

Policy Briefing July 2013:

The Interface between Mental Health and Criminal Justice: An Application of Phillips' Multi-Level Framework

Racism still blights the lives of far too many people. Whilst it is argued that overt forms of discrimination have diminished and that behaviour in society as a whole has changed for the better, nevertheless, racism, which takes place at the micro, meso and macro level (defined later in this briefing) remains and is invidious at the interface of mental health and criminal justice. Interactions at the aforementioned levels continue to discriminate against Black, Asian and Minority Ethnic (BAME) people.

This policy briefing seeks to examine the independent and intersecting layers of racial discrimination at the crossover of mental health and criminal justice services. To meet this end the briefing will apply Phillips' (2011, p.175-178) expanded multi-level framework to racial discrimination in the prison setting. By doing so, a broader and alternatively structured conceptualisation of institutional racism and ethnic inequalities will be offered. The briefing will then move on to consider racial inequality within the prison setting and offer a speculative example of how it can be addressed by applying the Public Sector Equality Duty.

Racial inequality in mental health and criminal justice

Racial inequality is often a consequence of multiple layers of racism that arise in many guises. It is such racism which can be understood in the legal framework as constituting direct and indirect discrimination. The latter is more commonly seen as policies which operate to the detriment of certain racial and ethnic groups or practices that become institutionalised leading to discriminatory outcomes and thus point to racism within a given system.

Discrimination in mental health services can be easily evidenced. Black men tend to be given higher doses of medication than white men and are five times more likely to be detained on locked wards (Nacro, 2007). Examples of racial inequality in mental health can also be seen when considering the number of Black people and people categorised as mixed race, who are three times more likely to be admitted to hospital for mental disorders than white people, and also more likely to be referred to mental health services by the police, courts or social services (Count me in Census, 2011).

In the area of criminal justice, racial inequality is evident in the use of force. NOMS Equality Annual review shows that force was used on Black and Black British prisoners at a rate of 46 times per 100 prisoners compared to 21 times per 100 for White prisoners and 15 times per 100 for Chinese or Other prisoners (Ministry of Justice, 2011). Of relevance to this glaring statistic is the finding from Her Majesty's Prison Inspectorate Annual Report 2011-12, which notes that rigorous scrutiny of the use of force was mainly absent and few senior managers reviewed such documentation and reviews of video recordings. Meanwhile, Black and mixed race people are over-represented at all stages of the criminal justice system from stop and search to imprisonment, while Asians are overrepresented in stop and search and in prisons and are under-represented at other stages (Webster in Sveinsson, 2012).

Discrimination at the Interface of Mental Health and Criminal Justice for Gypsy and Traveller Communities

It is important to bring together evidence from the two systems of health and criminal justice to enhance our wider understanding about how different levels and types of racism, alongside individual but intersecting institutional structures, contribute to racial inequality. This briefing will do this in a short way by focusing on Gypsy and Traveller communities.

Despite a longstanding presence of Gypsies and Travellers in the UK, there is scant reference to their health needs in the policy arena (Matthews, 2008), yet extreme disadvantage is reflected in their access to mental health services. Moreover, research carried out by Cemlyn (2008) identified that Gypsy and Traveller communities experience poor health although they are less likely to receive effective, continuous healthcare. High suicide rates, children suffering psychological damage from repeated brutal evictions, tensions associated with insecure lifestyles and hostility from the wider population all contribute to poor levels of mental health and well-being. Cemlyn's (2008) research also identified that for some particularly excluded groups of young Gypsies and Travellers, there is a process of accelerated criminalisation, reflecting racism within the criminal justice system, and leading rapidly to custody.

Developing a stronger comprehension of the above dynamics is one of the steps that need to be taken if any meaningful attempt at meeting equality requirements is to be made. However, this should not simply be about looking at the levels of disproportionality which would show over-representation of Gypsies and Travellers in prison (Berman, 2010; 2012 & HMPI 2012) or the disproportionality in the area of mental ill-health (Keating in Graig, 2012 & MacGabhann, 2011). It is about exploring how processes, attitudes, fear and individual and structural cultures contribute to different levels of racial inequality experienced by Gypsies and Travellers.

