



Research Findings

Dangerous associations: Joint enterprise, gangs and racism

An analysis of the processes of criminalisation
of Black, Asian and minority ethnic individuals

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**CENTRE FOR CRIME
AND JUSTICE STUDIES**

About the authors

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Introduction

Following the publication of Baroness Young's review *Improving outcomes for young black and/or Muslim men in the Criminal Justice System* in 2014, the Centre for Crime and Justice Studies commissioned the authors to write a research and policy project to explore the relationship between Joint Enterprise, gangs, and the police's gang database, and ethnicity. This study also forms part of the authors' response to a call by the House of Commons Justice Committee for a rigorous consideration of the possible relationship between the disproportionate application of collective punishments/sanctions and in particular, the Joint Enterprise (JE) upon BAME individuals and groups.

The findings offer a critical analysis of contemporary responses to the 'gang', highlighting limitations in the evidence base that currently informs the pursuit of collective sanctions against alleged 'gang' members and their associates.

This report reveals the dangerous associations of a series of negative constructs, signifying racialised stereotypes that endure and underpin contemporary policing and prosecution strategies in relation to serious youth violence in England and Wales.

The net effect of criminal justice policies which are designed to 'disrupt' and 'end' the gang, is the disproportionate punishment of young people from minority ethnic (particularly black) groups while failing to adequately curtail levels of serious youth violence across England and Wales.

The research question

The key questions for the project were:

- *To what extent do 'gang' discourses influence the process of criminalisation of young Black men?*
 - What is the relationship between the 'gang' and those convicted of serious youth violence?
 - How is the 'gangs' discourse used in the process of prosecution within JE cases?

How we approached the research questions

The following report presents analysis from a range of official data sources, alongside a JE prisoners' survey and two JE case studies.

Data sources:

- *The ethnic profile of individuals registered on police gang lists in three locations:*

- Greater Manchester Police's Xcalibre Task Force
- London Metropolitan Police's Trident Gang Crime Command
- Nottingham's Vanguard Police Team

– *Comparative data on gangs and youth violence from:*

- Manchester's Ending Gangs and Youth Violence (EGYV) problem profile (comparing those on police gangs lists and those convicted of serious youth violence offences)
- Data provided by the London Mayor's Office for Policing and Crime (MOPAC) (comparing the profile of individuals recorded in gang accused cases with those recorded in serious youth violence accused events)

The research team invested significant resources developing networks in support of requests for official data on gangs and serious youth violence. This included correspondence and meetings with strategic and data personnel from organisations including MOPAC, the National Offender Management Service (NOMS), London Community Rehabilitation Company, London Serious Violence Group and Birmingham Reducing Gang Violence Panel. In the majority of cases such efforts were unsuccessful, whether due to lack of resources or the increased fragmentation of cohort data held by different parts of the system.

Prisoner survey and case studies

A survey captured the experiences of serving JE prisoners, exploring the relationship between their experience of collective punishments and the use of the 'gangs' discourse. In total 550 questionnaires were sent to prisoners in contact with Joint Enterprise Not Guilty by Association (JENGBA)¹ and 241 questionnaires were returned. This survey built on a previous study conducted by Cardiff University.²

The candid responses and in many cases the in-depth information captured within the questionnaires provided qualitative personal accounts of the prosecution process, and the relationship between the gangs discourse and JE convictions.

Further, two actual case studies of JE prosecutions from Birmingham were developed in order to provide a context to understanding the process of criminalisation. These are derived from a range of sources and have been included without commentary in order for readers to form their own impressions about the prosecution evidence and sentencing consequences.

‘Arguably, such findings challenge the assumed violent nature of gangs in England, which has hitherto dominated and provoked crime control responses to the gang’

Contemporary responses to gangs and youth violence

The creation of the Metropolitan Police’s Operation Trident in 1998, and the establishment of Manchester Action Against Guns and Gangs (MAAGGs) in 2001, signal the genesis for dedicated police and criminal justice teams (‘gun and gang’ units) tasked with managing coordinated responses to the gang. Importantly, such teams were initiated in response to a series of high profile fatalities attributed to the importation and growth in American style gangs. The ‘gang’ was characterised by weapon-enabled (gun and knife) criminal behaviour and the perpetration of serious violence offences. In the ensuing fifteen years, there has been an increase of CJ policies enacted to respond to the perceived growth in the number of gangs in England and Wales.³ Significant investment and CJ practice interventions have continued apace to support the ‘war on gangs’ which have consistently been referenced as being responsible for increased levels of interpersonal violence which pose a significant ‘risk of harm’ to members of the public, within specific areas of England and Wales.⁴ For our purposes, there is little robust evidence to inform the effectiveness of gang policy in England and Wales.⁵ Further, academic and political debate continues as to the precise definition and offending patterns of the gang.⁶ Despite this, there is an expansion of a ‘gang industry’ with recent policy and policing strategies designed to collectively respond to those identified as involved or associated with the gang.⁷

The Ending Gangs and Youth Violence (EGYV) policy

The English riots of summer 2011 led to a speedy review into the growing problem of gangs and gang violence being established by the then coalition government.⁸ This process culminated in the launch of the government’s EGYV policy, supported in its first year of implementation by significant investment, (HM Government).⁹

We will provide £10 million in Home Office funding in 2012/13 to support up to 30 local areas to improve the way mainstream services identify, assess and work with the young people most at risk of serious violence, with at least half of this funding going to the non-statutory sector.

