

STRENGTHENING CIVIL SOCIETY PROGRAMME: FUTURE FUNDING THEMES

Scoping paper: Criminal justice

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About this paper

The Baring Foundation's Strengthening Civil Society (SCS) programme aims to support organisations within civil society to make effective use of the law and human rights-based approaches to tackle discrimination and disadvantage and bring about wider social change. This includes changes in policy, regulation and law; changes in behaviour, attitudes and norms; and new ways of designing and delivering services or support for individuals.

As part of considering the future direction of the programme, in 2025 the Foundation commissioned four scoping papers on the themes of Human Rights, Criminal Justice, Environment and Human Rights, and Corporate Accountability, one or more of which might become a future focus for the programme.

This paper considers the area of Criminal Justice.

ABOUT THE AUTHOR

Tayyiba Bajwa is a barrister at Doughty Street Chambers. She combines a criminal practice with work in related areas including inquests, crime-related public law, prison law and actions against the police. She also has a busy international practice and has been instructed in proceedings before the ICC, IACHR and WGAD. She recently spent three semesters as a Supervising Attorney at the International Human Rights Clinic within the law school at UC Berkeley where she taught students international human rights law and led projects challenging human rights abuses in a number of jurisdictions including the UK, Israel, South Africa and Kenya.

Introduction and summary

I have been asked to prepare a research paper for the Baring Foundation on the thematic area of criminal justice. Specifically, I am asked to consider how the Foundation might broaden its work to support all aspects of legal action to tackle discrimination and disadvantage.

In summary, I have outlined ongoing work in three main areas:

1. **policing;**
2. **the criminal courts;** and
3. **prisons,**

and attempted to identify thematic issues within each area which may offer potential for future engagement by the Foundation.

POLICING

In relation to policing, I have considered the rise of **artificial intelligence in policing**, the increasingly draconian response to **protest**, and the **discriminatory use of police powers**.

- In relation to **artificial intelligence in policing** I have outlined the various equality and privacy concerns about the use of such technology by police, the expansion of its use and the potential for legal and policy challenges. There is a lot of work already ongoing on this space to try and document the expansion of the use of artificial intelligence by police; however, given its nature as an emerging threat to civil liberties, there is rich scope for creative intervention.
- In relation to **protest**, I have outlined at a very high level the increasing restrictions on the right to protest, and the potential discriminatory manifestations of that in relation to protests on Palestine. In particular, I note the ongoing passage of Labour's Crime and Policing Bill, the concerns about the closing of civic space on university campuses and the move to designate certain protest organisations as terrorist. This is an area in which several large human rights organisations are already very active but

a particular gap may be the community and civic education and engagement aspect of the work.

- Finally in relation to **discriminatory use of police powers**, as well as highlighting the well-known issues relating to racial disproportionality and stop and search, I have outlined some novel work documenting the particular impact of invasive police powers on women.

CRIMINAL COURTS

Under the heading of the criminal courts, I have considered three discrete issues: the doctrine of joint enterprise, the Independent Review of Criminal Courts, and sentencing.

- In relation to **joint enterprise**: I have noted the most recent data arising from the CPS pilot to gather data on the equality implications of the doctrine. The initial statistics show a racial disproportionality and further results are due to be released. There are a number of organisations working on this issue with entirely different modes of operation – there are community-based organisations, specialist criminal justice organisations and broader civil liberties organisations. In light of the developing evidential picture, I consider this may offer a unique area for the Foundation's intervention.
- In relation to the **Independent Review of Criminal Courts**, the results of which were published on 10 July 2025, I outlined the various concerns at some of the proposals (reclassification of offences and the adoption of Intermediate Courts). This is an area to monitor to see what recommendations are issued and what course of action the government adopts.
- Finally, in relation to **sentencing**, I have outlined the recent government pushback against the Sentencing Council's efforts to address racial disparities in sentencing and similarly identified this as an area to monitor.

PRISONS

Finally, in relation to **prisons**, I have considered the roll out of **PAVA spray** into the youth custodial environment and the **particular status women in custody**.

- In relation to **PAVA spray**, I have highlighted the evidence that shows PAVA spray is used disproportionately against Black and racialised minority ethnic prisoners. There is limited evidence of its effectiveness in reducing violence in prisons and as such the pilot project in Young Offenders Institutions is a high priority and current issue that offers scope for meaningful legal and policy engagement.

- There has been extensive documentation of the particular challenges faced by **women in custody**. The Government has shown unique buy-in to addressing this issue, even developing a Female Offender Strategy Delivery Plan. The evidence base, and indication of proactive engagement by the government makes this particular issue one upon which there is real potential for impactful engagement.

Methodology

This research paper seeks to adopt the fundamental principles underpinning the Baring Foundation's Strengthening Civil Society (SCS) programme to the analysis, in particular by mainstreaming the following questions.

- Which are the areas ripe for **collaboration** in which positive, purposeful partnerships can be initiated and nurtured.
- How can the Foundation deploy its funds **creatively and pragmatically**.
- The need to ensure an expansive approach to the programme to maximise **public access** to information to maximise the realisation of rights.
- The need to mainstream **racial justice**.

In considering the work that is currently ongoing, I have tried to focus on organisations who are not already the recipients of SCS funding because the Foundation will

inevitably have a deeper and more holistic understanding of the work of its existing partners. I have sought to identify expert organisations and coalitions in each of the thematic areas identified below and review the challenges inherent in the current political climate, the ongoing work and potential opportunities for collaboration, expansion or strategic development.

In approaching this question, I have adopted a broad approach to the theme of criminal justice to incorporate policing, the criminal court process and the prison service. Through a process of desk-based research I have identified thematic areas within each topic which are currently the subject of ongoing work or particular attention by organisations working in the criminal justice space, I have then identified potential areas for meaningful, creative and impactful work going forward.

The justification

In my view, the theme of criminal justice does have a very clear link to the purpose of the Foundation, namely, to empower civil society to strategically tackle the root causes of injustice and inequality. Specifically in relation to inequality, that is because the criminal justice system taken as a whole perpetuates systemic discrimination.

The analysis below focuses on individual characteristics – there has not been comprehensive analysis of the intersectionality of such discrimination. It is apparent that this issue is both long-standing and urgent. There are a number of organisations working specifically on behalf of marginalised groups but also those challenging the procedures and systems that give rise to an unfair system.

A BRIEF OUTLINE OF INEQUALITY IN THE CRIMINAL JUSTICE SYSTEM

Race and ethnicity

The 2017 Lammy Review concluded that black and minority ethnic individuals were overrepresented throughout the criminal justice system. In particular, BAME individuals are more likely to be stopped and searched, arrested, receive longer sentences, and make up a disproportionate percentage of the prison population, with figures particularly stark in the context of youth custody.¹

Ministry of Justice figures from 2022 concluded that “in general, ethnic minorities (excluding white minorities) appear to be over-represented at many stages throughout the CJS compared with the white ethnic group”.² Specifically that includes, stop and search, arrests, prosecutions, convictions, custodial remands at the Crown

Court, custodial sentences and the prison population, with the greatest discrepancy evident in stop and search. The disparity is even more significant among children. Particularly stark statistics include that:

- since 2018 white defendants have had a consistently lower average custodial sentence length than all other ethnic groups combined;
- black defendants serve a greater proportion of their original determinate sentence in custody as compared with mixed, white and Asian defendants;
- in relation to children: 69% of children arrested in London in 2022/23 were from ethnic minorities.

The National Police Chief’s Council acknowledged in 2024 that Black people are twice as likely to be arrested, three times as likely to be subject to police use of force and four times as likely to be stopped and searched than white people.³ The chair of the National Police Chiefs Council has publicly admitted that policing is ‘institutionally racist’.⁴

Disability

There is little government data about the prevalence of persons with “hidden disabilities” – such as cognitive impairment, mental health conditions and/or neurodiverse conditions in the criminal justice system, but the evidence available suggests a significant proportion of those in the criminal justice system do have such conditions. For example, it is estimated that around 40% of people detained in police custody have a mental health condition, between 5-10% of the male prison population

¹ *The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian, Minority Ethnic individuals in the Criminal Justice System*, 2017, www.gov.uk/government/publications/lammy-review-final-report.

