality**

The disproportional treatment of alleged offenders (and convicted criminals) by the CJS is another type of justice gap. There are potentially two meanings to the concept of 'disproportionality': the first is disproportionate treatment relative to the proportion of that group in the population; the second is disproportionate treatment relative to the actual level of criminal activity of the group. While much of the data presented in relation to disproportionality generally uses the first meaning; the concept of a 'justice gap' depends upon the second. The relationship between the two is crucial in ascertaining whether or not there is a justice gap.

A key example and an issue that has been frequently raised is that of whether and if so the ethnic and religious minorities are treated disproportionately harshly by the CJS. More recently this concern has been extended to other equality groups, including gender, sexual orientation, gender identity/transgender, disability and age.

Disproportionate treatment can potentially take place at any stage of the CJS, but most of the attention has been on race in relation to 'stop and search' procedures by the police. This report considers stop and search, but also other areas of the CJS, including prisons which contain disproportionate numbers of men from minority ethnic groups and people with learning difficulties.

The key analytic question is whether the treatment of the alleged perpetrators and convicted criminals is proportionate to their criminality, which varies between equality groups, or not. In order to address this question it is necessary to have detailed data on the equality group composition of the offending population, against which these

data can be compared. These data and the comparative analysis are harder to obtain since there are many factors that need to be taken into account. Nevertheless, the conclusion usually drawn is that there is some ethnic and religious discrimination (see House of Commons Home Affairs Committee 2007; May et al 2010).

**Stop and search**

There is disproportional use of ‘stop and search’ of minority ethnic men relative to their proportion in the population, as shown in Table 5.19. These statistics, drawn from the Ministry of Justice and the Home Office, show that a higher proportion of Black and Asian men than white men are subjected to ‘stop and search’, while further studies (EHRC 2010) show considerable variation in outcomes in different police force areas. The ethnic ratios in stop and search statistics fluctuate between 1997/8 and 2007/8, showing a dip around 2002/3, but the ratios in 1997/8 and 2007/8 are not considerably different. This suggests that any ethnic disproportionality in stop and search has not changed.

Data for Scotland do not appear to be routinely available. There is though increasing concern about the use of stops and searches in Scotland. Statistics obtained under the Freedom of Information Act reveal a large increase in the number of stops and searches since 2007 (Macaskill 2010).

**Table 5.19 Stop and search of persons (under s1 of the Police and Criminal Evidence Act 1984, and other legislation) rate per 1000 population by ethnic appearance and ratio of white persons to minority ethnic persons, England and Wales**

		1997/98		2002/3		2007/8	
		Rate	Ratio	Rate	Ratio	Rate	Ratio
Ethnicity	White	19		16		17	
	Black	139	7.3	92	5.8	129	7.6
	Asian	45	2.4	27	1.7	40	2.4
	Other	20	1.1	21	1.3	32	1.9
	Total	22		19		22	

#### Notes:

Ratio of stop and searches calculated by division of minority ethnic category by white category (where white =1) to give likelihood of being stopped and searched relative to white population.

#### Sources:

Ministry of Justice (2009a); Home Office (2005a); Home Office (1999)

#### Comments:

There is disproportional use of 'stop and search' of minority ethnic men relative to their proportion in the population. A higher proportion of Black and Asian men than white men are subjected to 'stop and search', The ethnic ratios in stop and search statistics fluctuate between 1997/8 and 2007/8, showing a dip around 2002/3, but the ratios in 1997/8 and 2007/8 are not considerably different. This suggests that any ethnic disproportionality in stop and search has not changed.

### **Prison and detained population**

The proportion of the population that is imprisoned is increasing, thus making this issue larger than before. However, it is hard to say whether this additionally constitutes a justice gap, since it is hard to say whether this reflects the actual level of criminal activity in the groups or for example changes in practices within the criminal justice system In addition the number of people detained for immigration reasons has also increased, see Table 5.26. The increase has been gradual, with one major increase between 2003 and 2004. The majority, approximately 90%, of those held in detention centres are male.

There is a disproportionately large number of men, especially minority ethnic men in prison, as shown and commented on in Tables 5.20 to 5.25. By disproportionate is meant the number of minority ethnic men in prison as compared to minority ethnic men in the overall population. The extent to which the disproportionality reflects disproportionality in relation to real crime levels or discriminatory practices is not possible to say. Either way, the minority ethnic male prison population is disproportionately high, in 2009 there were almost five times more Black people in prison per head of population than White people (Ministry of Justice 2009a).

There is concern over the high proportion of prisoners with learning difficulties / disabilities and mental health problems, as well as concern over the treatment of female offenders by the CJS. The issues raised include the inappropriate use of

custody, with too many women imprisoned on short sentences for non-violent crimes and an over-use of remand (see below for details from small scale studies).

There is concern about the treatment of people detained by the police and in prison, including deaths when in contact with the police (see previous chapter for concerns and implications for equality groups and deaths in prison) (FPDC 2007; JCHR 2005). The Prison Service asserts that the rate of self-inflicted deaths is not increasing but has remained fairly stable. There have been some changes in the number of deaths during or following contact with the police (see Chapter 4, especially Tables 4.24 to 4.26). These include some fluctuation and possible decline in self-inflicted deaths and an increase in non-self-inflicted deaths (possibly linked to the aging of the prison population). It is hard to estimate whether there is disproportionality or to discern trends because of the lack of relevant data on ratios and changes in the methods used (Home Office 2004a).

**Male prisoners and ethnicity**

The majority of the male prison population is ethnic white, between 1995 and 2008 the proportions were fairly stable, ranging from 79% to 83% (see table 5.20 below). The second largest group is ethnic black. There has been a small shift in the proportions of male white and black prisoners; since 1995 there has been a decrease in the white male prison population and a small increase in the Black male prison population (see table 5.20 below). Compared to the Census population estimates for ethnic belonging, there is a large overrepresentation of black ethnic men in prison (see table 5.22 below).

**Table 5.20 Proportion of prison population by ethnic appearance for males of all nationalities 1995-2008. England and Wales**

<b>Ethnic appearance</b>	<b>1995</b>	<b>1997</b>	<b>1999</b>	<b>2001</b>	<b>2003</b>	<b>2005</b>	<b>2007</b>	<b>2008</b>
Total male population (= 100%)	49,086	58,795	61,322	62,690		71.676	75.451	78.689
White	82.9	81.9	81.5	79.1		75	73	72.5
Black	11.4	12.0	11.9	13.5		14	15	14.9
<i>African</i>	2.0	2.1	2.0	2.3		3	-	-
<i>Caribbean</i>	6.8	7.4	7.1	7.8		8	-	-
<i>Other</i>	2.6	2.5	2.8	3.4		3	-	-

Asian	3.0	3.1	3.1	3.1		6	7	7.2
<i>Bangladeshi</i>	0.2	0.2	0.3	0.3		0	-	-
<i>Indian</i>	1.3	1.2	1.1	1.0		2	-	-
<i>Pakistani</i>	1.5	1.7	1.7	1.8		2	-	-
<i>Other</i>	-	-	-	-		2	-	-
Mixed	-	-	-	-		3	3	3.2
Chinese or other	2.5	2.9	3.4	4.3		1	1	1.5
<i>Chinese</i>	0.2	0.2	0.7	0.2		0		
<i>Other Asian</i>	0.9	1.1	1.4	1.8		-		
<i>Other</i>	1.4	1.7	1.9	2.3		1		
Not known/recorded	0.2	0.1	0.0	0.1		1	1	-

Sources:

Home Office (2004a); Home Office (2006a) Table 9.1; Ministry of Justice (2007) Table 9.1; Ministry of Justice (2008b) Table 9.1; Ministry of Justice (2009a) Table 9.1.

### **Female prisoners and ethnicity**

White ethnic women make up the majority of the female prison population, ranging from 75.6% in 1995 to 70% in 2007. In 2008 the number was 70.2% (see table 5.21 below). The second largest group is the ethnic black group, ranging from 19% in 2005 and 2007 to 23.8 in 2002. The ethnic breakdown of the female prison population is thus slightly different than the ethnic breakdown of the male prison population; there is a higher proportion of white men than white women in prison, and a higher proportion of black women than black men in prison. There are also relatively more female prisoners in the category Chinese or Other (3.4% of the prison population) than in the male prison population (1.5%). Combined, these numbers suggest that ethnic minority women are more likely to be found in the prison population than ethnic minority men, compared to the female/male white ethnic groups.