In pursuance of the Home Office EGYV agenda, Local Authority areas that could demonstrate the existence of a ‘gang problem’ were funded and commissioned to undertake secondary data analysis to provide a ‘problem

profile’ of young people who had been convicted of a serious youth violence offence or who were identified as being at risk of or involved in gangs.¹⁰ It was envisaged that the profiles would identify the personal, social and crime causative factors that contributed to young people becoming involved with gangs or committing serious violence and in turn would inform the development and design of interventions (for which 50% of the funding was allocated) to reduce the likelihood of future criminal behaviour. The resultant analysis provided one of the first opportunities to gather and analyse data from a range of official sources, in order to compare those individuals who were flagged as involved in ‘gangs’ to the profile of those convicted of ‘serious youth violence’.¹¹

With reference to the problem profile exercise undertaken in Manchester, there emerged a number of distinct differences on pertinent dimensions, confirming a clear disconnect between the two groups targeted by the single EGYV policy. Primarily, differences emerged in relation to the age, gender and risk profiles of the two groups. The analysis had found that those identified as ‘gang’ involved were older, male and surprisingly, assessed as posing a lower risk of harm, with a reduced likelihood of reoffending. A significant proportion (21%) of people registered to the police ‘gang’ list had no risk assessment completed, indicating they had never been convicted of a criminal offence. A further 21% had no record of conviction within the previous three years. Similarly, the MOPAC *Gangs and Serious Youth Violence report* (2014) indicates that of the 3,495 gang nominals¹² in the London area, ‘only 6% of individuals are assessed as within the most harmful red category, half of whom are in custody,’ with ‘the majority (57%) currently assessed as within the lowest (green) status.’¹³ Arguably, such findings challenge the assumed violent nature of gangs in England, which has hitherto dominated and provoked crime control responses to the gang.¹⁴

Of more significance, there were profound differences in the geography and home address locations of individuals flagged as gang-involved and those perpetrating serious violence. The mapping of postcodes revealed a stark visual illustration of the different neighbourhoods in Manchester where the two groups resided. Importantly, and to be developed later in this report, although these areas shared socio-economic profiles (as measured by deprivation indices), the racial composition of the geographic locations was different. The communities with higher concentrations of BAME people were more likely to be the areas identified by the police and criminal justice partners as having a ‘gang problem’. Since its introduction, the centrally driven EGYV initiative has been beset with conceptual problems,

‘Despite the development of gang databases across criminal justice and welfare agencies there is no objective or reliable understanding of how many gangs or gang members exist in England and Wales’

which are further complicated by its attempt to target and respond to two divergent groups presenting with different characteristics and profiles.¹⁵ In acknowledging this tension, the strategic partnership in Greater Manchester noted:

Despite the need for a more systematic evidence base, partners are already coming to recognise that youth violence is linked to, but is not the same as, gang activity as currently identified by local agencies in GM [Greater Manchester]. Whilst serious youth violence and gang violence can be understood as problems with many shared characteristics, a large proportion if not the majority of individuals convicted of youth violence are not identified by local agencies as gang involved. (New Economy, 2013)¹⁶

That serious youth violence perpetrators are ‘not identified...as gang-involved’ reflects the processes and mechanisms through which the police select, register and regulate so-called gang-involved people. In the absence of specific ‘gang offences’, the police identification of individuals as gang-involved is contingent upon the reliability of ‘police intelligence’. That is, beyond self-disclosure, it is the police who determine who is a gang-nominal. Albeit that increasingly this process involves a range of multi agency partners such as Job Centres. Despite the development of gang databases across criminal justice and welfare agencies there is no objective or reliable understanding of how many gangs or gang members exist in England and Wales. As such, penal strategies designed to reduce levels of serious violence, which focus upon the ‘gang’, are likely to be misconceived and ineffective in addressing the levels of serious violence perpetrated throughout England and Wales.¹⁷

The (re)emergence of collective punishment

The incursion into the lives of young BAME people identified as gang-involved or at risk of gang involvement occasions an alarming disregard of the rights of the young people so classified. [T]he stigmatic effect of the gang label, the inflation of risk and the imposition of punitive court disposals (disproportionate sentences and incapacitation strategies) can have a profound impact in curtailing the life opportunities and chances for many young BAME people...[T]he attribution of the label gang has significant implications for those who are so defined, not least in the new EGYV strategy (HM Government 2011) that recommends the doubling of sentences for proven gang members, for instance.¹⁸

In light of the significant investment and the reported success of the EGYV strategy, the Home Office has recently sought to clarify and extend the definition of the gang further ‘to make it less prescriptive and more flexible’. This reconfiguration of the gang definition has been accompanied by legislative changes to widen the scope for the use of ‘gang injunctions’ and other penal powers including the use of collective punishment strategies.¹⁹ The most recent manifestation of the trend towards collective responses to the gang can be found in the piloting of *Operation Shield* within the London boroughs of Haringey, Westminster and Lambeth. The project will:


*[T]arget gangs as a whole (rather than individual members). This will **see every known member** of the gang penalised through a range of civil and criminal penalties when **one gang member** commits a violent crime, such as a stabbing. Any members of the gang who genuinely want to leave their violent lifestyle behind will also be helped to do so under the pilot scheme. (emphases added)²⁰*

There is further evidence of ‘Shield tactics’ being deployed beyond the pilot areas. The Metropolitan Police have posted letters to the homes of individuals on the basis of their perceived gang involvement, warning explicitly of the likelihood of collective punishments such as JE on the basis of ‘gang’ membership or association (see letter overleaf).