² Ministry of Justice, *Statistics on Ethnicity and the Criminal Justice System*, 2022, www.gov.uk/government/statistics/ethnicity-and-the-criminal-justice-system-2022/statistics-on-ethnicity-and-the-criminal-justice-system-2022.html.

³ National Police Chiefs Council, *Police Race Action Plan Progress Report*, 1 August 2024, www.npcc.police.uk/our-work/police-race-action-plan/police-race-action-plan---progress-report.

⁴ V. Dodd, ‘Head of Britain’s Police Chiefs says force is “institutionally racist”’, *The Guardian*, 5 Jan 2024, www.theguardian.com/uk-news/2024/jan/05/head-of-britains-police-chiefs-says-force-is-institutionally-racist-gavin-stephens.

has a learning disability and almost half of the male prison population has some degree of traumatic brain injury.⁵ The Equality and Human Rights Commission's (EHRC) inquiry concluded that those individuals are not routinely provided with the adjustments necessary for them to be able to participate in the justice process and that legal professionals do not have sufficient or adequate training to appropriately deal with impairments.⁶

Economic status

It is unsurprising that there is a strong correlation between socio economic deprivation and involvement with the criminal justice system. For example, in 2021 the imprisonment rate for the ten most deprived local authorities in England was ten times greater than that of the ten least deprived local authorities in England.⁷

The impact of poverty is particularly acute in relation to children and young people. A recent study published by the University of Liverpool concluded that living in persistent poverty and/or with parental mental illness throughout childhood doubles the risk of carrying and/or using a weapon.⁸ That is borne out by the Ministry of Justice statistics which showed that more than half of young people who were cautioned or sentenced for an offence were eligible for Free School Meals.⁹

Gender

As victims of crime, there is a well-recognised increase in the reported levels of violence and abuse against women and girls (VAWG); in 2023 the National Police Chief's Council noted an increase of 37% in police recorded VAWG between 2018 and 2023 with 3,000 cases recorded daily across England and Wales.¹⁰

Women in custody present particular issues; according to the 2022/23 HM Inspectorate of Prisons Survey, women in custody reported a high level and breadth of personal need including: mental health problems, physical disability, drug and alcohol problems, financial and housing concerns.¹¹ There is also evidence that women in custody self harm at twice the rate of their male counterparts.¹² Women disproportionately receive short custodial sentences which raise questions about both cost, effectiveness and proportionality of impact.¹³

The Prison Reform Trust has found that the criminal justice system may not take proper account of women who commit crime due to experience of sexual abuse or violence, finding that there were strong links between women's experiences of domestic and sexual abuse and coercive relationships and their offending.¹⁴

Pregnant women in custody have been the focus of recent public attention following two high profile and tragic baby deaths in women's prisons in 2019 and 2020.¹⁵

⁵ Equality and Human Rights Commission, *Inclusive justice: a system designed for all*, June 2020, www.equalityhumanrights.com/media-centre/criminal-justice-system-failing-disabled-people.

⁶ *Ibid.*

⁷ Hart, E and Jones, R and Scott, D, Chorley 'Super Prison': The Case Against, 2022, www.cardiff.ac.uk/_data/assets/pdf_file/0007/2685211/Chorley-Super-Prison-The-Case-Against-1.pdf.

⁸ Adjei NK, Jonsson KR, Opoku-Ware J, et al, Impact of family childhood adversity on risk of violence and involvement with police in adolescence: findings from the UK Millennium Cohort Study. *J Epidemiol Community Health* 2025;79:459-465.

⁹ Ministry of Justice, *Statistics on Ethnicity and the Criminal Justice System*, *ibid.*

¹⁰ National Police Chiefs' Council, Call to action as VAWG epidemic deepens, 23 July 2024, news.npcc.police.uk/releases/call-to-action-as-violence-against-women-and-girls-epidemic-deepens-1.

¹¹ HM Inspectorate of Prisons, *Annual Report 2022-23*, hmiprisons.justiceinspectorates.gov.uk/hmipris_reports/annual-report-2022-23.

¹² Ministry of Justice, *Women and the Criminal Justice System 2023*, 30 January 2025: assets.publishing.service.gov.uk/media/679b44b5f2c688b4b630eab4/Statistics_on_Women_and_the_Criminal_Justice_System_2023.pdf.

¹³ Natasha Mutebi, Richard Brown, *Parliamentary Research Briefing: The use of short prison sentences in England and Wales*, 27 July 2023: post.parliament.uk/research-briefings/post-pb-0052.

¹⁴ Prison Reform Trust, "There's a reason we're in trouble": Domestic abuse as a driver to women's offending, 2017, prisonreformtrust.org.uk/wp-content/uploads/old_files/Documents/Domestic_abuse_report_final_lo.pdf.

¹⁵ In September 2021, the Prisons and Probation Ombudsman (PPO) found that Rianna Cleary, an 18-year-old woman, should never have been allowed to give birth alone in her cell in Europe's largest women's prison, HMP Bronzefield. The PPO investigation into baby Aisha's death on 27 September 2019 highlighted a series of failings in care in HMP Bronzefield. On 18 June 2020, Louise Powell, a 30-year-old woman in HMP Styal, who did not know she was pregnant, gave birth to a stillborn baby, Brooke, in what the PPO described as "shocking circumstances in a prison toilet, without specialist medical assistance or pain relief".

There are recognised health risks to pregnant women in prison. As many as 19 out of 20 children are forced to leave their home when their mother is imprisoned; maternal imprisonment has a direct impact on a child's development.¹⁶

¹⁶ Doughty Street Chambers, *Representing pregnant women and mothers in the criminal justice system: A legal toolkit*, piptoolkit.squarespace.com/the-toolkit.

The landscape: a brief analysis

This section seeks to do the following.

- Analyse the existing work on each sub-topic within the identified thematic areas.
- Analyse emerging issues within each sub-topic.
- Set out the key organisational players within each space.
- Provide an assessment of opportunities for the Foundation's engagement.

Policing

I have identified three specific sub-topics in relation to policing: artificial intelligence and data led policing; protest; and the discriminatory use of police powers.

ARTIFICIAL INTELLIGENCE AND DATA LED POLICING

Outline

Policing is rapidly adopting artificial intelligence to embrace data-led and predictive policing. In February 2025, the Police Federation issued a report on Policing and Artificial Intelligence which observed that there was a "lack of information in the public domain around the availability of these tools and how they are implemented in practice."¹⁷ However, an Amnesty International report of the same month found that almost three quarters of UK based police forces are using data-based and data-driven systems, with 32 forces

using geographic crime prediction, profiling or risk prediction tools and 11 forces using individual prediction, profiling or risk prediction tools.¹⁸ There is a risk that challenging such tools through litigation can result in amended tools being implemented as alternatives. For example, in London, following a successful challenge to the Gangs Violence Matrix, the Metropolitan Police has now developed the Violence Harm Assessment (VHA) database which includes profiles of individuals; a number of human rights groups have raised rights concerns about the VHA.¹⁹

There is evidence that UK police forces are contracting with Palantir to develop a "real time data sharing network" that includes personal details of vulnerable victims, children and witnesses. The projects with Palantir appear to involve processing data from more than 12 UK police forces which will act as a pilot for a potential national roll-out of Palantir's data mining technology which has reportedly been used by US police forces to predict future crimes.²⁰ Liberty, Amnesty International UK and the Good Law Project have all raised concerns about the specific involvement of Palantir.

There have also been reports that police use of live facial recognition cameras may become "commonplace", with the first fixed live camera to be fitted for trial in Croydon in the late summer 2025.²¹ There had been a previous successful legal challenge to the use of facial recognition cameras by South Wales Police in 2020 where the Court of Appeal found that

¹⁷ The Police Foundation, *Policing and Artificial Intelligence*, February 2025, www.police-foundation.org.uk/wp-content/uploads/2010/10/policing-and-ai.pdf.pdf.

¹⁸ Amnesty International, *Automated Racism: How police data and algorithms code discrimination into policing*, February 2025, www.amnesty.org.uk/files/2025-02/Automated%20Racism%20Report%20-%20Amnesty%20International%20UK%20-%202025.pdf?VersionId=JqCcTODw37yAXyINmAY6uAzrKEWucFF7.