A Multi-Level Framework: Micro, Meso and Macro Racism

By using an expanded multi-level framework, conceptualised by Phillips (2011), it is possible to breakdown and explore how racism interactively operates at different levels and contributes to differential racial outcomes. The framework allows for different complex arrangements of identities, discrimination and outcomes to be considered at three discrete but intersecting and overlapping levels: micro, meso and macro. ROTA's interest in applying

the framework lies solidly in being better able to identify points at which interventions can be best made. Moreover, the development and application of the framework can be viewed as being important in helping to identify and differentiate institutional racism as being the cause and outcome which has been one of the major drawbacks associated with MacPherson's definition¹ (Home Affairs Committee, 2009).

What follows is a speculative exploration of how racism interactively operates at micro, meso and macro levels to assist our understanding of ethnic inequality in the prison setting at the intersection where mental health and criminal justice services meet.

Micro-Level Racism

Within the prison setting, micro level racism is presently understood as direct discrimination, for instance individual racism which may be perpetrated by prison officers or other prisoners. An encounter of micro-level racism was very clearly illustrated by an Irish Traveller in 'Voices Unheard', a report by the Irish Chaplaincy in Britain (MacGabhann, 2011). The report documents how a Traveller prisoner was going to the gym and was told by an officer not to steal the weights for scrap metal because that was what the officer assumed Travellers did. It is possible that the notions of race, ethnicity and culture which are held by some prison officers may taint the prison experience for Gypsy and Traveller prisoners. When considering the protected characteristic of race, and micro-level racism described above, it becomes significant to the protected characteristic of disability, and in particular long term mental ill-health. Such instances of micro-level racism provide a context in which a prisoner assesses how he or she is valued within a particular establishment. This is of further importance as perceptions are underpinned or informed by encounters of direct racism, which may influence help-seeking behaviour.

Meso-Level Racism

The multi-level framework locates existing conceptualisations of institutional racism at the meso level. The meso-level encapsulates but is broader than the notion of institutional racism. Phillips notes that the meso level is particularly concerned with situating and contextualising factors which are temporally and spatially specific. The meso-level occupies itself with individual and intersectional phenomena at the middle level of theorising, including but not restricted to: "1) socio-economic disadvantage, 2) neighbourhood composition and effects, 3) political, media and popular discourses, 4) political incorporation and empowerment, and v) institutional processes and practices" (p. 4 Phillips, 2011).

Meso-level racism within the prison context, for example, can be seen as manifesting itself when prisoners are not supported to partake in educational courses, provided with pastoral

¹ The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.

or culturally sensitive and emotional support or offered adequate medical care. Meso-level racism is that which exists within the organisational practice of the prison that may further entrench the disadvantage of the prisoner. It is this level of racism which can be seen as the outcome of functions which operate to the detriment of minority ethnic communities that are normalised in practices and procedures that are uncritically followed. Moreover, Phillips (2011) describes elsewhere how micro-level actions are constituted by, and reinscribe, meso-level racism which may be rooted in political, media and popular discourses. Put another way misleading media reporting fuels stereotyping and racism which are pervasive and often overt.

Macro-Level Racism

Macro level racism takes into account structural forces beyond individual practices and institutional processes. Such an account recognises, nonetheless, that institutional processes are developed, formulated and implemented by individuals who are constrained or enabled by structural factors. Phillips refers to globalising forces as producing fundamental changes in the mode of economic production and the unequal distribution of resources which has structured social relations in Britain as elsewhere, citing major demographic shifts from migration flows. Similarly the international pricing of oil can be construed – flippantly – as a process encapsulated at the macro-level which transcends in to pressures being placed on those making decisions at a national level. As the manifold economic pressures permeate most levels of society it is particular racial and ethnic groups who are likely to be disproportionately affected.