**Table 5.21 Proportion of prison population by ethnic appearance for females of all nationalities, 1995-2008. England and Wales**

<b>Ethnic appearance</b>	<b>1995</b>	<b>1997</b>	<b>1999</b>	<b>2001</b>	<b>2002</b>	<b>2005</b>	<b>2007</b>	<b>2008</b>
Total female population (= 100%)	1,998	2,672	3,207	3,713	4,394	4,515	4,283	4,505
White	75.6	75.3	75.3	73.5	70.6	71	70	70.2
Black	19.5	19.6	19.2	21.2	23.8	19 <sup>1</sup>	19	19.2
<i>African</i>	5.5	4.1	2.7	2.3	2.1	6	-	-
<i>Caribbean</i>	9.6	9.5	9.9	12.5	15.1	10	-	-
<i>Other</i>	4.5	6.0	6.4	6.5	6.6	4	-	-
Asian	1.4	0.9	1.1	1.0	0.9	2	3	3
<i>Bangladeshi</i>	0.1	0.0	0.1	0.1	0.1	0	-	-
<i>Indian</i>	0.9	0.5	0.4	0.4	0.5	1	-	-
<i>Pakistani</i>	0.5	0.4	0.5	0.4	0.3	0	-	-
<i>Other</i>	-	-	-	-	-	1	-	-
Mixed						5	4	3.9
Chinese and Other	3.6	4.2	4.5	4.2	4.7	2	3	3.4
<i>Chinese</i>	0.2	0.1	0.2	0.2	0.2	1	-	-
<i>Other Asian</i>	0.5	0.6	0.5	0.6	0.7	1	-	-
<i>Other</i>	2.9	3.5	3.8	3.4	3.8	-	-	-
Not known	0.0	0.0	0.1	0.1	0.1	1	1	0.4

Notes:

1 The original table has 19 'Black female prisoners' yet the breakdown of 'Black' into 'African', 'Caribbean' and 'Other' adds up to 20 (Home Office 2006a).

Two different sources are used for table 5.24: Home Office 2006 for 1995-2005 and the Ministry of Justice for 2007-2008. There are slight differences in the categories, which is why some rows are left blank. The Home Office 2006 uses two 'other' categories, both placed under the head category of 'Chinese and Other': 'Other Asian' and 'Other'. The Ministry of Justice reports also use two categories for other: 'Other' under the head category 'Asian' and 'Other Asian' under the head category 'Chinese and Other'. In addition, the Ministry of Justice reports introduces the 'Mixed' category, which is missing from the 1995-2005 Home Office reports.

Sources:

Home Office (2004a) Table 9.1; Home Office (2006a) Table 9.1; Ministry of Justice (2007) Table 9.1; Ministry of Justice (2008b) Table 9.1; Ministry of Justice (2009a) Table 9.1.

**Table 5.22 Population by ethnic group 2001 Census. England and Wales**

<b>Ethnic group</b>	<b>2001 population</b>	<b>2001 percentage</b>	<b>2007 population</b>	<b>2007 percentage</b>
White: British	42,747,136	86.99%	42,736,000	83.6%
White: Irish	624,115	1.27%	570,500	1.1%
White: Other	1,308,110	2.66%	1,776,300	3.5%
Asian or Asian British: Indian	1,028,546	2.09%	1,316,000	2.6%
Asian or Asian British: Pakistani	706,539	1.44%	905,700	1.8%
Asian or Asian British: Bangladeshi	275,394	0.56%	353,900	0.7%
Asian or Asian British: Other South Asian	237,810	0.48%	339,200	0.7%
Black or Black British: Caribbean	561,246	1.14%	599,700	1.2%
Black or Black British: African	475,938	0.97%	730,600	1.4%
Black or Black British: Other	95,324	0.19%	117,600	0.2%
Mixed	643,373	1.31%	870,000	1.7%
Chinese or Other: Chinese	220,681	0.45%	400,300	0.8%
Chinese or Other: Other	214,619	0.44%	376,100	0.7%
Total	49,138,831	100%	51,092,000	100%

Notes:

The Census 2001 is ten years old, so the proportions might have changed. There is no more recent Census. The more recent 2007 numbers are on estimates.

Source:

2001 Census

## Male prisoners (Scotland)

The number of male prisoners is increasing. In 1999 there were 5830 male prisoners in Scotland compared to 7005 in 2008. The increase is found in the group adult offenders, the number of young offenders has decreased over the past decade (see table 5.23).

**Table 5.23 Average daily population of males in penal establishments by type of custody, 1998/1999 - 2007/2008. Number and percentage. Scotland**

Type of Custody	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08
Total <sup>(1)</sup>	5,830	5,765	5,676	5,929	6,193	6,307	6,447	6,523	6,830	7,005
Remand: sub total <sup>(1)</sup>	919	922	835	956	1,165	1,158	1,132	1,159	1,466	1,443
Untried	833	833	740	854	1,046	1,026	975	969	1,253	1,231
Convicted awaiting sentence	86	89	95	101	119	132	156	190	213	212
Young offenders - direct sentence	678	639	614	586	570	532	515	584	591	634
Adult prisoners - direct sentence	4,065	4,023	3,991	4,098	4,145	4,243	4,383	4,331	4,214	4,292

Notes:

(1) Components may not add to totals due to rounding.

Source:

Scottish Government (2008b).

## Female prisoners (Scotland)

The number of female prisoners has increased considerably over the past decade, from 199 in 1999 to 371 in 2008. The increase is mainly found in the adult female

prisoner category, but in contrast to the male prison population, the number of young female prisoners has also increased (see table 5.24).

**Table 5.24 Average daily population of females in penal establishments by type of custody, 1998/1999 - 2007/2008 Number and percentage, Scotland**

Type of Custody	1998 /99	1999 /2000	2000 /01	2001 /02	2002 /03	2003 /04	2004 /05	2005 /06	2006 /07	2007 /08
<b>Total <sup>(1)</sup></b>	<b>199</b>	<b>210</b>	<b>207</b>	<b>257</b>	<b>282</b>	<b>314</b>	<b>332</b>	<b>334</b>	<b>353</b>	<b>371</b>
<b>Remand: sub total <sup>(1)</sup></b>	52	54	45	63	82	87	84	83	101	117
<b>Untried</b>	41	40	31	44	57	59	56	56	72	74
<b>Convicted awaiting sentence</b>	11	14	14	19	26	29	29	27	29	42
<b>Young offenders - direct sentence</b>	17	27	28	24	20	23	30	24	30	24
<b>Adult prisoners - direct sentence</b>	121	123	124	161	173	197	212	220	214	222

Notes:

(1) Components may not add to totals due to rounding.

Source:

Scottish Government (2008c)

### **Female and male prisoners and ethnicity (Scotland)**

The majority of the prison population in Scotland is male and ethnic white (see table 5.25 below). The ethnic white prison population makes up almost 97% of the total prison population, a number similar to the 98% ethnic white in the total Scottish population. There is a higher proportion of ethnic black people in prison than in the population at large, though the numbers are small: 1.32% of the total prison population is ethnic black compared to 0.16% in the Scottish population at large (see table 5.25).

**Table 5.25 Ethnic origin by gender of prisoners in custody and population on 30 June 2007 (Scotland) <sup>(1)</sup>**

<b>Ethnic origin</b>	<b>Male</b>	<b>Female</b>	<b>Total</b>	<b>Percentage of total prison population<sup>2</sup></b>	<b>Percentage in total population<sup>3</sup></b>
<b>Total</b>	6,810	344	7,154	100	2.01
<b>White</b>	6,588	322	6,910	96.6	97.99
<b>Black-Caribbean</b>	38	4	42	0.59	0.04
<b>Black-African</b>	31	3	34	0.48	0.10
<b>Black-Other</b>	12	6	18	0.25	0.02
<b>Indian</b>	7	2	9	0.13	0.30
<b>Pakistani</b>	58	-	58	0.81	0.63
<b>Bangladeshi</b>	3	-	3	0.04	0.04
<b>Chinese</b>	19	2	21	0.29	0.32
<b>Other Asian</b>	21	2	23	0.32	0.12 <sup>4</sup>
<b>Mixed</b>	13	1	14	0.20	0.25
<b>Other</b>	20	2	22	0.31	0.19

Notes:

- (1) Includes persons awaiting deportation.
- (2) Calculated from total column
- (3) Entire column derived from: Scottish Executive (2004).
- (4) Other South Asian (Scottish Executive, 2004).

Sources:

Scottish Government (2008c); Scottish Executive (2004).

### **Detainees**

There has been an increase in the number of people being held in immigration detention in the UK over the past decade. In 2001, the total number was 1575 compared to 2250 in 2008 (see table 5.26 below). The number has increased gradually, with the main increase taking place between 2003 and 2004. Of those in detention centers in 2001, 81% (1280 persons) in were recorded as having sought asylum at some stage, which is similar to the 83% (1280 persons) in 2008. Men make up the majority of those detained and removed from the UK; since 2001 men

have rather consistently made up approximately 90% of the detainees (see table 5.26).