¹⁹ See, e.g. www.met.police.uk/police-forces/metropolitan-police/areas/about-us/about-the-met/violence-harm-assessment; Liberty and UNJUST, 'Harms of Gangs Matrix set to be repeated, Groups Warn', 13 February 2024, www.libertyhumanrights.org.uk/issue/harms-of-gangs-matrix-set-to-be-repeated-groups-warn.

²⁰ Liberty Investigates, *UK Police working with controversial tech giant Palantir on real-time surveillance network*, 16 June 2025, libertyinvestigates.org.uk/articles/uk-police-working-with-controversial-tech-giant-palantir-on-real-time-surveillance-network.

²¹ D. Boffey and M. Wilding, 'Live facial recognition cameras may become 'commonplace' as police use soars', *The Guardian*, 24 May 2025, www.theguardian.com/technology/2025/may/24/police-live-facial-recognition-cameras-england-and-wales.

its use breached privacy rights and broke equalities laws, noting in particular that South Wales Police had not taken steps to ensure that the software programme in question did not have “unacceptable bias on grounds of race or sex” because there had been insufficient interrogation of the data upon which the programme was trained.²²

Concerns

There are a number of concerns around the inequality and injustice that may ensue from such projects.

- Discrimination: the data used to train and operate the predictive systems is imbued with the structural and institutional racism and discrimination inherent in policing.
- Over-criminalisation and the chilling effect on freedom of assembly and association: the use of geographic prediction can result in the greater possibility of non-criminal behaviour being targeted and disrupted.
- Privacy and data sharing: there are concerns about the sharing of police predictions, profiles, risk assessments and related data with other authorities such as welfare and local authorities. It is unclear what safeguards are in place.
- Presumption of guilt: the application of individualised crime prediction systems will inevitably involve individuals who are profiled and labelled as criminals on the basis of unverified intelligence.

Organisations involved

The organisations working in this space include: Amnesty International UK, (which authored Automated Racism), Justice,²³ Open Rights Group,²⁴ Statewatch,²⁵ UNJUST,²⁶ Tottenham Rights, 4Front²⁷ and Privacy International.²⁸

Potential for future work

There is significant scope for work in this continually developing area and it is an issue that offers the following opportunities that align with the Foundation’s goals.

- There is significant scope for collaborative grant making on an issue that presents a real risk of significant discriminatory application.
- Proper challenge to these tools requires investigation, advocacy, campaigning, as well as litigation, meaning there is real scope for a multi-faceted approach to the work.
- There is a dearth of public information and awareness about the existence and use of the tools and a real need for the public to be aware of how they are being policed and their sensitive personal data being used and shared.
- Given that each police force is operating its own system, there is scope for smaller, locally focused grants targeting specific police forces (as was done in the 2020 challenge to South Wales Police).

In terms of grant making in this area given that the tools are still emerging, my view is that:

- any grants would have to be largely research and data gathering focused to provide sufficient evidential foundation for any legal or policy challenge to the use of such tools;
- any grant making would need to be staged to allow for a research phase followed by a strategic design phase to consider which route (legal, policy advocacy or community advocacy) offers the best prospect of genuine change-making;
- this is a rapidly evolving landscape and so adopting a fluid approach to grants, for example, to encapsulate new AI policing tools as they emerge should be adopted.

²² *R(Bridges) v Chief Commissioner of South Wales Police* [2020] EWCA Civ 1058, www.libertyhumanrights.org.uk/wp-content/uploads/2020/02/Bridges-Court-of-Appeal-judgment.pdf.

²³ Justice are running a multi-year project on AI and the law which aims to produce a statement to provide guiding principles and objectives on using AI in the justice system. More information can be accessed here: justice.org.uk/our-work/system-wide-reform/ai-human-rights-and-the-law.

²⁴ See, for example: www.openrightsgroup.org/blog/why-predictive-policing-must-be-banned.

²⁵ See, for example: www.statewatch.org/news/2025/april/uk-ministry-of-justice-secretly-developing-murder-prediction-system.

²⁶ See, for example: www.unjust.org.uk/policing-technology-data-harms.

²⁷ Note, it appears from the website that this organisation may be winding down. See, e.g. 4frontproject.org/our-transition

²⁸ See, for example: libertyinvestigates.org.uk/articles/uk-police-working-with-controversial-tech-giant-palantir-on-real-time-surveillance-network.

PROTEST

Outline

In recent years there has been a massive erosion of the right to protest in particular through the enactment of the Police, Crime, Sentencing and Courts Act 2022 and Public Order Act 2023 which significantly enhance police powers to restrict protest.²⁹ There has been a lot of activity in this space, led mostly by Liberty who successfully challenged the Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023 which amended the provisions of the Public Order Act 1986 lowering the threshold upon which the police can impose conditions on protests (both static and marches). That was a pure public law challenge (rather than engaging argument under the Human Rights Act 1998) and was successful on the basis that the 1986 Act required there to be “serious disruption to the life of the community” and that did not empower the government, by secondary

legislation, to allow for the imposition of conditions where disruption was said to be “more than minor”.³⁰

Organisations involved

Historically, the key players operating to challenge restrictions on the right to protest have been larger organisations such as Liberty and the Public Law Project (PLP), both of whom were involved in the above-referenced case. More recently, Black Protest Legal Support had provided direct legal advice to protestors but appears to have ceased operation. Other organisations operating in this space include the Netpol,³¹ Article 11 Trust,³² Green and Black Cross,³³ Good Law Project,³⁴ Big Brother Watch,³⁵ European Legal Support Centre (ELSC),³⁶ Defend the Right to Protest,³⁷ and Defend Our Juries.³⁸

There is some evidence of existing collaboration – for example, Liberty and PLP were both involved in the recent legal challenge to the 2023 Regulations, Liberty and Big Brother Watch collaborated on parliamentary advocacy prior to enactment of the 2022 and 2023 Acts,

²⁹ The Police, Crime, Sentencing and Courts Act 2022 enhanced police powers to restrict and disrupt protest related activity. It was enacted largely in response to protests by environmental campaigners which caused significant travel disruption (see, e.g. www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-factsheets/police-crime-sentencing-and-courts-bill-2021-protest-powers-factsheet). The Act widens the range of conditions that the police can impose on static marches, broadens the range of circumstances in which police can impose conditions on a protest to include single person or noisy protests, increased the maximum penalty for obstruction of the highway and amended the offence relating to the breaching of protest conditions to change the threshold to one of constructive knowledge. The Public Order Act 2023 created new criminal offences that reflected common protest tactics: locking on and being equipped for locking on, tunnelling, obstructing major transport works and interfering with key national infrastructure. It also expanded stop and search powers under PACE 1984 to allow for stop and search where an officer has reasonable grounds to suspect a person is carrying something “made or adapted [or intended] for use in the course of or in connection with” wilful obstruction of the highway, intentionally or recklessly causing public nuisance, locking on, obstructing major transport works, interfering with the use or operation of key national infrastructure and causing serious disruption by tunnelling or being present in a tunnel. The Act created a new suspicion-less stop and search power akin to that under s.60 Criminal Justice and Public Order Act 1994. Such orders can be given if (i) authorised by an inspector or more senior officer; and (ii) the senior officer reasonably believes the following offences may be committed in the area: wilful obstruction of the highway, intentionally/recklessly causing public nuisance, locking on, obstructing major transport works, interfering with the use or operation of key national infrastructure, causing serious disruption by tunnelling or being present in a tunnel or people in the area are carrying prohibited items (items made or adapted [or intended] for use in the course of or in connection with” these offences; and (iii) the authorisation is necessary to prevent people committing those offences or carrying prohibiting items.

³⁰ *R(National Council of Civil Liberties) v Secretary of State for the Home Department* [2025] EWCA Civ 571. A summary explanation can be accessed here: www.libertyhumanrights.org.uk/issue/liberty-defeats-government-appeal-as-court-rules-anti-protest-laws-are-unlawful.

³¹ See, for example: netpol.org.

³² See, for example: article11trust.org.uk.

³³ See, for example: greenandblackcross.org.

³⁴ See, for example: goodlawproject.org/case/silencing-of-protesters.

³⁵ See, for example: bigbrotherwatch.org.uk/campaigns/protect-protest-rights.

³⁶ See for example: elsc.support.