Additionally, the neo-liberal orientation towards promoting choice, accountability, marketisation and competition and accompanied by managerialist logics of testing and targets can be understood as macro structural forces. The neo-liberal stamp of decentralised government and public managerialism has altered the way public sector organisations are managed, which is then translated in frontline operational practices. It is such structural determinants of material conditions which provide the framework through which institutional processes and practices at the meso level are enacted.

Cumulative Layering

When micro and meso-level racism are combined with macro level racism, the cumulative impact of multiple layers of racism can be seen. As a simple example, a macro level interaction could be the neo-liberal managerialist and choice based pressures on work programme contractors to find employment for ex-offenders. In a payments by results fashion, whereby funding is dependent on the success of finding ex-offenders employment, increased demands are placed on work programme employees. Additionally, the neo-liberal framework ensures employment providers are pitted against each other to secure a dominant place in relevant markets.

Pressures from national government and prisons are likely to impel employment providers to direct their efforts to the goal of improving employment rates, as funding is dependent on such success. This is combined with popular discourse, at the meso-level, which stereotypes Gypsies and Travellers as being illiterate, lazy, non-conforming, criminally

violent and disobedient. Such stereotyping can be seen as informing the mindset of work programme staff, at micro level, who are tasked with finding work for ex-offenders. These staff may – consciously or unconsciously – be deterred from recruiting Gypsy and Travellers due to these negative perceptions. A Gypsy or Traveller who is only supported or identified as being able to obtain less desirable types of employment is disadvantaged by micro-level racism. A potential consequence of this individual practice is one where selective targeting of some offenders over others can become reinforced as the logical response of work programme staff.

It is the cumulative effect of the aforementioned levels of racism, all of which provide the context for micro-aggression to occur. This results in compounded multiple layers of disadvantage and discrimination. Any regime within a prison that does not see, acknowledge or understand the impact of race and processes of racism on Gypsies and Travellers will only serve to perpetuate the difficulties already being experienced. A consequence of which is not only the extreme cultural dislocation, but a compounded and deeper sense of isolation and loneliness. It is noted elsewhere (Cemlyn, 2009) how this can lead to acute distress and frequently suicide.

The Public Sector Equality Duty

The legal framework of the Equality Act should be viewed as a mechanism to enforce intervention where BAME people will be disadvantaged due to micro, meso and/or macro level racism, In particular, the Public Sector Equality Duty (PSED – see box 1) and the legal requirement of public sector agencies to have due regard to the need to eliminate discrimination can be used as possible avenues. The Equality Act arguably goes one step further than previous race equality legislation by defining what having ‘due regard’

Box 1:

Public Sector Equality Duty (PSED)

- Section 149 (1): A public authority must, in the exercise of its functions, have due regard to the need to:
 - ▣ eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - ▣ advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - ▣ foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Due Regard

- ‘Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
 - ▣ **remove or minimise disadvantages** suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - ▣ **take steps** to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
 - ▣ **encourage persons** who share a relevant protected characteristic to **participate in public life** or in any **other activity in which participation by such persons is disproportionately low.**’

involves (Box 2). Hence making it fundamentally, and more importantly, legally clear that contemplation of PSED requirements is necessary.

Across mental health delivery in prisons, there are generic adaptations which can be made in the identification and assessment of mental health problems. These might include appropriate referrals to prison mental health in-reach teams, appropriate transfer to hospital and better and specific plans for resettlement. Training for uniformed officers in recognition and support of prisoners with mental health issues – which has been reported as being “generally inadequate”(pg 7, HMPI, 2012) – is another area where generic improvements can be made. Likewise, there should be thorough analysis of whether generic improvements reproduce the same levels of racial inequality; thus there is a need for measuring the effectiveness of existing interventions and their capability to reduce racial inequality.

