

# Speech: Justice for All?

I want to thank the RSA for inviting me to speak. Under Matthew's incredible stewardship, the RSA has taken its rightful place as one of the very few leading organisations that are truly innovative and cutting edge in their thinking. This is a place where ideas are generated, nurtured and come to fruition. This is a place where debate leads to change for the greater good of society – and I know Matthew would have it no other way.

So it is with a great measure of hopefulness that I speak to you all today.

As some of you already know, when the Prime Minister asked me to conduct this review, I accepted with little hesitation.

I saw a rare chance to forge a cross-party consensus on an issue that is complex, contested and divisive. I saw an opportunity to hear voices from beyond Westminster and Whitehall, from judges to community groups; prison officers to offenders; and from the victims of crime themselves. And I also saw the prospect of working to improve outcomes – not just for BAME people but also those from working-class and low-income backgrounds.

From the start I have been keen to examine whether the system treats all people fairly. That has meant understanding if prisoners from particular backgrounds are more likely to get stuck in cycles of reoffending – and what can be done about it.

Remember. Half of all crime is committed by people who have already been through the criminal justice system – costing up to £13 billion per year.

I know that this is an emotive subject. It speaks to issues of personal and professional identity. It concerns the treatment of individuals and the legitimacy of important public institutions. I know that some minds are made up already – from those who believe the system is racist to others who see almost no problem at all.

But having listened carefully to these viewpoints over the last 18 months, I am hopeful that I can help to effect some of the changes that are needed to address racial disparity where it exists, and to restore the system's reputation.

There is a framework I have in mind for how I want to try to achieve this – and that's what I would like to share with you today.

It is the product of the intensive research I have conducted over the course of my Review – both in the UK and internationally, in those countries who also struggle with over-representation of BAME or indigenous people in their criminal justice systems.

It derives from having listened carefully to the views of those who represent each aspect of the system – and most importantly, to those on whom the system has the most direct impact. The offenders, the defendants, their families and

communities. And of course the victims of crimes themselves.

The issues and concerns each have raised have been broadly consistent, and this has helped me to identify three broad principles on which I believe the solutions can rest. It is these principles that make up my framework. They are fairness, trust and shared responsibility. I'll explain each of them in turn.

## **Fairness through open decision-making**

In society, the poorest, the disadvantaged and those who need support often suffer the most. When few people care and there is no job or house to lose, a sense of hopelessness and powerlessness prevails. This can span generations and define entire communities.

It breeds disrespect for society and its rules, and distrust in its agencies and institutions. Without any real prospect of improvement in their situation, people's desperation can quickly turn to anger and criminality.

Whilst this is a familiar tale across the UK; I have also seen it be the case further afield in Europe and the US as well.

For some time the very fact of discrimination has been challenging to grip. There are those who would argue, on some reliable measures, that racism is on the wane – it has become less socially acceptable.

We know this because, for example, the British Social Attitudes Survey has been asking people the same question for over 30 years and the responses to it have changed.

That question is whether people would mind if a close relative married someone from a different ethnic group.

In 1983 over half said that they would mind either 'a little' or 'a lot' if a relative married someone from a West Indian or Asian background.

That figure has halved since then.

There are also those who argue that racism hasn't gone away, it has simply gone underground and become implicit or insidious. Consider for example when the word 'gang' is used and when the word 'group' used in the reporting of crimes. I suspect most people here know what image 'gang' is supposed to conjure up.

And then there is the school of academic thinking – 'unconscious bias'. This is an idea I sometimes think was designed to terrify Guardian readers. The suggestion is that people with no overt or conscious prejudices may still think and act in discriminatory ways.

This catch-all term, 'unconscious bias', has been a place-holder for many years; and yet the debate continues to rage in academia about the actual science behind this and the best ways of testing for it: it's fair to say that hasn't been settled yet.

My review though, is not about academic debate, it is about the treatment and outcomes for BAME offenders. We still can't seem to agree on the issue and its diagnosis. And the evidence is that, whatever people's diagnosis, the prescription doesn't change a great deal.

The best way to ensure fair treatment is to bring information and decision-making out into the open.

Let me give you three examples from the criminal justice system.

First, Northamptonshire Police and Stop and Search.

This is an area outside of the scope of my review but an initiative with lessons to learn from.

In Northamptonshire, any search grounds which are not clearly and immediately identifiable as reasonable, or which do not meet the Force guidance, are selected for presentation to a Reasonable Grounds Panel. This is chaired by a Police Officer, and made up of members of the public and one other Police Officer.

If the Panel decides that there were not reasonable grounds for the stop, the officer involved is informed of the decision and the reasoning behind it.