³⁷ Defend the Right to Protest (defendtherigattoprotest.org) focuses on (among other things) resisting police violence and attacks on the right to protest. From their website it appears they have not been active for several years.

³⁸ Defend Our Juries is a campaign which seeks to educate jurors on their absolute right to acquit on their conscience. It was established when Trudi Warner was found in contempt of court holding a sign that outlined the principle of jury equity. That contempt was dismissed by the High Court (see, *HM Solicitor General v Trudi Ann Warner* [2024] EWHC 911 (Admin) which can be accessed at: www.hja.net/wp-content/uploads/2024/04/HM-Solicitor-General-v-Warner-Judgment-22.4.24.pdf).

and ELSC and Liberty collaborated on recent opposition to Cambridge University's injunction against any protests relating to Palestine and Israel until the end of July 2025. In my view, given Liberty's leadership on this issue and its status as a larger organisation, the general issue of protest rights is not a space in which the Foundation can have a significant impact in terms of its funding.

Potential for future work

There are a number of specific legal issues that are on the horizon in relation to which the Foundation may consider strategic involvement:

Further proposed restrictions on protests

Labour's Crime and Policing Bill proposes the following.³⁹

- A new offence of "concealing identity at protests" at certain designated protests. The only defence is if the person charged can prove that they used the item for a purpose relating to health, religious observance or work.
- A new offence of climbing on "specified war memorials".
- The ability of police to restrict protests, including one person protests, "in the vicinity of a place of worship".

A number of organisations have raised concerns about the proposed amendments through the submission of evidence to Parliament: Liberty,⁴⁰ Amnesty UK,⁴¹ Diaspora Alliance,⁴² Muslim Association of Britain,⁴³ International Centre of Justice for Palestinians,⁴⁴ Stop the War coalition,⁴⁵ JUSTICE,⁴⁶ Big Brother Watch,⁴⁷ StopWatch,⁴⁸ Privacy International and Palestine Solidarity Campaign.⁴⁹ In my view this is an area that is particularly suited to the Foundation's aims for the following reasons.

- There are a number of organisations of vastly differing sizes and levels of development raising similar concerns about these opposed amendments. The Foundation is in a unique position to fund collaboration and coordination of work in relation to advocacy and potential legal challenge through its expert hub model.
- On the assumption that some of this work is already being funded, there is clearly scope for collaborative grant making.
- Through a focus on collaborative working and multi-faceted engagement (campaigning, advocacy, documentation in relation to those who will be affected by these changes), the Foundation has the opportunity to establish itself as a thought leader on an emerging issue.

³⁹ Crime and Policing Bill, bills.parliament.uk/bills/3938.

⁴⁰ See, for example: www.libertyhumanrights.org.uk/issue/the-uk-governments-plans-to-ban-face-coverings-at-protests.

⁴¹ See, for example: www.amnesty.org.uk/press-releases/uk-crime-and-policing-bill-attack-our-proud-legacy-protest

⁴² bills.parliament.uk/bills/3938/publications. Diaspora Alliance is a Jewish-led international organisation that builds solidarity and coalitions with other diasporic and minority communities. They have submitted written evidence to Parliament raising a concern that "this amendment, which is justified as being needed for the safety and wellbeing of Jewish communities, is being used as a smokescreen to restrict civil liberties, including the right to protest."

⁴³ Written Evidence by the Muslim Association of Britain to Parliament, publications.parliament.uk/pa/cm5901/cmpublic/CrimePolicing/memo/CPB130.htm which observed "protest - particularly when led by marginalised communities or those critical of government policy - are increasingly treated not as a democratic right, but as a threat to be contained. This amendment would accelerate that trend by lowering the legal threshold for intervention and expanding discretionary policing powers under intense political and media pressure. The vagueness of the proposed amendment compounds these dangers. Terms like "vicinity" are left undefined, creating legal ambiguity and inviting inconsistent or arbitrary enforcement. This lack of precision is not a technical oversight; it represents a structural weakness that threatens the principle of legal certainty. In practice, it has already led to restrictions on Palestine protests where places of worship were located streets away from the demonstration route. Such ambiguity undermines proportionality, facilitates overreach, and places yet more power in the hands of police operating without clear statutory limits".

⁴⁴ Written evidence submitted by International Centre of Justice for Palestinians: publications.parliament.uk/pa/cm5901/cmpublic/CrimePolicing/memo/CPB129.htm which notes the risk to protestors of doxing, and the need for privacy for some protestors.

⁴⁵ Written evidence submitted by Stop the War Coalition: publications.parliament.uk/pa/cm5901/cmpublic/CrimePolicing/memo/CPB107.htm.

⁴⁶ Written evidence submitted by Justice: bills.parliament.uk/publications/60537/documents/6429.

⁴⁷ Joint Written Evidence submitted by Big Brother Watch, Liberty, Privacy International, StopWatch, available here: publications.parliament.uk/pa/cm5901/cmpublic/CrimePolicing/memo/CPB11.pdf.

⁴⁸ Written Evidence submitted by StopWatch: publications.parliament.uk/pa/cm5901/cmpublic/CrimePolicing/memo/CPB10.htm.

⁴⁹ Written evidence submitted by Palestine Solidarity Campaign, available here: publications.parliament.uk/pa/cm5901/cmpublic/CrimePolicing/memo/CPB76.htm.

Closing of civic space on university campuses

As referenced above, Cambridge University was recently granted a five month injunction preventing all protests relating to Israel and Palestine.⁵⁰ It was apparent from the University's original application that this was initially targeted at "Cambridge for Palestine" and it was only upon comment from Fordham J that it was broadened to persons unknown.⁵¹ The High Court in its final decision did not accept the argument that the exclusion from specified areas of the campus constituted discrimination or an unlawful infringement on the rights of protestors. The expansion of that decision has already been seen with two further University of Cambridge colleges seeking similar injunctions.⁵²

It remains to be seen if similar approaches will be taken by other universities and in relation to other issues. In my view, this is a serious cause for concern; there is a long history of student involvement in protest and the acceptance that university campuses are private land, as well as an expansive approach taken by the Courts to applications by universities to prevent protest is extremely concerning. The apparent singling out of protests in relation to Palestine is unprecedented, and engages the twin aims of the Foundation – inequality and injustice.

In terms of organisations working in this space, ELSC is very much engaged in relation to Palestinian issues and it remains to be seen if other issues are similarly targeted. On 19 June 2025, the Office for Students issued new regulatory guidance to higher education urging

a very strong approach to permitting lawful speech on campus.⁵³ It remains to be seen how and whether universities apply this guidance.

Moves to designate protest related activity as "terrorist"

On 20 June 2025, after longstanding rumours, it was confirmed that Palestine Action, a direct action group "committed to ending global participation in Israel's genocidal and apartheid regime",⁵⁴ is to be designated a terrorist organisation.⁵⁵ There is an ongoing legal challenge to this proscription.⁵⁶

A number of Palestine Action activists are due to stand trial on charges of criminal damage, violent disorder and aggravated burglary after they used a vehicle to break down the doors of Elbit Systems, a firm that supplies arms to Israel, and stormed the building. The Crown Prosecution Service are prosecuting this as an offence with a terrorist connection. The UN Special Rapporteur on Countering Terrorism together with other UN experts wrote to the UK raising concerns about the "seemingly unjustified use of counter-terrorism laws against protest activity by political activists in a democratic society".⁵⁷

There have also been press reports that the police and prosecutors in that case shared details with the Israeli Embassy.⁵⁸

I understand that organisations such as Pal Pulse, Maslaha and ELSC are informally gathering data on the prevalence of arrests, and prosecution of those expressing support for Palestine for terrorism related offences and Defend our Juries is protesting the

⁵⁰ University of Cambridge v Persons Unknown [2025] EWHC 724 (KB) which can be accessed here: www.bailii.org/ew/cases/EWHC/KB/2025/724.html.

⁵¹ See, for example, Fordham J's initial judgment granting an interim application: [2025] EWHC 454 (KB) which is available here: www.bailii.org/ew/cases/EWHC/KB/2025/454.html.

⁵² 'University colleges seek injunctions over protests', BBC, 6 June 2025: www.bbc.co.uk/news/articles/c0qg2yek8dyo.