**Table 5.26: Immigration: detainees gender and age 2001-2008, UK**

<b>Total detainees</b>					
<b>Year</b>	<b>Gender</b>		<b>Of whom asylum seekers</b>	<b>Adults</b>	<b>Children<sup>3</sup></b>
<b>2008</b>	Male	1965	1345	1940	25
	Female	285	185	270	15
	<b>Total</b>	<b>2250</b>	<b>1530</b>	<b>2210</b>	<b>40</b>
<b>2007</b>	Male	1820	1255	1800	20
	Female	275	200	260	15
	<b>Total</b>	<b>2095</b>	<b>1455</b>	<b>2060</b>	<b>35</b>
<b>2006</b>	Male	1880	1365	1870	10
	Female	130	90	120	10
	<b>Total</b>	<b>2010</b>	<b>1455</b>	<b>1990</b>	<b>20</b>
<b>2005</b>	Male	1670	1245	1655	15
	Female	280	205	260	20
	<b>Total</b>	<b>1950</b>	<b>1450</b>	<b>1915/1920</b>	<b>35/30<sup>4</sup></b>
<b>2004</b>	Male	1735	1345	1720	15
	Female	215	165	205	10
	<b>Total</b>	<b>1950</b>	<b>1515</b>		<b>25</b>
<b>2003</b>	Male	1455	1165	-	-
	Female	155	120	-	-
	<b>Total</b>	<b>1615</b>	<b>1285</b>	-	-
<b>2002</b>	Male	1030	720	-	-
	Female	115	75	-	-
	<b>Total</b>	<b>1145</b>	<b>795</b>	-	-
<b>2001</b>	Male	1375	1145	-	-
	Female	170	135	-	-
	<b>Total</b>	<b>1545</b>	<b>1280</b>		-

Notes:

1 Excludes persons detained in police cells, Prison Service establishments and those detained under both criminal and immigration powers.

2 Figures rounded to the nearest 5 ( - = 0, \* = 1 or 2) and may not sum to the totals shown because of independent rounding. Figures include dependants.

3 Children: People recorded as being under 18 on 27 December 2008. These figures will overstate if any applicants aged 18 or over claim to be younger.

4 The Home Office (2006b) statistical bulletin contains two conflicting numbers. The total number of minors is stated to be 30, and when the total number is broken down by gender the report states 15 male minors and 20 female minors. That is, the Home Office reports simultaneously reports 30 and 31 minors.

5 Persons detained under Immigration Act powers who are recorded as having sought asylum at some stage.

6 Figures include dependants

7 Due to changes in working practices, these statistics now exclude all persons detained in Prison Service Establishments. Figures are not directly comparable with those prior to June 2006.

Sources:

Home Office (2009g) Table 3.3; Home Office (2008c) Table 6.5; Home Office (2007) Table 6.3; Home Office (2006b) Table 6.3; Home Office (2005b) Table 12; Home Office (2004b) Table 6.3; Home Office (2003) Table 11; Home Office (2002) Table 4.3.

## **Disproportionality in prisons and related institutions: smaller scale studies and reports**

As noted above (physical security in institutions), some of the evidence from smaller scale and more specialised research into the experiences of particular groups draws attention to matters relevant to both physical and legal security. For example, the Prison Reform Trust (PRT) investigation *No One Knows* into the experiences of prisoners with learning disabilities and difficulties documents the problems this group confront in accessing justice (Loucks 2007; Talbot 2008; Jacobson and Talbot 2009).

One of the key issues is the extent to which people are detained despite evidence suggesting that prison is an inappropriate response to their offending. Earlier work highlighted concerns about the high number of offenders with mental health problems and the lack of support for this group (e.g. Singleton et al 1998). In 2007, a review chaired by Lord Bradley was set up to investigate the extent offenders with mental health problems or learning disabilities could be diverted from prison to other, more appropriate, services. The report included focus on the difficulties experienced by specific groups: people with a dual diagnosis (mental health problems combined with drug/alcohol problems); people from Black and minority ethnic groups; and women.

The key difficulty identified was the lack of treatment for prisoners with a mental health disorder or learning disabilities and the difficulty of access to offender behaviour programmes for prisoners with mental health problems or learning disabilities. Prisoners whom staff consider unsuitable to participate in these programmes because of their mental illness or emotional instability are often excluded from them entirely (Bradley 2009). Some of the recommendations in the Bradley Review included the need for improved training at every level of the criminal justice system and the early identification of the mental health disorders of prisoners.

The Bradley report highlighted the problem of the lack of information available to identify the ethnicity of people with mental health problems or learning disabilities in the criminal justice system. One figure reported from the results of the national 'Count me in' census in 2007 is that BME groups are 40% more likely to access mental health services via a criminal justice system gateway. The review was followed by the government's launch of 'Improving Health, Supporting Justice' (Department of Health 2009a) which aims to improve mental health care for offenders, whether in a custodial or health setting.

As illustrated in the table above (Table 5.19) on stop and search statistics, disproportionality by ethnicity is also a key issue in relation to legal security, with annual statistics showing that people from Black and Minority Ethnic groups are

overrepresented at almost every stage in the CJS (Ministry of Justice 2009a: 2009c). Evidence suggests at least some element of discrimination as being a factor in the overrepresentation of some groups (e.g. EHRC 2010).

Whether and why young minority ethnic groups are disproportionately involved in crimes is a contested issue. In their report on differential treatment in the youth justice system, May et al (2010) argues that 'while it is possible that the overrepresentation of black and mixed race teenagers reflects differential reporting between victims, it is indisputable that ethnic minority groups are over-represented in the youth justice system' (p. 5). The report finds evident disproportionality when looking at the types of crimes that young people are charged with: black teenagers are over-represented in robbery and drug offences, while Asian teenagers are under-represented in all types of crime (see also Jones and Singer 2008). The report confirms discrimination and disproportional representation of young ethnic minority offenders at all stages of the criminal justice process.

Specific concerns have been expressed over the treatment of Travellers and Gypsies by the CJS. Research by Cemlyn et al (2009) found that this group suffered from disadvantages and cultural dislocation within the prison system which led to acute distress and frequently to suicide. According to the study, the combination of unfair treatment at different stages of the criminal justice system and other inequalities affecting these communities leads to an 'accelerated criminalisation' at a young age that can lead rapidly to custody. It includes, for example, disproportionate levels of Anti-Social Behaviour Orders against Gypsies and high use of remand in custody, explained by judicial assumptions about perceived risk of absconding and the lack of safe accommodation.

In relation to women's access to justice and treatment by the CJS, a number of reports have drawn attention to elements of discrimination and disproportionality, the high proportion of women prisoners with mental health problems, as well as the potential benefits of reform (e.g. Wedderburn 2000; Rickford 2004; Corston 2007; New Economics Foundation 2008; Hester 2009). The HM Prison Service reports several elements of discrimination where women and men have different needs. These include, for example, those with respect not only to maternity care and gynaecological health but also to psychological health where women are more likely than men to be past, or recent, victims of various forms of abuse, including physical, emotional and sexual (HM Prison Service 2003, 2004).

Although relatively small compared with male prisoner population, there has been increasing concern around the rapid rise in the number of women in custody, particularly since the early 1990s (HM Prison Service 2003, 2004). The issues in

focus include the misuse of custody; women being held far away from their families because there are few prisons for women; the detrimental impact of women's imprisonment on the lives of their children; a lack of schemes to divert women with mental health needs away from the CJS; the over-representation of minority ethnic and foreign nation women in the female offender population; and a lack of community alternatives to custodial sentences.

In a review of women in prison in 1997, the HM Chief Inspector of Prisons declared that 'there is an urgent need for a thorough analysis of the needs of women prisoners, and a national strategy for implementing and managing policies appropriate to satisfying them' (HM Inspectorate of Prisons 1997: 3). The findings included: a majority of women prisoners were mothers of children aged below 16, had poor educational and employment histories as well as accommodation problems, and that many reported physical and sexual abuse, substance misuse and mental health problems (HM Inspectorate of Prisons 1997).

A recent Fawcett Society Commission on Women and the CJS (formed in 2003) examined the experience of women as victims, offenders and employees in the CJS. According to the Commission (2009), the CJS continues to discriminate against women in its practices and attitudes. In relation to female offenders, it suggests that causal factors in offending are neglected and too many women are imprisoned on short sentences for non-violent crimes and remand continues to be over-used. It concludes that while there has been progress, there is still much to be done.

In their investigation into the specific experiences of minority ethnic women in the criminal justice system, Smee and moosa (2010) found that these women are not only overrepresented within the female offender population but are also more likely to feel isolated in custody and less likely to seek help. This is particularly important for foreign national women - 19% of female prisoners were foreign nationals in 2009 (Smee and moosa 2010), The additional barriers faced by minority ethnic women due to language and culture prevents them from seeking and receiving help and support both within prison and upon release (Smee and moosa 2010). Minority ethnic women are more likely to be victimised by prison staff than majority ethnic women are. In 2009, 26 % of minority ethnic women reported victimisation by prison staff compared to 16 percent of majority ethnic women (HM Inspectorate of Prisons 2009b). Further, minority ethnic women are more likely to be remanded into custody than white offenders (Women in Prison 2009).