This extraordinary shift towards the collective punishment of a group based upon the behaviour of an individual marks a significant development in the State’s response to the perceived problem of the UK gang. Given the nature of such strategies, the aforementioned intelligence processes through which the police and wider CJ agencies identify and monitor those deemed to be ‘associated’ with the gang member requires urgent reflection. Yet our own previous research involving interviews with criminal justice and VCS practitioners confirms that of other findings, that the processes of identification and association lack transparency and accountability.²¹ The use of collective punishment as employed through the doctrine of JE has significantly advanced since 2004-2005.

The joint enterprise doctrine

Joint Enterprise (JE) is a doctrine of common law which has been developed by the courts in cases where more than one person is to be prosecuted for the same offence.

 **METROPOLITAN POLICE** Working together for a safer London

TERRITORIAL POLICING

To (name) [REDACTED] Borough Name
Address

Address [REDACTED] Date:

Dear

The Metropolitan Police Service and all of its partners are committed to reducing knife and gang crime.

Information indicates that you have or are associated to a gang that is linked to crime.

If you are involved in crime and do not stop, you may be targeted by police and partner agencies.See attached page for examples of partner agencies**

Under a piece of legislation called "Joint Enterprise," you may be convicted of a crime and sent to prison;

- for just being present when a serious crime is committed,
- or being with those persons who commit a crime and you don't try to stop it

Methods (known as tactics*) we may use to target individuals involved with crime, guns or knives or linked to others involved with these are listed at the end of this letter.

Should you not wish to be on the receiving end of these tactics you will need to change your lifestyle.

We can help you to do this.

You can speak (in confidence) to a police officer and / or contact any of the organisations listed at the end of this letter.

If you would like to speak to a Tower Hamlets Police Officer in confidence, please telephone 0207 275 4526, or you may prefer to contact one of the agencies listed on the attached page.

An officer may call on you personally to discuss, I would encourage you to speak to them as they can help you break any gang links.

Police will arrest and prosecute those who continue to commit offences and whose activities have a negative impact upon the quality of life of the community.

Yours sincerely,

Borough Commander

It has emerged as a prosecution tool for the collective punishment of groups where it can be proved that the suspects were ‘in it together’. Controversially, it applies even where the suspects may have played different roles and in many cases, where a suspect was not in the proximity of the offence committed. Intrinsic to the application of the doctrine is the principle of ‘common purpose’ where it is alleged individuals have conspired to commit a crime together. Moreover, where such a ‘common purpose’ is shown to exist in committing one crime, all the participants may be held liable for other crimes committed by one member of the group, even though they may not have participated in or intended that the further crime should have been committed. Instead, JE has been contingent upon police and prosecution teams demonstrating possible ‘foresight’, that is, establishing some association between those involved to demonstrate a shared ‘belief and contemplation’ that the principal ‘offender’ might commit the offence.²²

Recent analysis by the Bureau of Investigative Journalism (BIJ) suggest that at ‘least 1800 and up to 4590’ people have been prosecuted for JE homicide over the period 2005/2006 and 2012/2013.²³ Since 2005, there has been a marked increase in the use of JE reaching a peak in 2008 when approximately 20 per cent of all homicides involving four or more defendants were prosecuted as JE. Critically, this increase in JE has been accompanied by emerging evidence of the disproportionate application of JE to particular groups and individuals.²⁴ For example, the BIJ suggest that ‘people are being drawn into homicide prosecutions without enough evidence to convict’. This is particularly so in cases where there are a greater number of defendants charged with homicide, where it is argued the CPS are more likely to ‘offer no evidence’ in respect of at least some of the defendants.²⁵

The application of joint enterprise

I didn't even know what Joint Enterprise was, when my QC was trying to explain it to me... all I was saying to him [was] 'look, the pathologist said I haven't touched this guy, the friends have said I haven't touched this guy, so therefore I'm not guilty'. That's how I thought it was anyway. But I was wrong, I was wrong.²⁶

This quote appeared in a written submission to the Justice Committee by academics from the University of Cambridge. Their findings derive from a survey of 294 young people serving lengthy sentences, where over half of respondents were convicted under JE. The study offers

comparative analysis between prisoners who were convicted using the doctrine of JE against those who were not. What the research found was a number of differences suggesting that ‘those convicted under the doctrine are serving longer tariffs, are more likely to consider themselves to be not guilty of the offence’ and at the time of the submission, were more likely to be in the process of appeal.²⁷ In addition, JE prisoners were more likely to feel that their convictions and sentences lacked legitimacy. Such sentiments arise due to the absence of ‘procedural fairness’ and a series of ambiguities related to the ‘moral legitimacy’ of the doctrine as illustrated below. Moreover, the Cambridge submission found that the proportion of Black/Black British people serving custodial sentences for JE offences is 11 times greater than the proportion of the general population who are Black/Black British (37.2% compared to 3.3%).²⁸

The following two case studies (overleaf) reveal the multiple and complex mechanisms used in the application of the joint enterprise doctrine in response Black and minority ethnic men. These case studies were compiled from official legal sources. The first is taken from a Judgment in the Court of Appeal, criminal division, R vs. Smith and others, as well as Mr Justice Mitting’s Summing Up of the original trial, provided by JENGBA. The second case study is taken from a Judgment in the Court of Appeal, criminal division, Lewis and others vs. R; Laing and another vs. R.

It is with reference to these two case studies that we now seek to understand the process through which the ‘gang’ is used as a tool in support of collective punishments such as JE, and further explain the complex relationship between the ‘gang’, youth violence and JE punishments.