In the first instance, the Officer and supervisor are offered training and reminded of the guidance on Stop and Search.

If the officer is involved in a second case, both the Officer and supervisor receive mandatory one-to-one training. In the third case, the Officer and supervisor are suspended from conducting/supervising Stop and Search until a personalised development plan has been completed.

Second, the jury system.

Every so often the jury system comes under attack from those who say that it doesn't work, or that the public can't cope with detail or contain their own prejudices. But the news from my Review is that it is one of the parts of the criminal justice system that is working best.

A comprehensive study by Professor Cheryl Thomas indicated that, statistically, it makes no difference what the ethnicity of the defendant or the jury is.

Why is this? Because 12 people on a jury must justify their opinions to one another. Prejudice doesn't work in that context – you must go on the evidence or you will be out-voted. Openness breeds fairness.

Third, an example from the prison system.

The statistical analysis I commissioned for this Review found that adjudications – that is disciplinary measures against prisoners – are disproportionately brought against BAME prisoners.

Those decisions are taken by individual officers. But when the case is reviewed by a panel, adjudications are less likely to be upheld.

Once again, it's the open forum that seems to correct the problem.

## **Trust and outcomes**

Alongside the need for fairness and transparency is the need for trust. When there is a lack of faith in the system that is supposed to look after you and enforce society's rules, there is also a lack of trust.

Over half of ethnic minorities born in this country, who took part in a survey, agreed with the statement that 'the Criminal Justice System discriminates against particular groups or individuals'.

Over half! That means they think the system is unfair – that it's stacked against them.

In the Netherlands, rigorous academic research on procedural justice has found – perhaps unsurprisingly – that people will be more likely to comply with the law when they feel treated in a just and decent way by law enforcers.

It also found that prisoners' perceptions of procedural justice influence their behaviour once released from custody. And those who felt they had been treated unjustly during imprisonment were more likely to re-offend, and be re-convicted.

A lack of trust affects the decisions that individuals themselves take when they come into contact with the system. One of the most striking findings in the Review so far is that defendants from ethnic minority backgrounds are more likely to plead 'not guilty' across almost every type of offence.

It starts with young men refusing to cooperate with the police and offering only 'no comment' in police stations. It is compounded by a lack of trust in the motives and competence of lawyers provided through legal aid. Legal advice is then refused or ignored by those who think their lawyer is simply part of 'the system'.

So defendants who had no realistic possibility of acquittal, and who subsequently and quite cheerfully admitted their crimes to me in prison, have spurned the chance to be diverted or for their sentence to be reduced – by up to a third, with an early guilty plea.

The result is wasted resources in the criminal justice system; more agony for victims as the case drags on; and many more years in prison for ethnic minority men and women than should have been the case.

Trust matters in other ways too. Society as a whole must have respect for the rule of law – it can't be seen to govern the actions of only the few. This requires the key institutions in the justice system to command not just legal power but also public legitimacy.

One of the surest ways to achieve this is also one of the dullest sounding....

As well as the lack of transparency, there is a significant paucity in the data available at various stages – from point of arrest through to release from custody and back into the community.

Data has a huge impact on an individual's ability to trust. Simply put, how best can we address weighty issues such as potential racial disparity if we don't know what its nature and scale is?

But let us look at what we do know.

According to the most recent census, just 3% of people in England & Wales are Black, and yet 12% of our prison population is Black.

Going further, 25% of our prison population, and over 40% of our youth prison population, come from ethnic minority backgrounds.

That compares to 14% of the overall population.

I don't believe all the causes of this lie in the criminal justice system, or that all the answers do either. But a deficit of trust set alongside that imbalance must be taken very seriously.

It is also the case that offenders from minority backgrounds are more likely to face prison sentences than white offenders for the same crimes.

In a recent analysis of indictable offences in the Crown Court, those self-reporting as Asian or Black were associated with a 50-55% increase in the odds of imprisonment, compared to those self-reporting as White.

## **Shared Responsibility – the role of communities**

Turning to the third principle of my framework, our criminal justice system is conceived as a series of processes, with little sense or understanding of how well they work together – or how they work for the communities they are supposed to serve.

A pronounced example can be found in youth courts – magistrates themselves are not empowered to problem-solve; nor can they hold to account the raft of frontline professionals that surround young people when things go wrong.

When schools exclude them, when there are no role models or mentors to then guide them, when work or training opportunities or constructive pursuits aren't available, children get into trouble.

The definition of 'community' is widening all the time as local courts are closed and boundaries stretched further. So they are a long way from knowing or even owning the problems that their children face.