In relation to transgender people, small scale studies show that transgender people are subjected to high levels of abuse and violence in every sphere of life (Lombardi et al, 2001; Whittle 2007; Poole et al 2002). A main concern about crimes committed

against transgender people is that they go underreported and under recorded; the scale of transphobic hate crime is unknown (Turner et al, 2009). In relation to transgender people in prisons, a 2009 Press for Change report drawing on case studies shows that the criminal justice system fails to regard trans women as potential victims of abuse, or fails to regard them as women at all (Turner et al 2009). Trans women are regarded as men by proxy, and “attacks on trans women by men are implicitly regarded as ‘male-on-male’ attacks rather than male-on-female attacks” (Turner et al 2009: 2). The implication is that a trans woman acting in self-defence is not regarded as such by the CJS, but rather as a man making threats or attacks on their attackers.

Small scale studies also show that transgender people are over-represented in the prison population (Lombardi et al, 2001; Whittle 2007; Poole et al, 2002). One study claims that there are more than twice as many transgendered people in prison that what would be expected with the available estimates of the size of the trans population in the UK as a whole (Poole et al 2002). It should, however, be remembered that the numbers are low; if the transgender prison population would be proportional to the transgender people of the UK population, Poole et al estimate that there would be six trans people in prison. In their study, Whittle et al (2007) identified, interviewed and had regular contacts with eight transgender prisoners. The majority of the offences for which transgender prisoners were convicted involve gaining money for gender reassignment surgery (for example, handling stolen goods). Poole et al’s research calls for transgender people to be included in diversity policies in the criminal justice system and for training on transgender issues for probation and prison officers.

## **5.4 Conclusions**

Legal security concerns equal treatment of equality groups with others by the CJS for both victims and for alleged perpetrators and convicted criminals. There are two main equality issues for the CJS that concern whether there is a greater justice gap for equality groups than others. The first is whether the attrition rate in bringing offenders of violence oriented to women and members of minority groups to justice is worse (meaning lower ‘conviction’ rates for such offences) is worse than for other offences. The second is whether there is disproportionality (greater severity) in the treatment of alleged offenders by the CJS.

The evidence shows that there are inequalities in the legal security of the equality groups as compared with others, especially but not only in that these groups experience lower conviction rates. These include: gender-based violence against

women (rape, sexual assault, intimate partner violence, domestic violence, forced marriage, FGM and honour based crime) and hate crime against equality groups on the basis of race/ethnicity, religion, sexual orientation, gender identity and disability. The data for the different equality groups varies considerably in its detail and robustness. There are continuing debates rather than an authoritative consensus on the best way to measure conviction rates.

There are inequalities and variations in conviction rates. The quality of the available data varies; the best data available is for rape since this has its own crime code, which means that a wider range of robust data is placed in the public domain than for domestic violence and hate crime. The conviction rate for rape worsened from at least as far back as 1997 until around 2006, since when small improvements have been made. The conviction rate for rape is worse than for other forms of violence.

For the majority of forms of hate crime (on the basis of race, religion, sexual orientation and gender identity, but not disability or age) the period since 2006 has seen small improvements in the conviction rates from the point of prosecution. However, for these groups there is no evidence that would enable an assessment of changes in attrition rates for earlier parts of the CJS process, nor for the longer time period of the whole decade. There remain gaps in the data available in the public domain necessary to estimate attrition rates across the CJS as a whole.

There are inequalities, that is, disproportionality, in the treatment of alleged offenders and convicted criminals between equality groups and the rest. This process potentially affects many aspects of the CJS, but the ones on which most data and commentary are available are the use of 'stop and search' of people suspected of offences, and the use of imprisonment rather than other sentences for convicted criminals.

There is disproportional use of 'stop and search' of minority ethnic men relative to their proportion in the population. Published CJS statistics (Ministry of Justice), as well as studies comparing the outcomes in different police force areas (EHRC 2010) show that a higher proportion of Black and Asian men than white men are subjected to 'stop and search' and considerable variation by area. The ethnic ratios in stop and search have not changed considerably between 1997/8 and 2007/8. This suggests that any ethnic disproportionality in stop and search has not changed. However there is little data as to whether or the extent to which this might be disproportional in relation to their actual criminality.

A higher proportion of prisoners are from ethnic minorities than the general population. There is continuing concern over the high proportion of prisoners with

learning difficulties. Although women are a minority in the prison population despite making up half the population, there is a question as to whether they are more likely to be in prison than men for the same level of offences committed at the same state of mental ill-health.

The potentially disproportional treatment of alleged offenders and convicted criminals in areas of the CJS other than stop and search and for the full range of equality groups is hindered by lack of data in the public domain.

The next chapter considers the challenges and potential solutions in examining these issues further.

## **6. CHALLENGES AND POTENTIAL SOLUTIONS FOR THE CRIMINAL JUSTICE SYSTEM**

### **6.1 Introduction**

The focus of this chapter is a review of key challenges facing the Criminal Justice System statistics and offers some suggestions as to how they might be improved in order to fulfil the duty on public bodies to promote equality.

As noted in Chapter 1, the Equality Act 2010 has extended the public sector equality duty to cover all the protected characteristics (i.e. age, disability, gender identity, race/ethnicity, religion/belief, sex, sexual orientation). The public duty is a proactive or positive measure; it shifts responsibility onto public bodies to demonstrate the actions they are taking in relation to equality and encourages a forward looking perspective towards what actions can be taken to advance equality (Fredman 2008).

The equality duty has potential implications for the data that public sector authorities collect, though the precise requirements are a little unclear. Currently the duty appears open to interpretation, raising the possibility of 44,000 bodies demonstrating commitment to the duty through different activities. Nevertheless, gathering and analyzing evidence across all the protected characteristics would appear to be one central component in meeting the duty (GEO, 2010:7). A failure to meet the Public Duty can result in legal action being taken against public authorities. For example, the EHRC successfully intervened in the case of Ealing Council's proposed funding changes which threatened the survival of the domestic violence support group Southall Black Sisters. Amongst other claims, the Commission argued that the Council had failed to comply with the Race Equality Duty.

There are considerable ongoing efforts within the CJS to improve statistics in relation to equality issues. These are noted and briefly reviewed.

The main part of the chapter is the identification of some of the key challenges in developing the knowledge and evidence base needed by the CJS in order to address equalities issues. It concludes with a summary of developments necessary to address these challenges.

### **6.2 Ongoing developments in policies**

There are a series of ongoing policy developments, examples of good practices, effective local innovations, and new proposals for policy innovation, as well as some

that have been ongoing for a long time but not yet been achieved. These developments in the CJS are noted so that proposals for further developments can be made appropriately. Ongoing developments include the following:

The HM Government (2009g) strategy to end violence against women and girls launched in November 2009, following a wide ranging consultation (HM Government 2009e), provides an overarching framework on physical and legal security for women. This overarching framework might be widened to all equality groups. This strategy follows an earlier action plan on tackling sexual violence and abuse (HM Government, 2007). Also in 2009, HM Government published a Cross-Government Action Plan on Hate Crime (HM Government 2009a). This plan builds upon a variety of previous initiatives; many of which were informed by the seminal Stephen Lawrence enquiry in 1999, but also include initiatives relating to other areas such as policies on protecting vulnerable adults from abuse (Department of Health 2009b; Magill et al 2010). Changes in legislation have also taken place. For example, in 2009, a law (Offences (Aggravation by Prejudice) (Scotland) Act) was passed to widen existing hate crime legislation to cover offences aggravated by prejudice relating to disability, sexual orientation and transgender identity.

The Crown Prosecution Service since around 2005 has embarked on a major programme of reform in practice and data collection on:

- domestic violence and sexual offences policies (e.g. 2008a, 2009c, 2009d), including piloting and then rolling out specialist Domestic Violence Courts;
- hate crime (e.g. CPS 2008b),
- policy on crimes against older people (CPS 2008d);
- policy on the treatment of victims and witnesses with mental health issues and learning disabilities (CPS 2009e, 2009f); and
- consultation on the single equality duty for 2010-11 (CPS 2009g).

This major CPS programme of reform in practice also includes work together with other government departments on developing assessments of victim satisfaction in cases of domestic violence (CPS 2009h). The CPS has also rolled out policies on hate crime over the past few years (e.g. CPS 2007), and now produces an annual publication on hate crime cases (e.g. CPS 2009b).

There are a number of reviews and reforms that concern other agencies, especially the police (NPIA 2008), including innovative local policing that might be rolled out nationally for example:

- the policy of the London Met on 'honour crimes' and data review (MPA 2009);
- the National Domestic Violence Delivery Plan (HM Government; 2009f);
- ACPO's (2009) 10 proposals for reform;

- the Stern Review (Stern 2010) into the way rape complaints are handled;
- the development of specialised risk assessment tools for domestic violence for the police and other agencies (CAADA 2009); and
- the development of new 'sanctuary schemes' (Netto et al 2009).