Case Study 1

Michael Christie and the murder of Ishfaq Ahmed

In December 2005, six black men, including Michael Christie, were convicted of the murder of Birmingham doorman Ishfaq Ahmed and the attempted murder of three of his colleagues under the common law doctrine of joint enterprise. 24 year-old Ahmed was shot and killed in an alleyway on 20 November 2004, as he tried to stop a group of 11 men forcing their way via a side door into the nightclub where he worked.

The prosecution case against Christie and his co-defendants was that they were in the group of 11 men, who together formed an armed gang acting with the joint purpose of forcing their way into nightclubs. Although neither handgun involved in the killing of Ahmed was ever recovered, and in the words of the judge, there was 'no sure proof' of the identity of the killer, the prosecution further argued that each member of the group must have known guns were being carried and would be used with lethal intent if necessary.

To firm up their case that the group of men formed an armed gang, the prosecution intended to call evidence that the defendants were members of the 'Johnson Crew', an alleged Birmingham gang. The only direct link between any of the six men and the Johnson Crew was a tattoo, 'JC' on one of their chests, admitted by that person to have represented the initials of the gang when he got it two years before. The judge said of the gang link in his summing-up:

There is no evidence in the case of all other defendants that they belong to the Johnson Crew, and none in any event that this incident resulted from Johnson Crew activity. In their case the Johnson Crew issue is simply irrelevant and should be put to one side.

Evidence of some connections between some of the defendants mainly revolved around mobile phone contact between them in the months leading up to and on the night of the incident, as well as some having each other's numbers in their phones. These connections were not denied by the defendants. Connections could only be shown to exist between three of the men, and between Christie and a defendant admitted to be his friend. There was no evidence presented to demonstrate that one particular defendant knew any of the other five.

Cell-site evidence and CCTV footage pieced together the movements of a group of around eleven men alleged to include the defendants, and a 'convoy' of cars belonging to three of the defendants, as they went around the centre of Birmingham and to different nightclubs in the early hours of the Saturday morning when the shooting took place. Telephone records of a mobile associated with Christie linked him to the journeys made by the cars.

Facial mapping experts were brought in to see if reference images of the defendants could be matched to the CCTV images. Neither of the expert witnesses could prove that Christie was in the footage, nor that the only other defendant he had links to was in any of the scenes. In any case, the experts described the CCTV footage as of poor quality. Neither Christie nor his friend were identified by eye witnesses as being present at the scene of the shooting.

Identification/recognition evidence of Christie in the CCTV images came from a police officer responsible for supervising him after his release from prison after serving half of a 14 year sentence for attempted murder. The prosecution adduced Christie's previous conviction as 'bad character evidence'.

According to the appeal judgment, the strength of the case hinged on the prosecution argument that the confrontational behaviour of the group meant that no-one in it could have been unaware that guns were carried and would be used with lethal intent if necessary.

Christie, along with the other five men, was convicted of one count of murder and three of attempted murder as a secondary party and sentenced to a minimum of 30 years in prison.²⁹

Case Study 2

Jermaine Lewis and the Birmingham riots

Jermaine Lewis was one of a group of young black men convicted of riot, possession of a firearm with intent to endanger life, and arson being reckless as to whether life was endangered, for an incident in Birmingham which occurred during the August 2011 disturbances in cities across the UK.

On the evening of Tuesday 9 August, a group of 42 mostly black men congregated outside The Barton Arms pub in the Aston area of Birmingham. Some of the men began throwing furniture from the pub into the A34 road and set the ground floor alight with petrol bombs. Four different firearms discharged at least 12 rounds in the direction of police arriving at the scene and at the police helicopter capturing events on CCTV from above.

Lewis could not be identified on any of the CCTV footage as being at the scene. One of his co-defendants, whom he had met on holiday and who had travelled up to Birmingham, could be identified, but was not seen to engage in any acts of violence. Lewis maintains that he drove his friend and his cousin, who was identified as one of the gunmen, to the scene and then drove off.

The prosecution used cell-site evidence to allege that phones linked to Lewis, his friend and his cousin were in the same general area at around the same times on the evening of 9 August. They then inferred that a break in regular telephone contact between the three phones during this period meant the men were together throughout the evening.

The prosecution brought the defendants' previous convictions and various media reports supposedly demonstrating gang

affiliation to the trial. This so-called 'bad character evidence' was intended to show that the defendants had a propensity to be involved in violence involving guns, knew guns were being carried by some members of the group and would be used with intent to kill if necessary, and had negative attitudes towards the police. This enabled members of the group who did not personally commit acts of violence to be convicted of the offences anyway.

Evidence of gang affiliation mainly revolved around rap videos posted online and pictures downloaded to the defendants' phones. These were interpreted by expert witnesses who were in fact police officers. They gave accounts of elaborate networks of, 'affiliated gangs with their own identities who were aligned with the Johnson Crew. It was not alleged that any of the defendants were actually members of the Johnson Crew. The officers claimed to be able to discern (from police intelligence) gangs called 'Shot and Neel', 'Goon Squad Army', 'Raiders', and 'Money over Bitches 19'. They also claimed that some of these gangs affiliated to the Johnson Crew formed a coalition called the 'Mob Squad'.

One of the defendants appeared in rap videos associated with 'Shot and Neel' or 'SAN', a group made up of mainly Asian young men. In August 2011 'SAN' had not been identified as being a group involved in any specific law-breaking. One of the expert witness police officers claimed that instead, it was made up of 'wannabes', or young men who aspired to be members of the notorious Johnson Crew.

Evidence was adduced linking some of the defendants with the 'Raiders'. A music video featuring alleged members of the Raiders

appearing alongside alleged members of the Johnson Crew was presented as evidence of an association between the two gangs.