⁵³ Office for Students, *Regulatory advice 24: Guidance related to freedom of speech*, published 19 June 2025 and effective from 1 August 2025: www.officeforstudents.org.uk/media/1mvnsrcl/regulatory-advice-24-freedom-of-speech-guidance.pdf.

⁵⁴ See, for example: palestineaction.org/about.

⁵⁵ R. Syal, 'Palestine Action expected to be banned after vandalism of planes at RAF base', *The Guardian*, 20 June 2025, www.theguardian.com/uk-news/2025/jun/20/palestine-action-to-be-banned-after-vandalising-planes-at-raf-base.

⁵⁶ 'Palestine Action co-founder wins permission to challenge ban', *The Guardian*, 30 July 2025: www.theguardian.com/uk-news/2025/jul/30/palestine-action-co-founder-wins-permission-to-challenge-ban.

⁵⁷ Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on freedom of religion or belief, Letter to the UK, Ref: AL GBR 13/2024, 21 November 2024: spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=29507.

⁵⁸ H. Siddique, 'Police and prosecutors' details shared with Israel during UK protests inquiry, papers suggest', *The Guardian*, 29 April 2025, www.theguardian.com/uk-news/2025/apr/29/police-and-prosecutors-details-shared-with-israel-during-uk-protests-inquiry-papers-suggest.

proscription but I have not been able to identify any comprehensive projects following this particular issue.

I consider this may be an area to be explored by the Foundation as it potentially gives rise to the opportunity for:

- cross-organisational collaboration among campaigning organisations who may be involved in protests which are being subject to counter-terrorism crackdowns to gather and share data;
- legal challenges both on the basis of discrimination and the over-broad application of terrorism powers;
- public education of protest legal observers and protestors to ensure that they are protecting themselves against the possibility of arrest and on how best to respond in any given situation.

In terms of grant making, this space is one that is constantly shifting. In those circumstances, my view is that:

- projects should be relatively short in duration with a narrow targeted scope. It is apparent that the larger organisations are taking on the big picture issues and the real room for intervention is in relation to specific narrower issues;
- as this is an area with the potential for very significant community impact, there should be open funding calls with a particular focus on community-based groups whose represented groups are likely to be directly affected by these issues;
- it is extremely difficult to succeed in legal challenges in the counter-terrorism space because of the extraordinary deference given

to government. That should not mean work is not funded – it is very important that there is significant scrutiny and challenge to any attempts by the government to designate civic space as “terrorist” in nature. However, it means that the expectations of significant legal victory need to be managed;

- one particularly crucial area for work is public education, in particular in relation to what people who are attending protests need to know to ensure that they are not arrested or prosecuted for terrorism type offences.

DISCRIMINATORY USE OF POLICE POWERS

Outline

Stop and search is a widely used police power that in certain circumstances requires police to have reasonable grounds for a specified suspicion,⁵⁹ and in certain circumstances operates on a suspicion-less basis.⁶⁰ The number of arrests following searches was 14.2% and 75% of all searches resulted in no further action.⁶¹ Research suggests that stop and search has little effect on violent crime and a weak and inconsistent impact on total crime.⁶²

The discriminatory impact of stop and search is well documented: in the year ending 31 March 2024, government statistics showed that people identifying as Black or Black British were searched at a rate 3.7 times higher than those from a White ethnic group. People identifying as Asian or Asian British were searched at a rate 1.3 times higher than those from a white ethnic group.⁶³

⁵⁹ The most used statutory powers for suspicion-led searches are s.1 Police and Criminal Evidence Act 1984 which allows police to search anyone who they have reasonable grounds to suspect possesses a knife or offensive weapon, or a range of other articles related to specified offences such as theft, burglary, or public order offences. Section 23 of the Misuse of Drugs Act 1971 allows police officers to search anyone they have a reasonable suspicion is in possession of controlled drugs. 99% of all searched in the year to March 2024 were under these powers. Stop and search, arrests and mental health detentions in the year to 31 March 2024: www.gov.uk/government/statistics/stop-and-search-arrests-and-mental-health-detentions-march-2024.

⁶⁰ Suspicion-less stop and search can take place in designated areas pursuant to s.60 Criminal Justice and Public Order Act 1994, section 11 Public Order Act 2023. Designated individuals subject to Serious Violence Reduction Orders can also be stopped and searched by police without the need for reasonable grounds of suspicion.

⁶¹ Stop and search, arrests and mental health detentions in the year to 31 March 2024, *ibid*.

⁶² Matteo Tiratelli, Paul Quinton, Ben Bradford, Does Stop and Search Deter Crime? Evidence From Ten Years of London-wide Data, *The British Journal of Criminology*, Volume 58, Issue 5, September 2018, pp1212–1231, doi.org/10.1093/bjc/azx085; Home Office, *Do initiatives involving substantial increases in stop and search reduce crime? Assessing the impact of Operation BLUNT 2*, March 2016, assets.publishing.service.gov.uk/media/5a80c6deed915d74e623061b/stop-search-operation-blunt-2.pdf.

⁶³ *Ibid*.

These findings were endorsed specifically in relation to London in the recently published study by the London Drugs Commission, an independent body established by Mayor Sadiq Khan which concluded as follows.⁶⁴

- Suspicion of carrying drugs remains the most common reason for stop and search across England & Wales.
- Across England & Wales, during the year to March 2023:
 - Black people were 5.1 times more likely to be subject to stop and search on suspicion of a drugs-related offence than white people.⁶⁵
 - Those from an Asian background were 1.9 times more likely to be stopped and searched for drugs than white people.⁶⁶
 - In London specifically, almost two-thirds of the 86,062 stops carried out by the MPS in 2023 ended in no further action.⁶⁷
 - The fact that black Londoners are disproportionately more likely to be both victims and perpetrators of violent crimes does not account for the racial disproportionality in drug-related stop and search.⁶⁸
 - The over-use and disproportionality inherent in stop and search was highly detrimental to community trust in policing.⁶⁹

StopWatch is focused on challenging the arbitrary and discriminatory use of stop and search powers and in November 2024 launched a new campaign to repeal the s.60 suspicion-less stop and search power.⁷⁰

This issue was ruled on by the Supreme Court around 10 years ago who noted that there were “great benefits to the public in such a power” and “it is mostly young black lives that will be saved if there is less gang violence in London”. The arguments that the power had been used in a manner that discriminated on the grounds of race was rejected by both the Divisional Court and Court of Appeal on the basis that the statistics relied upon were controversial and difficult to interpret. That ground of appeal was not renewed before the Supreme Court.⁷¹

In my view, notwithstanding the availability of undisputed statistics that show the racial disproportionality inherent in the use of stop and search, any further legal challenge to the use of s.60 (or indeed other stop and search challenges) would be very difficult given the Supreme Court’s recognition of its utility and the consistent view expressed by police that it is an essential power.

That being said, there is some very interesting work ongoing in relation to the particular experiences of women who are stopped by police. StopWatch have conducted a participatory piece of research which spotlights racially systemic maltreatment of women of colour by police.⁷² That stands against a documented background of police officers abusing their power in relation to vulnerable women.⁷³

Similarly, academics have begun to examine the impact of joint enterprise (see below) on women.⁷⁴ This is an issue which has received relatively little attention and there appears to be scope for cross-organisational collaboration

⁶⁴ London Drugs Commission, *The Cannabis Conundrum: a way forward for London*, March 2025, www.london.gov.uk/programmes-strategies/mayors-office-policing-and-crime-mopac/mopac-governance-and-decision-making/london-drugs-commission. That report (which made a number of other findings and recommendations in relation to drug regulation, particularly cannabis) was endorsed by Mayor Sadiq Khan (K. Rawlinson, Sadiq Khan calls for partial decriminalisation of cannabis possession, *The Guardian*, 28 May 2025: www.theguardian.com/society/2025/may/28/sadiq-khan-calls-for-partial-decriminalisation-of-cannabis-possession).

⁶⁵ The Cannabis Conundrum, §10.52.

⁶⁶ *Ibid.*

⁶⁷ The Cannabis Conundrum, §10.59.

⁶⁸ The Cannabis Conundrum, §10.92.

⁶⁹ The Cannabis Conundrum, §10.108.