In addition, there are ongoing developments in relation to action on hate crime by the police. In 2005, the Home Office and the Association of Chief Police Officers issued guidance on tackling Hate Crime (ACPO 2005) (with a proposal to refresh this manual in the recent Action Plan, HM Government 2009a: 19), and in 2009, ACPO and the CPS agreed on a common definition of hate crime. The National Policing Improvement Agency (NIPA 2010) provides courses for police staff in relation to tackling hate crime, and there are also locally based measures such as the appointment of dedicated hate crime officers within individual Police Forces and procedures such as 'third-party reporting' to improve the reporting of hate crimes to the police (HM Government 2009a).

With regard to tackling issues concerning disproportionality, there have been various government initiatives. Following the Corston report (2007) on vulnerable women in the CJS, increased resources to pursue community alternatives to custody for women offenders were proposed. Other measures to address the recommendations of the report included the setting up of a cross departmental unit to coordinate the work and pilot projects on conditional cautions aimed specifically at women offenders (Ministry of Justice 2008a). Attention has also been directed towards meeting the recommendations of the Bradley review (2009) of people with learning disabilities and mental health needs in the CJS. For example, in 2009 the Department of Health (2009a) launched a delivery plan aimed at improving outcomes in terms of both health and criminal justice.

### **6.3 Challenges and potential solutions**

#### **Introduction**

Increased attention to forms of violence relevant to equality groups that are not well captured by conventional crime codes has led to the development of additional concepts and definitions and reporting procedures. The many initiatives in this area are to be welcomed. However, these initiatives to name equalities issues and groups have developed in a not altogether consistent way. It is time to review the various definitions, the procedures for recording in CJS information systems, and the ways in which the statistics are made public or not. Several areas have been identified

where there are challenges in producing CJS statistics that are appropriate to the purposes of promoting equality and reducing violent crime.

### **Defining and reporting on intimate partner and domestic violence**

The definition of intimate partner and domestic violence lacks comparability across the different branches of the CJS, across England and Wales compared to Scotland, lacks coherence with other CJS statistics, and some data that does exist is not accessibly placed in the public domain.

Intimate partner and domestic violence is defined, recorded and counted in different ways by different branches of the CJS at different points in time. Unlike many other forms of violence it is not specifically identified by a crime code. There have been considerable innovations that attempt to capture this form of violence, but they are not consistent or coherent. For example, definitions vary as to: whether the range of perpetrators is restricted to an intimate partner or extends to all family members; the different forms and thresholds of severity; whether it is counted using 'prevalence' or the number of 'incidents'. The recording of the violence appears to be inconsistently done, with an absence of nationally agreed uniform compulsory practices for its recording, unlike those forms of violence identified by a crime code. Considerable parts of the data that are collected for performance management (for example police recorded 'flags') are not consistently placed in the public domain, despite their potential importance.

There is disagreement over whether a broad meaning of domestic is to be used, including all family members, or a more specific focus on intimate partner violence. The use of 'domestic' has the advantage of including kin-based violence but has the disadvantage of losing the gender specificity of intimate partner violence. The Home Office (2009e) (England and Wales) uses a broad definition of domestic violence that is inclusive of many types of actions and all family members as potential perpetrators. It is defined as: 'any threatening behaviour, violence or abuse between adults who are or have been in a relationship, or between family members. It can affect anybody, regardless of their gender or sexuality. The violence can be psychological, physical, sexual or emotional. It can include honour based violence, female genital mutilation, and forced marriage'. By contrast, in Scotland, the term 'domestic abuse' is defined more narrowly, especially in relation to the range of perpetrators: 'Domestic abuse is any form of physical, non-physical, or sexual abuse which takes place within the context of a close relationship, committed either in the home or elsewhere. This relationship will be between partners (married, co-habiting or otherwise) or ex-partners' (Scottish Government 2009: 31). One solution to the divisions over definition would be to collect data using both definitions, so that

intimate partner violence is treated as a sub-set of domestic violence, and statistics on both are presented.

Intimate partner and domestic violence do not themselves have crime codes, even when these forms of violence fit within crime categories, for example, being sub-types of common assault, serious wounding, and other wounding. In order to identify these forms of violence otherwise hidden within the reporting that uses crime categories, it is necessary to use and apply additional definitions. There are a series of potential solutions here, some of which appear to be at least partially under current development. One is the systematic use of 'flags' on categories of recorded crime so as to distinguish which crimes of violence against the person are 'domestic' or 'intimate'.

There has been some use of this as a system, though information is unevenly available: in Scotland domestic abuse incidents recorded by the police are annually published by the government, whereas for Police Forces in England and Wales the situation is less clear.

Indeed in the main part of the British Crime Survey reports of violent crime are cross-classified as to whether it is domestic (or by a stranger, acquaintance, or whether it is a mugging).

However, it remains unclear as to the extent to which this is intended to become a standard compulsory national procedure, or if it is merely voluntary for police forces. The Home Office has stated that developments are underway to introduce flags for domestic violence and hate crime flags under the Annual Data Requirement (Alkire et al 2009: 170). However, it is not altogether clear whether this refers to recorded crime offences or to incidents and whether it is to be compulsory or voluntary. Nevertheless, 'flags' for domestic and hate crime is a practice that has been subject to, at the minimum, exploratory development by the CJS. The next step might be to build on these developments and to make such flagging of recorded crimes as domestic (or intimate) part of a compulsory (statutory?) uniform national procedure within the accounting rules for recorded crime.

Some forms of domestic and intimate violence are considered insufficiently severe to cross the threshold of 'crime'. These are recorded by the police as 'incidents' rather than 'offences' (and sometimes as crime-related incidents). There are two issues here. The first is whether all events of domestic or intimate violence that do cross the crime threshold are actually categorised as crimes rather than as incidents. This is an issue of consistency of recording standards as to the placing of domestic and intimate violence as either crimes or incidents. This should be further investigated.

The second is the placing of these statistics in the public domain. While it is fairly common for individual police forces to allow data on domestic incidents into the public domain at the local level, they are not collected together and published as part of the national CJS statistics for England and Wales. They should be.

There is specific guidance for the recording of incidents following the *National Standard for Incident Recording (NSIR)*, the principal aim of which is: 'to ensure that all incidents, whether crime or non-crime, are recorded by police in a consistent and accurate manner, so as to allow resulting data to be used at a local and national level to meet the management and performance information needs of all stakeholders' (Home Office 2008b: 7). There are various categories to be used in recording incidents, including 'domestic incidents' which is for the recording of incidents that fall outside of the Association of Chief Police Officers (ACPO) defined domestic abuse. Where there are ACPO defined domestic abuse issues, it is stated that the qualifier 'domestic abuse' should also be used (Home Office 2008b: 55). Qualifiers are: 'designed to capture the surrounding characteristics and motivating factors around an incident. They are not incidents in their own right. The expectation is that all Forces will use the qualifiers listed as part of the National Incident Category List (NICL) in order to improve the quality of data available for analysis' (2008b: 14).

Following NSIR (2008b) counting rules, Domestic Abuse is a 'qualifier', to be used when an incident fits the appropriate definition. The Association of Chief Police Officers (2008a: 7) (CPS and government) definition of domestic abuse is: 'any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults, aged 18 and over, who are or have been intimate partners or family members, regardless of gender and sexuality.' (Family members are defined as mother, father, son, daughter, brother, sister and grandparents, whether directly related, in-laws or step-family.)

Information on incidents of domestic abuse recorded by the police (England and Wales) is not routinely publicly available (see National Policing Improvement Agency response, Alkire et al 2009: 171-2). However, in Scotland, annual statistics on police recorded domestic abuse are published, and incidents are separately identified as crimes/offences, and no crime or offence. A statistical collection on domestic abuse was recommended in the late 1990's in a Report of HM Inspectorate of Constabulary ('Hitting home' 1997). Domestic abuse in Scotland is defined as any form of abuse which takes place within the context of a close relationship. This relationship will be between partners or ex-partners (Scottish Government 2008a). A follow up report of HMCIS into the police response to domestic violence (HMCIS 2008) makes a series of recommendations, including the need to continually review monitoring practices.

Police recorded incident data is not (yet) widely publicly accessible for England and Wales.

The unit of measurement of intimate partner and domestic violence may be as prevalence or the number of incidents. Prevalence, the proportion of the population experiencing any violence, is the more usually used concept in the domestic violence practitioner community, while the number of incidents is consistent with conventional crime statistics practice. This distinction is particularly important in intimate partner violence where repeat offences are common. Unless intimate and domestic violence is counted in the same way as the rest of criminal statistics, it is likely to remain marginal to the main statistics. A potential solution is to use both definitions.

There is a more general question about the alignment between the terms used in the definitions of domestic and intimate violence and the categories used in crime codes. This potentially means that intimate and domestic violence is treated as a special area outside of 'mainstream' violent crime. Indeed this appears to be an issue in the definition of violent crime used in the PSA for the CJS, which is a major performance target. While the CJS PSA is defined using crime codes, then domestic and intimate violence should also be defined using crime codes otherwise its reduction is less likely to count towards the achievement of the PSA, even if these are additional to other forms of categorisation.