Members of these affiliated groups were said by the police officers to have a hallmark hand gesture known as 'throwing the sixes'. This hand signal is given in some of the rap videos by some of the defendants. Lyrics referencing 'gang behaviour' were cited by the prosecution. Tattoos with the initials of some of the gang names were used as evidence against some of the defendants.

Lewis appeared in a video called 'Gangbusters R Us' together with his cousin who was identified as one of the gunmen in the trial. The judgement from Lewis' failed appeal states, 'although his role was less prominent, Lewis did spend much of the video in close proximity to [his cousin]'. One lyric refers to a '0.44' and 'Phantom' (Lewis' nickname, or as the prosecution referred to it, his 'street-name'). When this lyric comes up in the video, Lewis mimics a shooting action. On Lewis' phone, a downloaded picture of the emblem of the 'Raiders' along with the word 'menace' was found. Downloaded pictures of guns were also on his phone, as well as one of a hooded man pointing a handgun.

In Lewis' appeal it states, '[he] had no significant criminal history but... he was an active member of the 'Raiders' gang which had used firearms in the past. The video material and that from his phone demonstrated his attitudes to guns and the police. It was pointed out, on his behalf, that he did not have any gun or use any gun.'

Lewis received a sentence of 23 years in prison.

Research findings

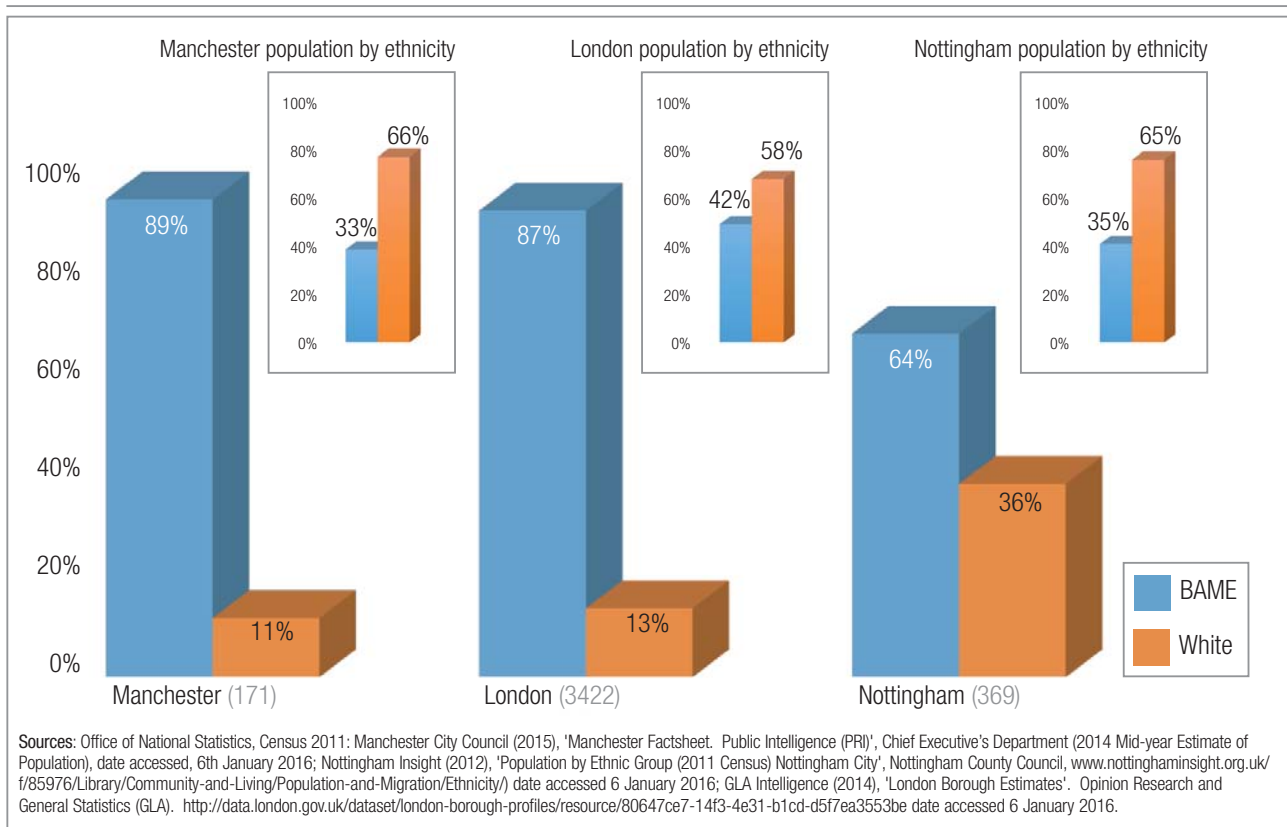
The ethnic profile of the gang: data analysis in Manchester, London and Nottingham

Chart 1 illustrates the ethnic profile of those registered to the police gangs lists within three geographic locations. The Manchester data gathered from the Xcalibre Task Force as part of the Manchester EGYV problem profile developed in 2012/2013 is presented alongside the analysis by Bridges (2015) drawn from a FOI request examining the ethnic composition of the Metropolitan Police's Trident 'Gang Matrix'. This found that, similar to Manchester, the vast majority (87%) of nominals on the Metropolitan Police's 'gang matrix' were Black, Asian or minority ethnic.³⁰ Furthermore, data from Nottingham reflects that the police's Vanguard team also identify 64% of Urban Street Gang members (USGs) as being from a minority ethnic background, against 36% who were categorised as 'white'.³¹