It is important therefore to ask what is being done to improve the situation for Gypsies and Travellers across two protected characteristics: Race and Disability. Bearing in mind the due regard functions, and the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to a) tackle prejudice and b) promote understanding. As micro-level racism can be seen in the individual interactions which can be informed by meso-level interactions, an exploration of the subjective interpretations of prisoner officers could be a possible step to embody an understanding of any assumptions which may prevail about Gypsies and Travellers amongst prison staff. After all, being in a minority situation is something that prison staff and equally white prisoners may have little understanding of or sympathy for. Arguably, this would be a primary step to meet due regard functions, for example by taking steps to meet the needs of persons who share a relevant protected characteristic by trying to understand and gauge diverging views. Prison officers may rely on unquestioned racial stereotyping in dealing with and making decisions about offenders. For instance, decisions around whose cell should be searched may indicate racial bias in decision making. Identification of this and better management oversight in the authorisation of cell searches could reduce the cumulative effects of racialised stereotyping. Such poor oversight, and poor racial outcomes, has been noted elsewhere in the prison setting in the selection of individuals to be involved in change behaviour programmes (Cowburn, M & Lavis, V, 2009). Similarly, good management oversight of the ethnic breakdown of offender outcomes and progress on the work programme could counter the harmful effects of neo-liberal policies of work programme service delivery. This would include rigorous equality monitoring in the first instance, but of tantamount importance the need to embed race consciousness amongst staff in particular middle tier management.

The Role of Law

Although this is a policy briefing the focus here has switched to the role of law. Despite being used interchangeably, there is a difference between law and policy, the most important being that law is coercive whereas policy is preferential (Solanke, 2009). This is important within the context of equality work as policies themselves do not confer actionable rights, but provide direction and guidance, whereas law should confer actionable rights and thus remains dominant. Moreover, when contemplating the implementation of a

legal framework such as the PSED, this means public authorities should consider applying the law to the betterment of minority ethnic communities by anticipating discrimination and avoiding it by positive state intervention. Such a model of delivery would be informed by an understanding of statutory duties under the Equality Act 2010 and by the experiences of people who use services. Whether such a model is presently realisable at NOMS is questionable following their recent decision to move away from prescriptive processes to an emphasis on delivering equality of outcomes.

Conclusion

Our objective in using a multilevel approach was to clearly specify the mechanisms and interacting processes through which ethnic inequalities are reproduced and sustained - in a cumulative fashion - and how the PSED can be the legislative framework to address such processes. The multilevel approach may also help to counter any confusion engendered by the elision of individual and institutional forms of racism contained in the Macpherson's definition, and enunciate the points at which intervention is required at policy and service provision level.

Inadequacies abound within the current prison system for those with mental health problems and this is compounded for people from certain racial and ethnic backgrounds. Many fluid and interacting dynamics contribute to and reproduce entrenched racial inequalities and thoughtful application of the PSED can drive through a better comprehension of hidden but pernicious dynamics. Greater steps need to be taken to make the invisible visible; by looking beneath what Phillips (2012) has termed the "convivial surface" to find a "hidden presence" of underlying and heavily racialised tensions.

To help meet PSED requirements the process of exploring multiple levels of racism can assist with specifying the mechanisms and interacting processes through which ethnic inequalities are sustained in a cumulative fashion. Greater emphasis also needs to be placed on the significance of seeing individuals as multiply positioned, with each characteristic (race, gender, class, disability) being irreducible to a discrete category or experience.

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What is ROTA?

ROTA is an action research and social policy organisation focused on issues impacting on Black, Asian and minority ethnic (BAME) communities.

As a BAME-led organisation, all ROTA's work is based on the principle that those with direct experience of inequality should be central to solutions to address it. Our work is actively informed by the lived experiences of BAME communities and their organisations.

How do I join?

Membership is free and the online membership form only takes a few minutes to complete. Members automatically receive our services including invitations to events, policy briefings, our monthly policy e-bulletin and more. The membership form is available on the 'about us' section of our website at www.rota.org.uk. Alternatively you can sign up at today's discussion seminar by talking to a member of ROTA staff.

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