Parents are not engaged. Parenting Orders exist by law, but are seldom used, let alone prosecuted. In the year ending March 2016 only 250 parents were issued with parenting orders by the courts, despite there being approximately

89,000 arrests of young people aged 10-17 and approximately 28,000 young people found guilty at courts in the same time-period.

Referral Orders have short-term impacts on children and don't treat the root cause of their offending – so before long they are brought before a magistrate again, this time for a more serious offence and now with a history of criminal behaviour building up on their CV.

The teachers, doctors, police men and women and community members, who should already be featuring in their young lives, need to be more actively involved when a child gets into trouble with the law.

If we don't encourage communities to represent the people who live in them, they can't foster social integration, trust, or a sense of belonging. Nor can they adopt the moral and spiritual values they need to embody and impart to their young.

New Zealand's Ran-ga-ta-hi courts offer much to aspire to. They have been designed to embrace not only the traditions of indigenous Maoris, but also their culture and approach towards raising children.

Elders and members of the community take an active part in hearings and in determining appropriate sentences for children who break the law.

The responsibility – and accountability if things go wrong – is shared with the community to which the child belongs, and to which he or she will return.

Its members are also involved in guiding and mentoring the child as well, not just whilst the sentence is served but also to support them in staying on the straight and narrow once it has been spent.

This is something we should learn from.

## **Closing**

Nothing justifies criminal behaviour. People end up in prison when they make bad choices.

But we also have to grasp what it is that leads them to do so.

In 2001 the Cattle report warned of white and black communities living "parallel lives".

Today the same is true, but the polarisation is not between black and white; it is between those who have a stake in society and those who do not; those who can see a future through education or training and those who cannot; those who can imagine doing an honest job that affords them respect and decent pay and those who cannot; those who have a safe home to live in and those who do not.

Our justice system can't resolve all that on its own and we shouldn't imagine that it can.

But what it can do is eliminate its existing disparities.

Guided by the principles of the framework I have set out today, I want to see innovations brought into the system to help break the cycle of offending and reoffending. I also want to see us draw on the best of what we know works – from home and abroad.

In Birmingham, for example, a new idea called 'Operation Turning Point', is currently being evaluated by Cambridge University. This scheme trials a deferred prosecution approach, based on certain eligibility criteria, which allows individuals to opt for a diversion scheme before entering a plea.

If they successfully complete the scheme then the charges are dropped. If they don't the charges can still be brought against them.

The early findings from Operation Turning Point are promising. They show it can deliver reductions in harmful behaviour; far less serious re-offending; and victims of crime have indicated a higher rate of satisfaction with the outcomes for perpetrators than previously.

As well as innovating, we should get smarter about our existing approaches. Delivery partners in the system must be more co-ordinated, sharing intelligence across the different agencies—the local authority, the health authority, the police, social services, youth and probation services and others—intervening earlier in chaotic families, and supporting vulnerable people caught up in crime.

Recently published data on admissions to youth custody between April 2014 – March 2016 shows that a lower proportion of BAME children were reported as having a mental health condition, compared to white children.

The proportion of BAME children reported as having a learning difficulty or disability was also lower than the proportion of white children recorded with these needs.

But proportionately more BAME children were reported as being a 'high risk' to others than White children.

This is appalling evidence – especially for children. The system must do more to offer – fairly widely, and much sooner – the support that is needed to help turn broken lives around.

I recognise we've been living in times of austerity, but these services need to be protected to achieve better outcomes for people – and spare future victims of crime.

And so I conclude, having given you all an overview of some of the work that I have been doing, and on what basis I will be seeking to make recommendations in my final report.

The criminal justice system was originally conceived to ensure fair and equitable outcomes for all. Now, more than ever, it needs to happen – regardless of their background and ethnicity.

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## [News story: Department for Education ministerial portfolios announced](#)

The Department for Education (DfE) has confirmed its ministerial team's portfolios today (3 July).

Education Secretary and Minister for Women and Equalities [Justine Greening](#) will continue to have overall responsibility for the Department for Education and the Government Equalities Office.

[Nick Gibb](#) will continue as Minister of State for School Standards, and has also been appointed Minister for Equalities.

[Robert Goodwill](#) has been appointed Minister of State for Children and Families.

[Jo Johnson](#) will continue as Minister of State for Universities, Science, Research and Innovation covering both the Department for Education and the Department for Business, Energy and Industrial Strategy, where his role has been expanded.

[Anne Milton](#) has been appointed as the Minister of State for Apprenticeships and Skills and Minister for Women.

[Lord Nash](#) will continue as Parliamentary Under Secretary of State for the School System.