⁷⁰ See, e.g. www.stop-watch.org/news-opinion/no-reasonable-grounds-the-case-for-repealing-section-60/

⁷¹ *R (Robert) v Commissioner of Police for the Metropolis* [2015] UKSC 79 supremecourt.uk/uploads/uksc_2014_0138_judgment_4ee4b45f0d.pdf; Court of Appeal decision [2014] EWCA Civ 69: www.bailii.org/ew/cases/EWCA/Civ/2014/69.html.

⁷² www.stop-watch.org/news-opinion/girls-research-project-finds-systemic-mistreatment-by-police-forces.

⁷³ See, for example: A. Clare-Martin, ‘Sarah Everard’s legacy’: Police sexual misconduct complaints soar by almost 50% in wake of murder, *The Independent*, 3 February 2024: www.independent.co.uk/news/uk/crime/police-sexual-misconduct-sarah-everard-b2488158.html.

⁷⁴ Clarke, B. and Chadwick, K. (2023) “The Criminalisation of Women in Joint Enterprise Cases: Exposing the Limits to ‘Serving’ Girls and Women Justice”, *International Journal for Crime, Justice and Social Democracy*, 12(4), pp. 80-91. doi: 10.5204/ijcsd.2542. www.crimejusticejournal.com/article/view/2542.

between StopWatch and organisations like the Centre for Women's Justice who also have a project focused on holding the state to account for violence against women and girls.⁷⁵

In terms of grant making given that the shape of this work is unclear, my view is that:

- any project should be phased in nature, with an initial grant for a scoping stage and then any further proposals can be subject to review. I would suggest an small amount of initial seed funding with the potential for a larger grant if a viable project is developed;
- as with other projects identified above, there is a strong need for community engagement. The Foundation may consider an open call in relation to community-based groups and a closed call for the organisations who already have demonstrated expertise in relation to the legal and policy issues affecting women;
- in terms of expectations, there is already a huge amount of data in relation to this issue. It would be particularly interesting to focus on local practices and procedures rather than national level challenges.

Criminal courts

JOINT ENTERPRISE

Outline

There have been longstanding concerns about the use of the joint enterprise doctrine in criminal law. Although the Supreme Court reviewed the position in *Jogee* and provided guidance as to the application of the doctrine,⁷⁶ the police and CPS continue to take a broad approach to its application. The effect of the doctrine is that multiple individuals can be prosecuted and convicted for the same crime on the basis of relatively loose legal principles which allow for its discriminatory application.

Those concerns about the discriminatory application of joint enterprise were the foundation of a 2022 legal challenge by Liberty and JENGbA that resulted in the CPS developing a pilot scheme to record data on the age, race, sex and disability of those prosecuted under the joint enterprise doctrine.⁷⁷ The pilot study revealed that 30.2% of defendants in joint enterprise cases were from black ethnic backgrounds and 8.4% from mixed ethnic backgrounds. That is more than seven times higher than the proportion of people from black ethnic backgrounds in the population of England and Wales, and almost three times higher than the proportion of people from mixed ethnic backgrounds.⁷⁸ Subsequently, the Solicitor General indicated that “The pilot found ethnic disparities in the caseload, but it was not possible to draw strong conclusions from the analysis due to the relatively small sample size (190 cases involving 680 defendants).”⁷⁹ The CPS is due to publish a report on the monitoring data collected during the 2024/2025 financial year in summer 2025.

A 2024 report by the Centre for Crime and Justice Studies concluded that joint enterprise laws are “vague and wide in scope, causing systemic injustice, including overcriminalisation, over punishment, discriminatory outcomes, and convictions where there is no compelling evidence of intent and a defendant’s physical contribution is minimal”.⁸⁰ In particular the use of “gang” evidence, has a particular impact on young Black defendants.⁸¹ A recent publication has also highlighted the particular implications of the doctrine for women.⁸²

Organisations involved

There are a number of organisations working on this issue: APPEAL,⁸³ Joint Enterprise Not Guilty by Association (who were behind *Jogee*), Liberty (who led the legal challenge in

⁷⁵ See, for example: www.centreforwomensjustice.org.uk/ppda.

⁷⁶ *R v Jogee*, [2016] UKSC 8: supremecourt.uk/uploads/uksc_2015_0015_judgment_e9dab4a097.pdf.

⁷⁷ S. Hattenstone, Joint enterprise prosecutions to be monitored for racial bias, *The Guardian*, 16 February 2023: www.theguardian.com/law/2023/feb/16/joint-enterprise-prosecutions-to-be-monitored-for-racial-bias.

⁷⁸ Crown Prosecution Services, *Joint Enterprise Pilot 2023: Data Analysis*, 29 September 2023, www.cps.gov.uk/publication/crown-prosecution-service-joint-enterprise-pilot-2023-data-analysis.

⁷⁹ UK Parliament, Written question: Homicide: Aiding and Abetting, 3 April 2025, questions-statements.parliament.uk/written-questions/detail/2025-04-03/44007.

⁸⁰ Nisha Waller, The legal dragnet: Joint enterprise law and its implications, *Centre for Crime and Justice Studies*, September 2024, www.crimeandjustice.org.uk/sites/default/files/2025-01/The%20Legal%20Dragnet%2C%20Sep%202024.pdf.

⁸¹ *Ibid.*

⁸² Clarke, B. and Chadwick, K. (2023) *ibid.*

⁸³ See, for example: appeal.org.uk/jointenterpriseontrial.

relation to the failure to gather data on such prosecutions),⁸⁴ Kids of Colour (who were heavily involved in the Manchester 10 appeal),⁸⁵ Centre for Crime and Justice Studies,⁸⁶ Youth Justice Legal Centre (YJLC),⁸⁷ Manchester Metropolitan University,⁸⁸ and SAY NO! To Joint Enterprise (a community interest company dedicated to advocating for individuals and families navigating the complexities of the justice system, particularly concerning Joint Enterprise. It was founded by a mother whose son was charged with murder on the basis of joint enterprise).

In tandem with the work directly challenging joint enterprise there is a relatively new initiative (backed by a number of the organisations identified above) called Art Not Evidence which seeks to prohibit the use of music and art as evidence of gang membership, joint enterprise or conspiracy. In their Open Letter to the Home Secretary the campaign states:

*“The indiscriminate use of creative expression as evidence in court risks miscarriages of justice, perpetuates harmful racist stereotypes, and contributes to a racially discriminatory criminal justice system that stifles creativity and freedom of expression. We applaud law reform campaigns in the USA, including the enactment of legislation in California, and urge judges, lawyers and legislators in the UK to follow suit.”*⁸⁹

Potential for future work

Given the forthcoming release of further data by the CPS in relation to joint enterprise prosecutions and the groundswell of action, in my opinion there is a unique moment for collaborative intervention engaging academics, community-based activists (such as SAY NO! and Kids of Colour), and more established organisations (such as Liberty) and specialist NGOs such as APPEAL and YJLC to challenge.

This could engage:

- individual experiences (both of defendants, families and potentially victims) of the consequences of joint enterprise
- documentation of the way in which such prosecutions are conducted and the way in which they play in aid of evidence based on stereotyping
- legal challenges to the scope of the doctrine, focusing in particular on its discriminatory impact
- policy / advocacy in relation to the operation of the doctrine both at the community and national levels.

Any such work would by its nature be collaborative in nature and would build upon a strong base of existing work. While a legal challenge would be difficult in light of the Supreme Court’s ruling, there is broad consensus among legal professionals that the decision in *Jogee* has not clarified the relevant principles of secondary liability and there remains significant scope for confusion, in particular as to how juries are directed to apply those principles.

In my view, grant making in this area should take into account the following.

- The need for integration of community perspectives into any initiative. That means grants should be collaborative in nature and mainstream the experiences of affected communities. This also weighs in favour of an open funding call.
- Projects are likely to have to be long term and detail oriented. There will be significant pushback against any legal challenge to the use of the doctrine of joint enterprise because it has weighty institutional backing. For example, in a recent edition of Criminal Law Week, Judge Philip Katz KC, a senior Old Bailey Judge, issued a case commentary in defence of joint enterprise.⁹⁰ With that in mind, expectations for a milestone breakthrough should be limited; the focus

⁸⁴ S. Hattenstone, Joint enterprise prosecutions to be monitored for racial bias, *The Guardian*, 16 February 2023, www.theguardian.com/law/2023/feb/16/joint-enterprise-prosecutions-to-be-monitored-for-racial-bias.