An underlying issue here is the process of the mainstreaming of the statistics on intimate and domestic violence into main crime statistics. While there are good reasons for recording the specificities of these forms of violence, there are even stronger reasons for ensuring that this is not at the expense of their exclusion from the main crime statistics. Cases of intimate and domestic violence need to be visible within the main statistics, this is not currently the case given that intimate and domestic violence do not have a specific crime code.

### **Recording rape as an offence or crime related incident**

Despite efforts to achieve consistency of recording of crime, there remain considerable challenges. The example here concerns the recording of rape as either a crime or a crime related incident. The boundary between these categories is more fluid than might initially appear. There are particular issues that arise from the desire of some victims to be anonymous or not actively seek a police investigation.

There are a set of national standards for the recording of crime, the National Crime Recording Standard (NCRS) and the Home Office Counting Rules (HOCR) for

recorded crime, in order to create consistency of recording across all police forces. It is based on applying legal definitions of crime to victim's reports (Home Office, no date). All reported incidents are recorded as either: incidents, crime related incidents (e.g. record of an incident reported by a third party where alleged victim does not confirm that there has been a crime or where victim cannot be traced; apparent or possible criminal activity), or a crime- 'notifiable offence' (even if the victim – who has confirmed that there has been a crime, does not want to provide details or pursue further) (Home Office, 2009b).

In the General Rules (Home Office 2009b: 4) there is specific guidance regarding the recording of 'allegations of rape' as either crimes or crime-related incidents:

Allegations of rape which come from victims, third parties or from Sexual Assault Referral Centres (SARCs):

A report of rape must be recorded as a **crime** in the following instances:

- The victim provides personal details and seeks a police investigation;
- The victim (whether anonymous or not) provides details of the allegation to be passed to the police but decides not to pursue the allegation;
- The victim undergoes a forensic examination with samples submitted to the police for analysis (whether or not personal details are passed to the police).

A report of rape should be recorded as a **crime-related incident** in the following instances:

- The victim does not seek a police investigation but is happy for some depersonalised data to be passed to the police for intelligence purposes;
- The victim wishes to remain anonymous and does not want details of the allegation passed to police (if any information at all received by police);
- The victim undergoes a forensic examination and samples are frozen at the SARC in case the victim decides to pursue the case at a later date (forensic samples are not passed to the police).

There is a difficult boundary in the categorisation of rape as either a crime or as a crime-related incident. There is a question here as to whether there is potential for inconsistency in recording generated by the different formulation of the rules for counting rape as crime related incidents rather than crimes with the formulation of the general rules on this issue.

## **Defining and recording data on hate crime**

As in the case of domestic and intimate partner violence, there are complexities in the defining and recording of hate crimes. Some of the difficulties in reaching consensus on the terminology in relation to these crimes appear to be the outcome of the fact that work in this area (academic and policy) is still relatively 'new' (though, of course, the crimes themselves are not). While a common definition of hate crime has been agreed by ACPO and the CPS, there remains a mismatch between the terminology used in policies and in legislation (e.g. aggravation and prejudice). There is an additional complexity in that some of these crimes (racially and religiously aggravated) have a specific crime code while the others do not.

The development of legislation on hate crime has also been uneven between England and Wales on the one hand and Scotland on the other, both in terms of timing and the terminology used. For example, legislation regarding hate crimes concerning disability and sexual orientation was passed covering England and Wales in 2003 (Criminal Justice Act 2003); in Scotland, the Offences (Aggravation by Prejudice) (Scotland) Act was passed in 2009, coming into force in March 2010. This act widened existing hate crime legislation to cover offences aggravated by prejudice relating to disability and sexual orientation as well as transgender identity (which is not technically addressed in England and Wales).

Prior to the Scottish Act of 2009, the Parliamentary Justice Committee discussed the Bill, taking submissions from various bodies including criminal justice agencies. During this consultation it was noted that aggravation elements could already be incorporated under the Common Law, Nevertheless, it was suggested that this provision was not adequately applied and generally believed that the statutory legislation would bring additional benefits. These include the impact that such legislation would have in raising public awareness and the profile of crimes aggravated by sexual orientation, transgender identity and disability. It was also emphasised that referring to these aggravations in legislation would allow these offences to be adequately recorded, and therefore monitored (Justice Committee 2009).

The CPS has a policy on crimes against older people (CPS 2008d), but the legislation does not technically address age in either Scotland or England and Wales. During the lead up to the Offences (Aggravation by Prejudice) (Scotland) Act, the Parliamentary Equal Opportunities Committee discussed the potential inclusion of age within the Bill. Evidence for and against its inclusion was presented. Some groups supported its inclusion suggesting that not to do so could lead to hierarchy of rights (where some groups are treated more seriously than others). However, other groups, including Age Concern Scotland and Help the Aged in Scotland, were

against its inclusion suggesting that the targeting of older people related to their perceived vulnerability or weakness rather than a particular hatred of them as a social group. In its submission, the COPFS also noted in prosecutions where it is believed that elderly people have been deliberately targeted then this fact will be taken into account by the court. Overall, the majority of evidence was judged to be against the inclusion of age as an aggravating factor in the bill. Regarding data recording, there is a similar procedure recommended for the recording of hate incidents as in the case of domestic abuse incidents. According to the National Standard for Incident Recording counting rules, the qualifier 'hate / discrimination' is to be used to identify any incident which is perceived to be motivated due to person's racial group; religion; disability; sexual orientation; or transgender status (each distinguished separately) (Home Office 2008b).

### **Methods of recording repeat offences**

Intimate partner and domestic violence are often repeat offences, as are many hate crimes (ACPO 2005; HM Government 2009a) so the ways in which repeat offences are counted is of greater concern than is the case for other forms of violent crime.

Counting depends on a number of rules, two of which are the 'finished incident' and 'principal incident' rules (Home Office 2009b). The former rule means that if there is one victim and one offender who threatens the victim on three occasions, the number of crimes recorded depends on when the incidents are reported. If reported together after the third incident, then they would count as one crime. If each is reported separately following each incident then three would be recorded. If police observe each of the three incidents, then this would also count as three crimes. Therefore, if a woman is hit by the same man on three occasions and all are reported together, this would be counted as one crime. According to the 'principal crime rule', if there is one victim and one offender and two incidents, reported together, then only the most serious is recorded. These rules (finished incident and principal crime rule) have important implications for crimes where repeat victimisation is particularly common (e.g. domestic abuse).

### **Data quality**

There has been ongoing interest by inspectorate bodies regarding the quality of data recording on violent crime (e.g. HM Inspectorate of Constabulary 2009; HM Inspectorate of Constabulary for Scotland 2008; Independent Police Complaints Commission 2009; Audit Commission 2006). One issue regards the extent to which

events which should be recorded as crimes are (incorrectly) recorded as 'incidents'. The Metropolitan Police Authority Domestic and Sexual Violence Board (2010: 15) recently expressed serious concerns around the recording of cases across the London boroughs:

There seems to be considerable variation across the boroughs in terms of those domestic violence cases which are recorded as crimes and those which are recorded as incidents. Though the same policy applies across the MPS, some boroughs are recording significantly less crimes in proportion to the reported incidents than others. Using MPS data for all boroughs, the average across London is 45% of all reported DV incidents are recorded as crimes; slightly less than half. Across boroughs who didn't present to the DSVB; Camden recorded 2678 incidents and of those, 949 crimes; 35%. In terms of the borough reports which the DSVB received; the borough with the highest conversion rate was Richmond, where of 754 DV incidents, 598 were recorded as crimes, which is 79%. At the other end of the scale; Lambeth identified 1976, or 39% of its reported 4979 DV incidents. (Metropolitan Police Authority Domestic and Sexual Violence Board 2010: 15)

Similarly, the HM Inspectorate of Constabulary in Scotland (2008) comment that while there have been improvements in data collection processes there is nevertheless room for improvement (e.g. in the amount of detail recorded; flagging procedures; and training).

### **Developing the measurement of attrition rates**

The attrition of cases as they go through the criminal justice system is higher for victims of rape than those for victims of violence against the person in general (Walker et al 2009).

There is controversy over the reasons for this greater attrition. The CPS (2009a: 31) notes the high number of unsuccessful outcomes in rape prosecutions due to jury acquittals. However, a report commissioned by the Ministry of Justice (Thomas 2010) found that juries convicted more often than they acquitted in rape cases concluded that juries are not the primary source of the low conviction rate on rape. There are a number of studies that look at the various steps including Kelly et al (2005) and Feist et al (2007) which identify several rather than a single point at which attrition takes place. The scale of the attrition has recently become subject to some controversy, following the Stern Review's (2009) comments on the use of the 6% figure, which

were in turn met with critical comments (Baird 2010; Fawcett Society 2010). So the identification of the best procedure by which to measure it is of some importance.

It may be argued that the 6% figure for rape convictions is actually a generously high estimate; a fully comprehensive attrition rate would use as its starting point the number of crimes committed as opposed to those recorded by the police resulting in a much lower rate of conviction. This is particularly the case for rape, and indeed for cases of intimate partner and domestic violence, for which the rates of reporting are low relative to other crimes.