It is clear that the gang label is disproportionately attributed to BAME people, when compared to both the size of the BAME populations within each of the cities

presented and the numbers of white British people flagged or registered as involved with gangs. From Manchester, through to Nottingham and London, the gang construct is racialised to Black and Brown men. Placing this data in context, narratives regarding the creation of police team's such as Xcalibre, Trident and Stealth reveal how the response to 'gangs' was racialised from their inception. The Metropolitan police's Trident unit, like Xcalibre in Manchester, was conceived as being a response to 'black on black crime' within BAME communities. They were established on the basis that the police perceived that they were unable to engage with 'communities' in their response to violent crime.³² Yet, the gang databases created by such police units have a policy and operational significance that develops over time, potentially failing to respond to the changing nature of the defined problem. This is revealed in Manchester, where the significant reduction in the levels of 'gang related' firearms discharges and fatalities (between 2004/2005 and 2012/2013) has not been accompanied by a reduction in the resourcing of gang units. Paradoxically, the reduction in 'gang-related' firearms discharges and fatalities has

Chart 1: Gang membership by ethnicity



been accompanied by an increase in the number of (police) reported gangs.³³

Comparative analysis of gang and serious youth violence cohorts

If these police 'gang' lists increasingly fail to map onto serious youth violence incidents in the same location, we cannot assume that their construction is an objective response to violence occurring within particular communities. As established earlier, the value of the initial problem profile in Manchester is the revelation that the 'gang' and youth violence cohorts were distinct. The analysis illustrated a stark disconnect between the two groups, and pointed to the significance of 'race' and ethnicity in explaining this disconnect. It has not been possible to conduct a similar matching of individualised data of persons registered on the

Metropolitan Police's 'Gang Matrix'. Aggregate data obtained from MOPAC provides a comparison of the pan-London ethnic profiles of individuals accused of involvement in those flagged as gang related offences, with those accused of involvement in serious youth violence over a given period (not specified in the data returned). The information for Manchester and London are presented in the charts below, reflecting that whilst each police area develops different recording practices and timescales, the data displays consistent features in respect of ethnicity.

Therefore, within Manchester and London as illustrated through charts 2 and 3 below, it is BAME people who are overwhelmingly identified and registered to 'gangs' lists, although they make up a much smaller proportions of those perpetuating youth violence.

There is a danger that the representation of 'race' and ethnicity to BAME may conceal the attribution of the

Chart 2: Gang and serious youth violence cohorts by ethnicity for the Manchester area – BAME and 'white' groupings

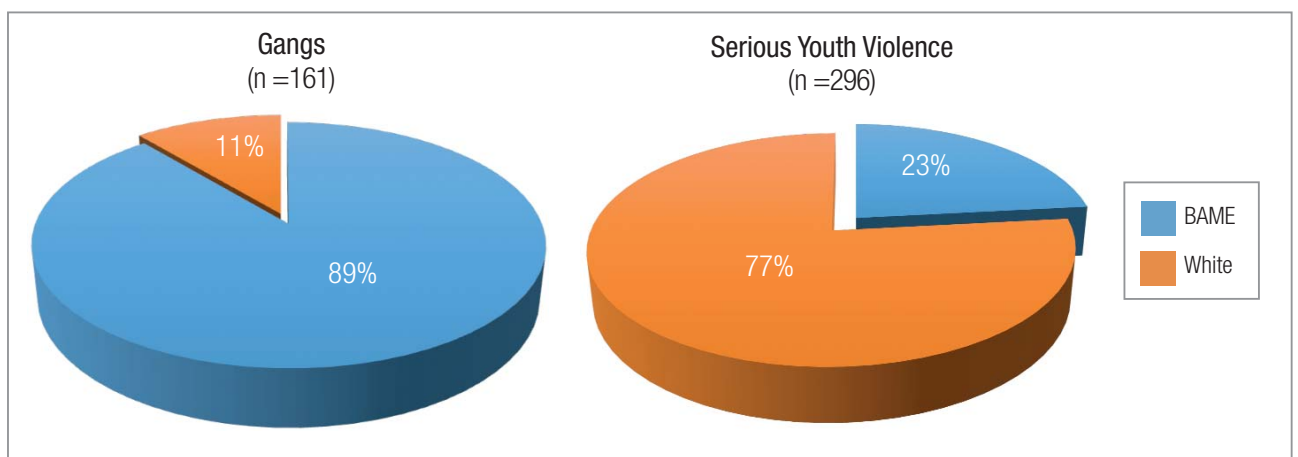
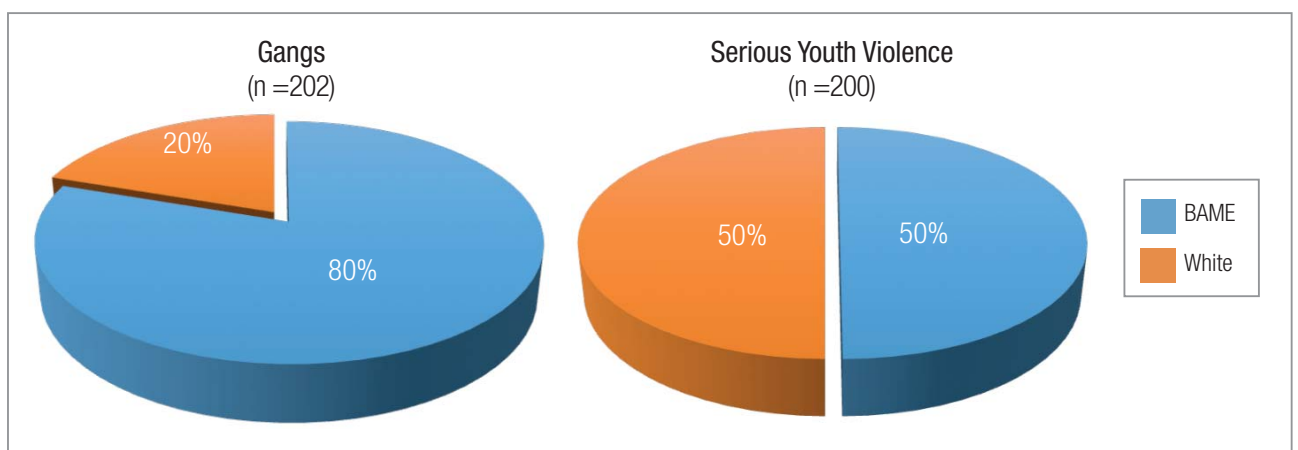