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## [News story: Defence research and exports support UK jobs](#)

Mrs Baldwin visited Yeovil today to mark a year of the innovative Strategic Partnering Arrangement between Leonardo Helicopters and the MOD. The Arrangement was signed in July 2016 and lays out shared commitments to cost effectiveness, jobs, and exports, recognising the key role both parties play in building national prosperity through exports, sustaining employment and specialist skills, and supporting small and medium enterprises (SMEs) in the supply chain.

Over the course of a year, the MOD has placed millions of pounds worth of contracts with Leonardo, supporting hundreds of jobs, boosting exports, and

driving technological innovation. In January 2017 the MOD signed a £271 million five-year deal with Leonardo to support the UK's world-leading Wildcat helicopters, safeguarding hundreds of UK jobs.

Most recently, in June 2017, the MOD announced a £260 million contract to supply the UK's Armed Forces with the next generation of secure Identify Friend or Foe technology. The work will sustain around 150 jobs at Leonardo's sites in Luton, the West of England, Edinburgh and across the wider UK supply chain.

Minister for Defence Procurement Harriett Baldwin added:

Our Strategic Partnering Arrangement with Leonardo is a fantastic example of the contribution that Defence makes to the UK economy: creating hundreds of jobs, attracting millions in investment, and boosting UK exports across the world.

Backed by our rising defence budget and strategic engagement on exports, we are determined to deliver the high-wage, high-skills jobs of the future, making the UK one of the most competitive places in the world to innovate, build business and help deliver security.

During her visit, Mrs Baldwin was briefed on the progress being made on the second phase of a jointly-funded £8 million Rotary Wing Unmanned Air System (RWUAS) concept demonstrator; cross-Government efforts to support the export of the Wildcat AW159 and Merlin AW101 helicopters; and company plans for continuous improvement and to underpin design engineering capabilities that are vital to ensuring safety and airworthiness.

Leonardo Helicopters make a significant contribution to the economy in the South West and developing plans would see the site in Yeovil become the heart of an aerospace technology centre. The MOD anticipates spending some £3 billion with Leonardo Helicopters over the coming decade, with work on the future coordination of strategic exports between the UK Government and Italy being led by the Department for International Trade.

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## **Speech: Communication, expectations, innovation: maintaining public support for new technology**

Today the [Information Commissioner's Office \(ICO\)](#) announced the result of its [investigation](#) into the way that the Royal Free NHS Foundation Trust shared

identifiable data about 1.6 million patients with DeepMind.

This is a matter which I have considered carefully with my [advisory panel](#) and on which I provided advice to the ICO at her request. Like the ICO, my panel and I found problems with the way this data had been shared. In particular, the ICO asked my opinion on the question of whether the Royal Free had used an appropriate legal basis for the initial data sharing. After much careful deliberation with my panel, I came to the view that they had not.

Reflecting on this matter, I believe it is important to underline that as National Data Guardian (NDG) I am a strong advocate of work to develop new technology which can improve care and save lives. In this case, the Royal Free and DeepMind developed an app to alert hospital nurses and doctors to inpatients who might have acute kidney injury, a very serious condition, which can be hard to diagnose but can develop rapidly.

The issue that concerned my panel members and me was not that innovation was taking place to help patients affected by this condition. Far from that, it was the legal basis which the Royal Free had used to share data which could identify more than 1.6 million patients to DeepMind.

## **Innovation within a legal framework**

In this instance the Royal Free shared the information on the basis of 'implied consent for direct care'. This is a legal basis that doctors, nurses and care professionals rely on every day to share information in order to make sure the individuals they are looking after receive the care they need. However, it is my view that this legal basis cannot be used to develop or test new technology, even if the intended end result is to use that technology to provide care.

I'm afraid that a laudable aim – in this case developing and testing life-saving technology – is not enough legally to allow the sharing of data that identifies people without asking them first. We need to reassure the public there are always strong safeguards in place to make sure that confidential information will only ever be used transparently, safely and in line with the law and regulatory framework.

## **Getting the balance right**

The tension between supporting and enabling innovation and acting in line with public expectation is not new. We wrestled with these issues 20 years ago during the [Caldicott Committee's Review of Patient Identifiable Information](#). This was commissioned when the NHS was just starting to move from paper to computerised records, with the result that information could be sent much more easily from one part of the health service to another.

Our 1997 report highlighted the benefits of what we called an 'information explosion' – more effective and efficient care for patients and a better basis for planning and monitoring services. It also acknowledged a tension between the needs of those running and planning services to use patient

information on the one hand and, on the other, patients' expectations about how information about them would be used.