Conviction rates are measures of the extent to which the perpetrators of crimes are held to account by the CJS through criminal convictions. One method, developed for rape (Kelly et al 2005) and domestic violence (Hester et al 2008) includes attrition across the whole of the CJS process in one statistic. Another method, developed by the CPS (2009), addresses only the attrition that occurs after the point at which cases are prosecuted. There are further issues: the CPS regularly includes convictions for lesser offences than the one charged as if they constituted convictions for the offence, doubling the success rate; a practice that some have called into question and consider inappropriate (Baird 2010; Fawcett Society 2010; House of Commons Home Affairs Select Committee 2008).

Attrition and conviction rates are harder to develop in domestic and intimate partner violence and those forms of hate crime that do not have a crime code, since without a crime code it is harder to track cases through the CJS processes. Nevertheless this can be done, if cases are appropriately flagged.

In consultations on indicators for legal security, the measure for attrition proposed by Alkire et al (2009) for domestic violence, rape and hate crime was based on successful prosecutions of cases as proportion of total number of victims (as estimated by survey data). This received widespread support except from the Home Office, which considered the proposed measures to be statistically unsound because the use of data from more than one source introduced methodological inconsistencies. The revised proposal by Alkire et al, following the consultation, is to report three sets of figures in raw form: number of cases (estimated from surveys); cases reported and recorded by police; cases successfully prosecuted. While this provides the raw data needed to calculate an attrition rate (expressed as proportion or ratio), such raw data is not itself an attrition rate, thus it would be difficult to use this indicator in estimating the direction of shifts over time.

A narrower way of calculating the attrition is that used by the CPS. Here, the conviction rate is proportion of total prosecutions that lead to convictions. However,

this omits the attrition of cases in all the CJS procedures prior to the decision to prosecute (reporting, recording, detecting, arresting, and charging). The House of Commons Home Affairs Committee (2008) criticised this method of calculation, stating:

Although some progress has been made by the Crown Prosecution Service over the last few years in increasing conviction rates for domestic violence offences, it is sobering to note that, in areas in which the attrition process has been tracked, the conviction rate for domestic violence, at around 5%, is even lower than that for rape, which is 5.7%. Without linking CPS data on successful prosecutions to data on incidence, arrest, charge and caution, the increase in successful prosecutions tells us little about the criminal justice response to domestic violence. (House of Commons Home Affairs Committee 2008: 89)

A report by HM Crown Prosecution Service Inspectorate highlighted the high proportion of discontinuance in cases of domestic violence (HMCPSI 2007). An aide memoire was issued by the CPS in 2008 (2008a) as a response to the issue of the high number of discontinued cases. In relation to discontinuance, a Select Committee inquiry (House of Commons Justice Committee 2009) into the role of the CPS raised the question of under- or over-charging (if only 'cast iron' cases were put forward for prosecution, then the apparent 'success' in securing convictions would be higher).

There are a range of possible solutions here. One may be to calculate the attrition rate for different parts of the CJS separately, for example providing specific rates for the police (from the cases recorded to the number of cases referred to the CPS) and the CPS (from prosecution to conviction). Another solution might be to bring the statistical systems into sufficient alignment such that concerns about different methodology become insignificant.

Work to address the high attrition is ongoing and this is certainly an area where further developmental work is required. The PSA on justice (24) recognises this as a priority to be addressed.

### **Disproportionality**

Disproportionality is an important potential measure of the fairness of the CJS, measuring the extent to which equality groups receive the same or worse treatment.

As in the case of 'access to justice', data on 'fair' or equal treatment in CJS is difficult to interpret. A larger proportion of one group may be in detention because of higher

rate of offending, or because it is the outcome of unequal treatment by CJS agencies. As Hunter et al (2009: vii) state:

Disproportionality is a pointer to the *possibility* of differential treatment, but is not necessarily evidence of it. Disentangling differential experience of crime – whether as victim or as offender – from differential treatment by the criminal process is complex.

Nevertheless, measures of potential disproportionality can serve to alert various agencies to the potential of unfair treatment, which can be further investigated. For example, Hounslow launched review of stop and search (Saunt, 2009, Hounslow Chronicle) after finding a high degree of disproportionality.

Data relating to disproportionality is sensitive. Disparities by ethnicity in particular have been a source of great concern to numerous bodies and have been the subject of many reviews and reports (e.g. MPA 2004). The attention to this issue increased in the context of the MacPherson inquiry, following the death of Stephen Lawrence in 1993 in an unprovoked racist attack by five white youths, with no one convicted for his murder. As a result of campaigning by his parents, a judicial inquiry was announced in 1997. In 1999, the Stephen Lawrence Inquiry reported on the 'institutional racism', professional incompetence and failure of leadership in the police investigation, and Lord MacPherson issued series of 70 recommendations. One of the outcomes of the inquiry was the Public Sector Equality Duty for Race. This was the first public sector equality duty to be introduced, designed to shift the onus from the individual to the institution and from avoidance of discrimination to the advancement of equality.

Since the inquiry there have been a number of reports examining its impact (e.g. Foster et al 2005). A comprehensive review of literature by Rollock (2009) ten years after the inquiry concludes that while there has been some progress (e.g. in the CPS), it is 'difficult to conclude' that the charge of institutional racism no longer applies. Further reports include those from the EHRC on police and racism (Benneto, 2009) and an independent review by Dr Richard Stone (2009). The Home Office (2009f: 1-2) response to these reports acknowledged that effort should be focused on reducing unjustified disproportionality in the use of stop and search.

The development of the indicator for disproportionality is complex. In this report, the Ministry of Justice annual publication of data on stop and search at level of England and Wales is used. To obtain longer time series, data on ethnic appearance is used (more recently available are data on self-defined ethnicity). From 2005, data is available on 'stop and account' following a recommendation from the Stephen

Lawrence enquiry, but not sufficient to plot long term trends (Ministry of Justice 2009a: 31).

Use of data from the Ministry of Justice contrasts with the general population survey data used by Alkire et al (2009) following their consultation with the Ministry of Justice. They state that further discussion is required on the implications of using these different sources (2009: 190). One advantage of using data from the Crime Surveys is that disaggregation across more of the equality strands is potentially available. However, since the issue widely emphasised is the differential rate of stop and search by ethnicity, and given the small sample sizes of some of the groups in the crime surveys, the administrative data from the Ministry of Justice may be the preferred source for examining change over time (particularly since this is collected under statute).

Data on stop and search for Scotland is lacking. A research report was commissioned by the Scottish Executive (2001) arising from discussion of the Stephen Lawrence Inquiry. While the issue of stop and search did not appear to have the same high profile as in England (and Wales), there was a lack of data to demonstrate the basis for this. In this context, the research set out to establish whether stop and search was an issue requiring further exploration. The exploratory report (2001: 86) concluded that, while there was no room for complacency: 'although disproportionality in a technical sense cannot be measured, there is no evidence from this research that people from black and minority ethnic groups are being specifically targeted for stop and search activities'.

Issues of disproportionality in terms of the high proportion of prisoners with learning difficulties/disabilities continue to raise concern, together with the potential misuse of custody for some female offenders. As several non-governmental and government commission reports have pointed out (see Chapter 5), these matters require action, including investment in alternatives to prison.

### **What are the possible priorities for criminal justice agencies to comply with the public duty to promote equality?**

The current public duties for race, disability and gender are supported by specific duties with different requirements on reporting, evidence gathering and timescales; the new general duty, expanded across the equality strands, will harmonise these requirements. The Government Equalities Office consulted on the new public duty in 2009 (GEO 2009a) and reported in 2010 (GEO 2010). Draft regulations will be issued for consultation following the enactment of the Equality Bill in April 2010. It is

expected that the new duties – the integrated public sector Equality Duty, the Socio-economic Duty, and dual discrimination protection – will come into force in April 2011.

In summary the following needs can be identified in view of the above challenges associated with the data:

- Expansion of the **evidence** base, particularly for newer strands, and to improve the understanding and explanation of attrition in the processes leading to conviction and disproportionality in treatment by the CJS in order to identify and address the causes which may lie inside or outside (e.g. economic inequalities) of the CJS agencies.
- Alignment of **definitions** (across Britain; across agencies; between different data sources, administrative and survey).
- Improvement of **recording** practices (consistent, comparable and transparent).
- Setting priority objectives based on evidence (**target outcomes** for each strand), so that there are outcome based measures, evidence based prioritising that is consistent with the aim to 'improve transparency within the public sector' GEO (2010: 33).
- **Implementation** of policies to reduce violent crime in a way that effectively addresses the inequalities in physical and legal security that are linked to inequalities between social groups.

## 6.4 Conclusions

This chapter has reviewed some of the major challenges associated with data on physical violence and legal security. The discussion highlighted issues relating to the complex (and in some cases ambiguous) terminology used in the criminal justice systems, the collection of data (i.e. whether or not relevant data is collected), the quality of the data, as well as the availability of collected data (i.e. is it accessible to the wider public). In the next chapter, a summary assessment of the available data will be presented together with recommendations for changes.