⁸⁵ See, for example: kidsofcolour.com/resources.

⁸⁶ See, for example: www.crimeandjustice.org.uk/legal-dragnet.

⁸⁷ See, for example: yjlc.uk/resources/legal-guides/3-fighting-racial-injustice-rap-drill.

⁸⁸ See, for example: www.mmu.ac.uk/research/projects/challenging-joint-enterprise.

⁸⁹ See: artnotevidence.org.

⁹⁰ Criminal Law Week, Issue 31, 11 September 2024.

should be on political advocacy and judicial education to ensure that the doctrine is drawn in the narrowest possible terms and in such a way that does not centre racial stereotypes.

- There is a need for institutional buy-in, for example, from the Judicial College, to effect meaningful change. That will be much more likely if engagement is data-driven and supported by experiences (rather than vice-versa).

INDEPENDENT REVIEW OF THE CRIMINAL COURTS

The criminal courts are facing an extraordinary backlog and trials are being listed with unprecedented delay. The ineffective functioning of the criminal court system has been the subject of a government review by Sir Brian Leveson – namely the Independent Review of the Criminal Courts.⁹¹ The purpose of the review was to produce options and recommendations as to how the criminal courts “could be reformed to ensure cases are dealt with proportionality”. The review has recommended the following.

- Removing the right to elect a jury trial for either way offences which carry a maximum sentence of two years.
- Increase magistrates’ court sentencing powers to 12 months on a permanent basis.
- Remove the right of automatic appeal against conviction and sentence from the magistrates’ court; and
- Creation of a “Crown Court Bench division” to try certain either way offences in the Crown Court abrogating the right to trial by jury. The Crown Court Bench will be composed of a Crown Court judge sitting alongside two lay magistrates. Appeals from this Court will be to the Court of Appeal.⁹²

There have been strong critical response to the proposal of an intermediate court from both the Law Society and the Bar Council with both noting the serious concern that this would effectively remove the right to trial by jury and create a real risk of undermining public confidence in the justice system.⁹³ The Bar Council notes that there would be limited ability to challenge the conscious or unconscious bias in an intermediate court system and that there would need to be the “fullest consideration of the different outcomes for persons with any protected characteristics...based on judicial decision-making as to guilt or innocence”.⁹⁴ The Ministry of Justice and court system are public bodies subject to the Equality Act 2010 and Human Rights Act 1998 and there may well be scope for public law challenges in response to any proposals implemented as a result of the Leveson Review.

In response to the Review, the Criminal Bar Association conducted a snap survey, which indicated widespread opposition among the criminal bar to a number of the proposals, in particular in relation to the proposed “Crown Court Bench Division”.⁹⁵ The Bar Council has echoed those concerns about the abrogation of the right to trial by jury.⁹⁶

As yet, the shape of any such challenge is speculative and I highlight this issue as one for future consideration rather than any specific project at the current time. As a result it is also very difficult for me to offer any meaningful opinion in relation to the shape or nature of grant making.

SENTENCING

There has recently been pushback from the Government in relation to a new Sentencing Guideline which prompted consideration of (among other things): pregnancy, reoffending and ethnicity in determining whether a

⁹¹ See, Independent Review of the Criminal Courts: Part 1, 9 July 2025 www.gov.uk/government/publications/independent-review-of-the-criminal-courts-part-1.

⁹² *Ibid.*

⁹³ Bar Council response to the Independent Review of the Criminal Courts: www.barcouncil.org.uk/static/86b0f6fe-6fcd-4463-ae9cbb172f3e4a3d/Bar-Council-Submission-to-the-Independent-Review-of-the-Criminal-Courts-Final-Draft-a-002.pdf; Law Society Response to the Independent Review of the Criminal Courts: www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/do-not-waste-precious-time-and-resources-on-intermediate-court-warns-law-society.

⁹⁴ *Ibid.*

⁹⁵ Criminal Bar Association, Monday Message, 28 July 2025: www.criminalbar.com/resources/news/monday-message-28-07-25.

⁹⁶ www.barcouncil.org.uk/resource/leveson-report-diversion-welcome-but-no-need-to-curtail-trial-by-jury-warns-bar-council.html.

pre-sentence report (PSR) is necessary.⁹⁷

A pre-sentence report is a report prepared by the probation service which provides a holistic assessment of an offender's characteristics and suitability for a community or suspended sentence. Judges are not bound by the conclusions of such reports, but they can provide helpful background in the context of a sentencing exercise.

The Justice Secretary responded by stating "it is this government's policy to oppose differential treatment on the basis of race or ethnicity in our courts' and that disparities between cohorts are best addressed through policy and subsequently indicated she intended to put a Bill before Parliament to overrule the Guideline. As a result, the Sentencing Council has withdrawn the Guideline and an amended version has since been published (which will enter into force on 1 September 2025) which has removed specific direction to sentencing judges that a PSR "may be required" where an individual is female, pregnant, transgender, has a learning disability, has a drug or alcohol addiction issue, is a victim of domestic abuse, trafficking or modern slavery, is a sole carer, a young adult, or from an ethnic, cultural or faith minority.⁹⁸

It is very concerning that the current government has shown such overt hostility to attempts by the Sentencing Council to take steps to address the issues arising from the sentencing of the groups above to custodial sentences (particularly short custodial sentences). It can only be anticipated that there will be further challenges by the government to any initiatives seeking to combat discrimination in the criminal justice system and those should be robustly resisted. As things stand there is no identifiable project in this space, but it is an area to monitor for developments and to see whether there might be scope for policy advocacy or legal challenge.

Prisons

PAVA SPRAY

Outline

Following a pilot in four prisons beginning in October 2018, the prison service rolled out the use of PAVA spray in prisons holding male adults. PAVA spray is a synthetic spray used to incapacitate individuals. It is classified as a prohibited weapon under the Firearms Act 1968. According to prison operational guidance, it is "to be directed towards the eyes and can disable and/or incapacitate most subjects". Guidance for those who have been sprayed states "You have been subjected to the effects of PAVA spray. PAVA primarily affects the eyes causing closure and severe pain. You may also feel a burning sensation on your skin. PAVA may also produce uncontrollable coughing; this is the body's protective measure. These effects are a normal response to this type of PAVA spray."⁹⁹

Consistent analyses show that PAVA spray is drawn or used disproportionately against BAME prisoners. For example:

- in 2022, although black prisoners accounted for only 13% of the prison population, they were subject to 27% of PAVA spray draws and 30% of the subsequent uses;
- in the same year Muslim prisoners accounted for 17% of the male prison population but were 30% of those upon whom PAVA was used.¹⁰⁰

The Prison Reform Trust has indicated that there is no evidence that has established that the availability and use of PAVA reduces rates of assault in prison.¹⁰¹ In fact, the Ministry of Justice evaluation showed violence continued to rise and the use of PAVA spray undermined trust between prisoners and staff.¹⁰² There are also numerous instances where PAVA spray, rather than being a last resort, was

⁹⁷ sentencingcouncil.org.uk/guidelines/imposition-of-community-and-custodial-sentences.

⁹⁸ Revised Guideline can now be accessed here: www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/imposition-of-community-and-custodial-sentences-overarching-guideline.

⁹⁹ HM Prison & Probation Service, *PAVA in Prisons Project: Evaluation Report*, 2018, Annex 5: Aftercare Information for Prisoners, see: prisonreformtrust.org.uk/wp-content/uploads/2022/02/2018.11.20-Rory-Stewart-to-PD-PAVA-with-evaluation.pdf.

¹⁰⁰ *Ibid.* See specifically, *Maslaha, Maslaha Briefing No. 1: The Hidden Lives of Muslims In Prison*, March 2025: static1.squarespace.com/static/67487919889d3a3537e4ecd1/t/6787b938d75edd706700d4b4/1736948024975/Maslaha+%231+Briefing.pdf.

¹⁰¹ *Ibid.* Prison Reform Trust, *Equality incapacitated*.