That review said that managing that tension by "adhering to explicit and transparent principles of good practice" will "reassure patients and those treating them that confidentiality is safeguarded" and that "patients expect nothing less."

If what we were seeing in 1997 was an information explosion, what we are seeing now could be called an information explosion many fold. The technology of today presents extraordinary opportunities to provide even better, safer, more individualised care.

## **The challenge continues**

The technology may be different, it may be developing more quickly than ever, but I believe we face a similar tension which we must address – between the reality that health and care data is often needed for innovation and public expectations about how such data will be used.

Now, as then, we have to work with where the public is. Confidentiality remains as important as ever. People need to be able to tell their doctor, nurse, or care worker things about themselves and their health and care needs in confidence. If such information is then used in a way that patients and service users do not expect, this precious trust will become undermined. The mantra of "no surprises" sums this up.

## **A conversation and safeguards to reassure**

In [the review I published last summer](#), I highlighted that we had found very low levels of public knowledge and understanding about how health and care data is used. Many were altruistic about data about them being used for research and innovation – but they wanted to know about that and to have a choice. In my report, I argued strongly that it is the responsibility of all health and social care, research and public organisations to make the case for data sharing to the public.

An ongoing conversation with the public is essential. This must be a two-way dialogue, in which people's expectations are both listened to and informed. We will also need to reassure the public that there are strong safeguards in place to protect personal confidential data.

Just as was the case 20 years ago, I believe we can earn public support for the use of data in innovation, by "adhering to explicit and transparent principles of good practice" to "reassure patients and those treating them that confidentiality is safeguarded". Now as then, the public rightly expects nothing less.

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## Press release: Nine anglers fined over £6,200 for illegal fishing in Staffordshire

Just a few months after penalising 17 Staffordshire anglers, North Staffordshire Justice Centre Magistrates' Court issued combined fines of £6,217 to a further 9 anglers for fishing offences. The court has now issued more than £17,000 fines this year for angling offences.

On 26 June 2017, North Staffordshire Justice Centre Magistrates' Court heard how 9 anglers were caught fishing illegally over the past 9 months. Most fined on 26 June were caught fishing illegally in February this year.

All 9 were caught fishing without a rod licence by Environment Agency officers out on regular patrols. Six anglers pleaded guilty and 3 failed to appear in court so were proved guilty in absence. The lowest total fine was £457 and the highest was £942; that's over 30 times more than an annual £30 licence!

The following were all found guilty under Section 27(1)(a) of the Salmon and Freshwater Fisheries Act 1975:

- James Morrison of The Chartway in Walsall
- Connah Reynolds of Brierley Park in Buxworth
- Ben Brammer of Handley Street in Stoke on Trent
- Ben Gee of Villa Close in Biddulph,
- Julian May of Wolseley Street in Birmingham
- Ryan Scarisbrick of Richmond Street in Burton upon Trent
- Matthew Bains of Hillside Drive in Leek
- Leslie Keeley of Hawthorne Grove in Wallasey
- Craig Hall of Orchard Close in Willenhall

Craig Hall was also summoned to court for failing to state his name to a water bailiff when requested.

Magistrates heard that Environment Agency enforcement officers found these anglers fishing without a rod licence at pools near Stoke on Trent, Stafford, Burntwood, Leek and Wolverhampton; and on the River Trent at Burton.

Andrew Eardley of the Environment Agency said:

I can't understand why a minority of anglers continue to risk prosecution for fishing without a licence. A licence costs just £30 and now lasts for 12 months from the day you buy it. Fishing licence money is invested into England's fisheries and rivers; improving the sport of angling.

The minority of anglers that fail to buy a fishing licence are

cheating their fellow anglers and the future of the sport. Fishing licence cheats risk a criminal conviction, a significant fine and could lose their fishing equipment.

Money from fishing licence sales is invested in England's fisheries and is used to fund a wide range of projects to improve facilities for anglers, including protecting stocks from illegal fishing, pollution and disease; restoring fish stocks through re-stocking; eradicating invasive species; and fish habitat improvements. Fishing licence money is also used to fund the Angling Trust to provide information about fishing and to encourage participation in the sport.

Children under 12 fish for free. Anyone aged 12 to 16 also fish for free, but do need to have a valid Environment Agency fishing licence. Anyone over 16 must pay for an Environment Agency fishing licence to fish for salmon, trout, freshwater fish, smelt or eel in England.

Anyone witnessing illegal fishing incidents in progress can report them directly to the Environment Agency hotline, 0800 80 70 60. Information on illegal fishing and environmental crime can also be reported anonymously to Crimestoppers on 0800 555 111.