## 7. RECOMMENDATIONS

### 7.1 Introduction

Considerable inequalities in physical and legal security are linked to equality groups.

In relation to physical security, there is evidence of considerable amounts of gender-based violence against women and hate crime against ethnic and religious minorities. There is less available data and evidence on hate crimes against transgender people and groups based on sexual orientation, and crimes against inequality groups based on age and disability. There is evidence of a decline in partner and domestic violence against women, but not in sexual violence. Whether the amount of racially motivated crime is fluctuating or increasing is not clear.

In relation to legal security, there is evidence of attrition in the process between reporting and conviction so that conviction rates are lower for some equality groups, including women, than is the case generally for violent crime. There is also evidence that the conviction rates for rape got worse since 1997, although there appear to be small improvements since around 2006. There is evidence of disproportionality in the treatment of some equality groups by the CJS, especially in the case of ethnic minorities and stop and search.

The evidence base for policy development is often thin, though it is improving slowly. Crime codes rarely illuminate the extent to which equality groups might suffer more violence, suffer lower conviction rates when victims of violent crime, or might be disproportionately treated by the CJS (though there are exceptions such as rape and racially or religiously aggravated assault). In order to know the extent to which equality groups suffer disproportionately from the lack of physical and legal security, it is necessary to introduce procedures that identify equality groups in crime surveys and at all stages in the CJS.

There is considerable development work ongoing in the CJS to address these issues. For example, experimental modules have been introduced in crime surveys, special flags and qualifiers have been used to identify equality groups in the CJS process, while attention has been paid to the development of new policies targeted on the issues of particular concern to equality groups. However, the work needed to identify equality groups at all relevant stages is far from complete.

In this concluding chapter, a summary assessment of the available data is presented, together with a series of recommendations for change.

## 7.2 Quality: assessment and recommendations

In producing an overall summary assessment of the data that is available from across the various CJS agencies, it is possible to draw on established standards from the Office for National Statistics (ONS). The ONS (2007) assess the quality of national statistics using seven criteria: relevance, accuracy, timeliness, accessibility and clarity, comparability, and coherence.

For each of these criteria, a summary assessment of the data available is presented together with recommendations for possible changes to the policy on the collection of statistics by the CJS to meet its equalities duties.

- **Relevance**

### Assessment

The criterion of relevance requires that data are provided that are relevant to all the equality strands. This requires both specification of the strands and the categorisation of crimes in a way that is pertinent. There is a difficulty in that the use of conventional crime codes in the collection and making publicly available CJS data obscures these distinctions. There is more data relevant to the strands produced during internal CJS monitoring, especially through the use of 'flags', but this is not usually publicly accessible. The British (and Scottish) Crime Survey produces more data on the extent of violence against equality groups, but it is not a vehicle for the production of data on the CJS process itself. However, there are limits here because of the tendency to use specially developed categories that are hard to align with the crime codes.

### Recommendations

1. **Definitions** to be introduced in a consistent way to allow equalities issues to be identified throughout the CJS in the same way: including the police recording of crime and incidents; CPS, court processing and prisons; the British and Scottish Crime Surveys (in both the face-to-face and self-completion parts of these surveys); and CJS performance management indicators.
2. Recorded crime categories should be the lead (because they are embedded in law) categorisation with the use of **flags** to identify all of the equality groups. While extra categories such as those for the nature of acts of domestic violence that are used in some surveys are of interest, they should not be additional to and not at the expense of the use of crime categories. The B(S)CS should be revised so that all violent crime, including domestic violence is counted using crime codes. Data on

perceptions (e.g. fear of crime, confidence in the police) is too subjective and volatile to be appropriate for use in assessing the performance of the CJS on equalities issues. Outcome data using crime codes should be the lead categorisation.

3. The definition of 'conviction rate' used in CJS reporting should be the percentage of crimes recorded by the police that end with a conviction for the offence that was reported. Additional rates that measure the attrition at different stages of the CJS are welcome (e.g. from prosecution to conviction), but are not a substitute for a measure for the CJS as a whole.

4. There should be flagging throughout the CJS (including but not only, by the police) sufficient to ensure knowledge of equality group status of victim and alleged perpetrator (e.g. gender, ethnicity) and equality relevance (e.g. hate crime, intimate partner and domestic violence).

5. 'Flags' to name equality groups and equality issues should be compulsory and uniformly and comprehensively applied.

6. Compulsory and uniform flagging should be applied to the recording of crimes, crime related incidents and incidents, and performance management statistics.

- **Accuracy**

### **Assessment**

There have been considerable efforts to increase the consistency of police recording of crime in general, but considerable challenges remain in relation to the specific aspects of violent crime relevant to equality groups. The British (and Scottish) Crime Survey, while in general robust and accurate, does not have a sufficiently large sample size to deliver statistically reliable results for some of the minority strands, nor one that is large enough to support police force local area evidence-based policy making for equality strand issues.

### **Recommendations**

7. Reconsideration of 'standard' recording practices that have disproportionate detrimental impact on the recording of equalities issues. This includes counting each incident of a violent crime as an incident, even if several incidents are reported together to the police. This is important in the case of domestic violence, which is usually a repeat offence, in order to prevent an underestimation of the number of domestic violence incidents in the recorded crime figures.

8. Auditing of the quality of the application of these new definitions and data collection mechanisms, with the capacity of the audit body to make further recommendations if necessary.

- ***Timeliness***

### **Assessment**

The data that is produced is timely. In analysing crime statistics this is particularly important to address, given the time lag between a crime taking place and being brought to justice. While it may be difficult to produce timely statistics when the legal processes are prolonged, annual reports presenting the most up-to-date data are useful. Such reports need to also be accessible and comparable (see below).

### **Recommendation**

9. A single annual publication containing data from the B(S)CS, Home Office, Ministry of Justice and CPS, should be produced and placed in the public domain so as to enable the tracking of changes in conviction rates and disproportionality throughout the CJS as a whole.

- ***Accessibility and clarity***

### **Assessment**

While data on recorded crime is accessible and clear, much relevant data that is collected for internal monitoring of the CJS on equality issues is inaccessible to the public. The raw data needed to calculate the justice gap, attrition and disproportionately are often collected, but are rarely presented in a way that is accessible and clear.

### **Recommendations**

10. Data relevant to equalities issues to be routinely and uniformly placed in the public domain, including CJS performance data that is relevant to equalities issues.

11. The use of flags to identify equality groups in the CJS should have compulsory, statutory status and be reported in the same publication as recorded crime statistics.

12. Relevant statistics on all equality groups (including attrition/conviction rates and disproportionality) to be constructed from the raw data and placed in the public domain. These should include conviction rates for the CJS as a whole (and key stages) and disproportionality for the CJS as a whole (in addition to key stages).

13. Relevant and robust data to be collected across all equality groups, and on key groups at the point of intersection of two or more inequalities.

- **Coherence**

### **Assessment**

The way that data is collected on equality issues is still under development and often lacks coherence. The data collected on domestic violence and intimate partner violence in the BCS uses different categories from recorded crime, so it is very difficult if not impossible to form a coherent body of knowledge to support the CJS. The number of different terms used in the CJS also results in a lack of transparency and accessibility for public understanding.

### **Recommendations**

14. To use **crime codes** at all times, even if other categories are used in addition.

15. Data to be collected and counted always as incidents and, where relevant and only in addition (not alternative), as prevalence (percentage of the population). This is essential in order that all violent crime against women and other equality groups enters the mainstream statistics and is not separated out into a specialised field. This requires the revision of the B(S)CS so that the number of incidents of domestic violence is recorded and reported, not only its prevalence as a percentage of the population.

- **Comparability**

### **Assessment**

Definitions of those violent crimes that are most relevant to equality issues are sometimes inconsistent across different parts of the CJS. While the BCS produces high quality data on violent crime relevant to equality issues, it often does so in a way that is sometimes inconsistent with the main types of data in the CJS. The BCS does not have a large enough sample size to support comparisons between police force areas on equality issues. Even the use of booster samples would be unlikely to sufficiently increase the sample size of the equality groups in order to derive robust data. While there could be comparability of data on recorded crime (reported, detected, prosecuted, convicted) sub-categorised by equality groups, insofar as this data is collected it is not available publicly available. In addition, there are difficulties in comparing and compiling data due to the different use of financial and calendar years by different CJS agencies.

### **Recommendation**

16. Ideally, the recording of violence in adjacent public policy fields (e.g. health, social services, homelessness) should be brought into alignment with the use of common definitions. In respect of domestic violence, this is needed in order to

support the Multi-Agency Risk Assessment Conferences (MARACs) and in respect of hate crime to support agencies working together in community safety partnerships. This will reduce the information burden on each agency and enable monitoring of individual cases and policy effectiveness, which necessarily crosses over policy domains.

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