Chart 3: Gang and serious youth violence cohorts by ethnicity for the London area – BAME and 'white' groupings



‘These findings provide an opportunity through which we can begin to consider the problematic nature of the ‘gang’ and its use as a resource to criminalise racialised groups’

‘gang’ label to specific BAME groups. Further analysis below reveals that the ‘gang’ label is particularised to the ‘Black’ group - those categorised as belonging to the ‘Black British’, ‘Black Caribbean’, ‘Black African’ and/or ‘Black Mixed’ groups.

Charts 4 to 5 demonstrate that where the ‘Black only’ group is compared to ‘non-Black’ groups (including ‘White’ individuals and those classified in the police data as being from other minority ethnic groups) we can conclude that the gang label is particularly attributed to Black men, whilst a significantly reduced proportion of Black individuals are located within the serious youth violence cohorts. These findings, focusing as they do on young ‘Black British’, ‘Black Caribbean’, ‘Black African’ and ‘Black Mixed’ men, provide an opportunity through which we can begin to consider the problematic nature of the ‘gang’ and its use as a resource to criminalise racialised groups.

Gangs discourse: its relationship to the collective punishments of joint enterprise

The third and final section of this study focuses on the relationship between the discourse of the gang and its use in collective punishment in JE cases. Here data derived from the JENGBA prisoners’ survey will be analysed. We will explore how far there is further evidence of ethnic disproportionality in the impact of JE sentencing as shown by the survey responses of prisoners themselves.

Figure 1 (on the next page) confirms the broad geographical origins of the survey respondents, suggesting that the practices of JE prosecution they had experienced were widespread.

Over half of all respondents (53.1%) self-disclosed as belonging to a BAME group and 45.6% self-disclosed as ‘white British’. Placing this sample in context, the majority

Chart 4: Gang and serious youth violence cohorts by ethnicity for the Manchester area – ‘Black’ only and ‘All non-black’ groupings

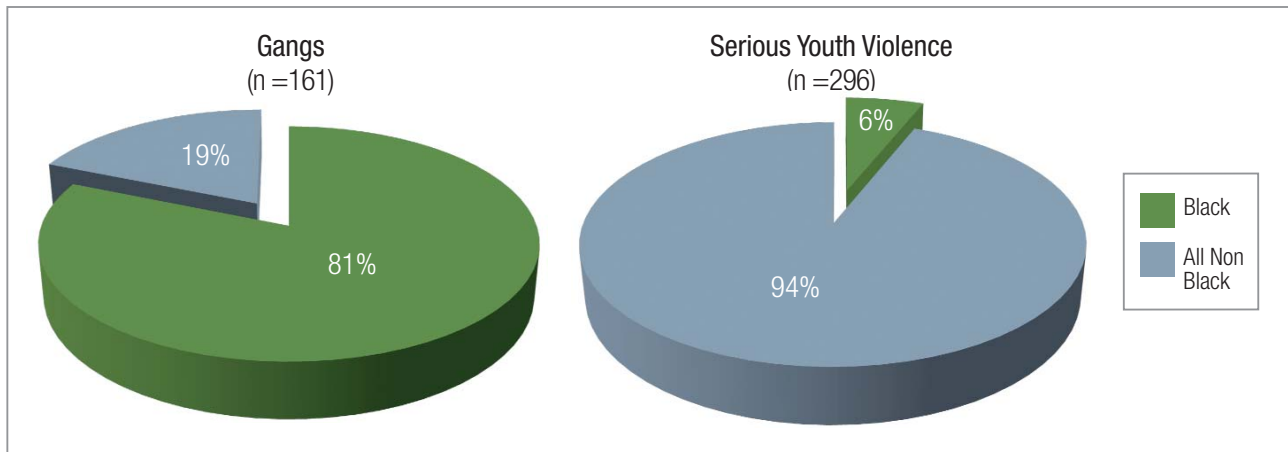


Chart 5: Gang and serious youth violence cohorts by ethnicity for the London area – ‘Black’ only and ‘All non-black’ Groupings