¹⁰² *Ibid.* HM Prison & Probation Service, *PAVA in Prisons Project: Evaluation Report*, 2018.

used without appropriate justification; for example, PAVA was used to stop someone self-harming.¹⁰³

On 24 April 2025, the government announced that it intended to authorise the use of PAVA spray in three Young Offender Institutions as a response to the “unacceptable” levels of violence across the Children and Young People’s Secure Estate.¹⁰⁴ In response to that, 37 organisations issued a joint statement condemning the use of PAVA spray against children in prison, noting it represented a “significant escalation in the use of force that is permitted against children”.¹⁰⁵

Organisations involved

There are a number of organisations active in this space: the Prison Reform Trust, Maslaha and the Howard League for Penal Reform, in addition to all those who signed on to the joint statement referenced above. I understand that the Howard League is contemplating litigation to challenge the use of PAVA spray in Young Offender Institutions which is funded through crowdfunding.¹⁰⁶

Potential for future work

There is clearly significant potential for legal and policy challenge to (i) the use of PAVA spray in all prisons and (ii) particularly the use of PAVA spray in young offender institutions. Given the recency of this announcement, in my opinion there is real scope for meaningful intervention to prevent a rollout of PAVA to all prisons housing young people.

In terms of grant design, given the immediacy of the issue, in my view grants should be short term initial seed funding to design projects around existing legal and advocacy work. There is a need for work to (i) gather data and (ii) design and develop legal challenges, and (iii) conduct advocacy work in relation to existing legal challenges. In those circumstances, I consider that projects could be multi-phase and multi-year in relation to data gathering, legal and advocacy work. As this is an area where there are a number of organisations with existing expertise and who are already engaged in this work, it is better suited to a closed call for funding.

WOMEN IN PRISON

Outline

There is a high level of multiple need among women in the justice system;¹⁰⁷ the majority of women in prison (82%) report that they have mental health problems, and the majority have self-reported problems with alcohol (59%) or drugs (49%).¹⁰⁸ A thematic report by HM Inspectorate of Prisons found that more than eight in 10 women had felt unable to cope at some point in prison.¹⁰⁹ As addressed above, there are particular concerns about pregnant women in prison.

Many women in prison are the victims of more serious crimes than those they are accused of;¹¹⁰ in particular, a large proportion of female offenders have endured domestic and other abuse, which is often linked to

¹⁰³ *Ibid.* Of the 50 incidents surveyed, 4–22% fell outside operational policy and expectations of professional conduct.

¹⁰⁴ Statement of the Secretary of State for Justice, 24 April 2025: questions-statements.parliament.uk/written-statements/detail/2025-04-24/hcws599.

¹⁰⁵ Joint statement on the decision to introduce PAVA spray to prisons holding children, 24 April 2025: static1.squarespace.com/static/5f75bfbbfb67fc5ab41154d6/t/681097c4fa777d30b2c0525a/1745917893163/PAVA+joint+statement.pdf.

¹⁰⁶ See: www.crowdjustice.com/case/stop-the-use-of-pava-spray-on-children.

¹⁰⁷ Ministry of Justice (2018) Female Offender Strategy; Home Office (2007) *The Corston Report: A Report by Baroness Jean Corston of a Review of Women with Particular Vulnerabilities in the Criminal Justice System*: webarchive.nationalarchives.gov.uk/ukgwa/20130206102659/http://www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf; HMPPS & NHS England. (2023). *A review of health and social care in women’s prisons*: www.england.nhs.uk/long-read/a-review-of-health-and-social-care-in-womens-prisons.

¹⁰⁸ Prison Reform Trust, Bromley Briefings Prison Factfile, February 2024: prisonreformtrust.org.uk/wp-content/uploads/2024/02/Winter-2024-factfile.pdf.

¹⁰⁹ HM Inspectorate of Prisons. (2025). *Time to care: what helps women cope in prison? A thematic review by HM Chief Inspector of Prisons*, hmiprisons.justiceinspectorates.gov.uk/hmipris_reports/time-to-care-what-helps-women-cope-in-prison.

¹¹⁰ Prison Reform Trust. (2017). “*There’s a reason we’re in trouble*”- Domestic abuse as a driver to women’s offending: prisonreformtrust.org.uk/publication/theres-a-reason-were-in-trouble. See further, Women in Prison, Open Letter to the UK Government: Provide Support, End Unfair Criminalisation of Women womeninprison.org.uk/campaigns/stop-punishing-domestic-abuse-survivors; Centre for Women’s Justice, Campaign: Stop Criminalising Survivors, www.centreforwomensjustice.org.uk/stop-criminalising-survivors; Centre for Women’s Justice, *Women Who Kill: How the State Criminalises Women We Might Otherwise Be Burying*, February 2021: www.centreforwomensjustice.org.uk/news/2021/2/13/women-who-kill-how-the-state-criminalises-women-we-might-otherwise-be-burying.

their offending.¹¹¹ The Centre for Women's Justice has an ongoing campaign to "Stop Criminalising Survivors" calling for legislation to provide effective defences for those whose offending results from their experience of domestic abuse, ensuring the Victims Code includes a requirement to protect victims of domestic abuse and other forms of violence against women and girls, and decriminalising certain sex work related offences.¹¹² There is a particular impact upon Black, Asian, minoritised and migrant women who are particularly vulnerable to being swept into the criminal justice system as a result of additional hurdles to disclosing abuse and accessing support.¹¹³

According to research conducted by the Prison Reform Trust, as of December 2024, over a quarter (26%) of all women in prison were being held there on remand despite the fact that almost nine in 10 women on remand are assessed as posing only low to medium risk of serious harm to the public, and the majority of women committing low level, non-violent offences.¹¹⁴

The Female Offender Strategy Delivery Plan was published in 2022 and set out four priorities to reduce women's offending which included:

- fewer women entering the criminal justice system and reoffending;
- fewer women serving short custodial sentences;
- better outcomes for women in custody; and
- protecting the public through better outcomes for women on release.¹¹⁵

In September 2024, the government announced a Women's Justice Board to "reduce the number of women in custody by using early intervention and tackling the root causes of offending". The Board meets quarterly and had its first meeting in March 2025.¹¹⁶

Potential for future work

As a focus area, this brings together several elements of what the Foundation is looking for:

- the opportunity to work on new areas of discrimination and disadvantage in the criminal justice sector;
- the opportunity to build on work that is already in train and is already collaborative in nature;
- a real opportunity to shape law and policy given the Government's stated commitment to working on these issues.

As the shape of any future work remains unclear, I am not in a position to provide any views in relation to grant making.

¹¹¹ Lord Farmer. (2019). *The importance of strengthening female offenders' family and other relationships to prevent reoffending and reduce intergenerational crime*. Ministry of Justice: www.gov.uk/government/publications/farmer-review-for-women.

¹¹² Centre for Women's Justice, Campaign: Stop Criminalising Survivors, www.centreforwomensjustice.org.uk/stop-criminalising-survivors.

¹¹³ Centre for Women's Justice and Tackling Double Disadvantage, Briefing for MPs, 2023, static1.squarespace.com/static/5aa98420f2e6b1ba0c874e42/t/64b54ffae4f9f66b7f5a7588/1689604090962/Tackling+DD+Westminster+Hall+debate+briefing+FINAL+27+Jun.pdf.

¹¹⁴ Prison Reform Trust, *Resetting the approach to women's imprisonment*, April 2025, prisonreformtrust.org.uk/wp-content/uploads/2025/04/Resetting-the-approach-2025-briefing.pdf.

¹¹⁵ Ministry of Justice, Female Offender Strategy Delivery Plan 2022 – 2025: www.gov.uk/government/publications/female-offender-strategy-delivery-plan-2022-to-2025.

¹¹⁶ See, e.g. www.gov.uk/government/groups/womens-justice-board.

Conclusion

This paper has addressed only a handful of the litany of issues affecting the equal and fair operation of the criminal justice system and their selection has been informed both by desk based research to identify issues in relation to which future, short term intervention seems possible as well as my own experience as a professional working within the criminal justice system.

It is of course, ultimately a matter for the Foundation as to what shape and direction any future work in this space may take; if I can make

one recommendation – it is that the criminal justice sphere remain a key focus area for the Foundation. The one consistent conclusion across the all the areas and sub-topics identified above is that the criminal justice system is in crisis. Against that backdrop, the amazing work that all the organisations identified in this paper and beyond are doing could not be more essential and the Foundation can play a crucial work in shaping and nurturing that work so that the criminal justice system really works to protect the most vulnerable.

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