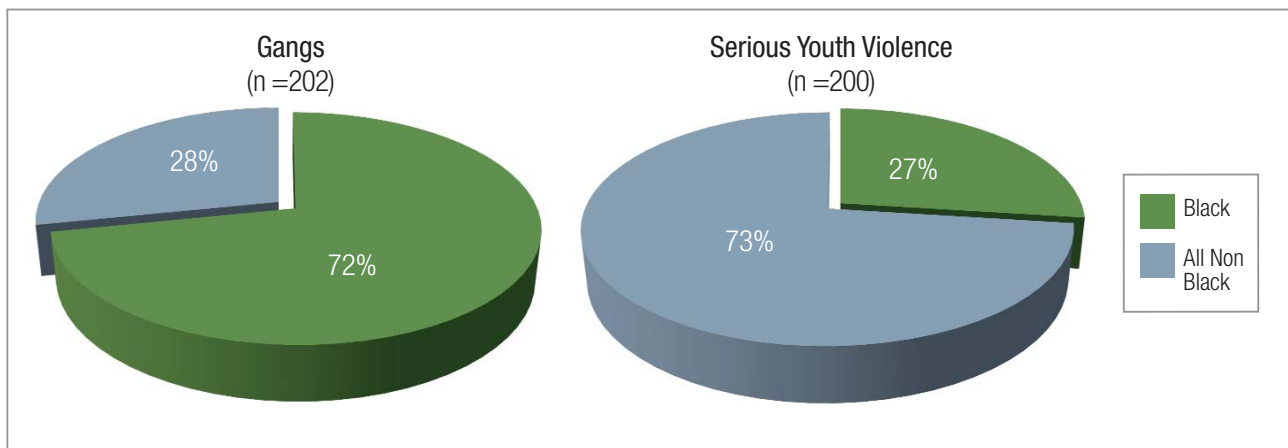


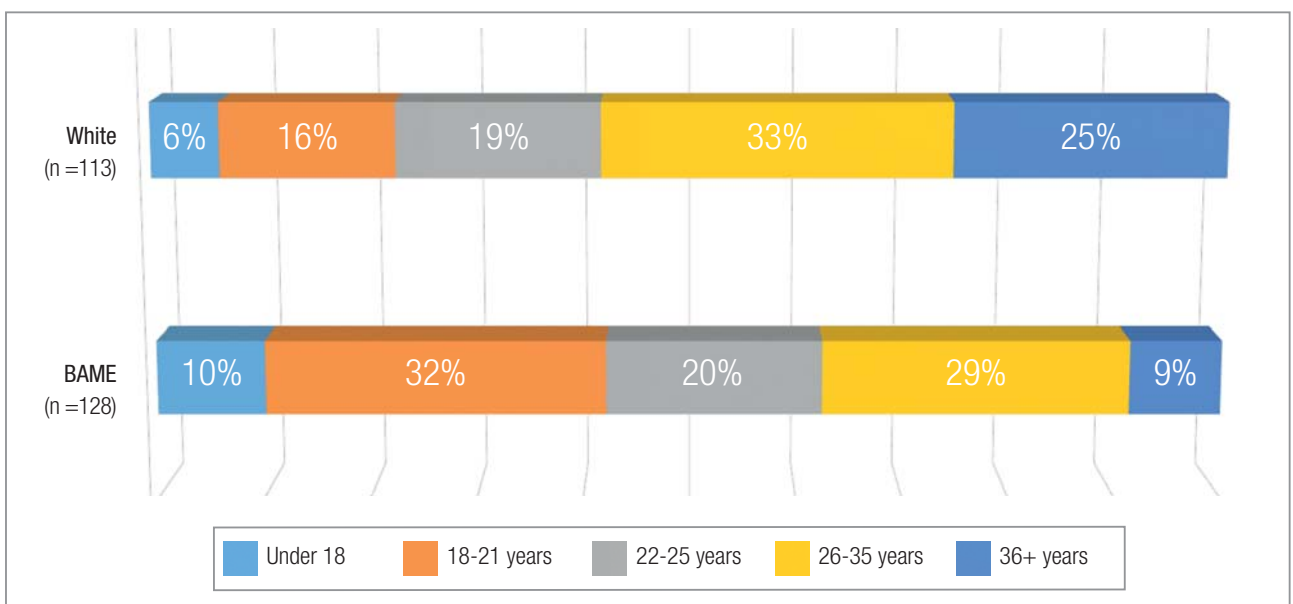
Figure 1: Number of JE questionnaire responses by Police area

Police area	Number	Police area	Number	Police area	Number
Missing	10	Hertfordshire	4	Reading	2
Avon and Somerset	1	Humberside	5	Shropshire	1
Bedfordshire	1	Kent	4	South Wales	1
British Transport Police	1	Lancashire	5	South Yorkshire	10
Cambridgeshire	1	Leicester	2	Staffordshire	2
Cheshire	7	Merseyside	13	Suffolk	1
Cleveland/Teesside	5	Metropolitan Police	70	Surrey	2
Derbyshire	5	Norfolk	4	Thames Valley	4
Devon and Cornwall	2	North Wales	2	Warwickshire	2
Dorset	2	Northamptonshire	1	West Mercia	4
Dover	1	PSNI	2	West Midlands	17
Durham	1	Northumbria	3	West Sussex	1
East Yorkshire	1	Nottingham	5	West Yorkshire	16
Greater Manchester	14	Plaislow	1	Wiltshire	2
Hampshire	3				

of the prison population of England and Wales self-disclose as white British (74%) with 18% of the prison population identified as belonging to a BAME group. The survey population having been drawn from individuals

engaged with JENGbA implies that respondents are people impacted by JE and motivated to communicate about its implications. Even if it is accepted that the population associated with JENGbA is motivated to question their

Chart 6: Age profile of JE prisoners



It is noteworthy that 53 young people were serving sentences greater than 20 years in length, including ten young adult prisoners serving JE sentences of over 30 years

sentence, it would be remarkable if there was such an ethnic disproportion in this motivation: why should white British prisoners be any less concerned? It is more likely that the profile of survey respondents therefore demonstrates the disparity in the use of JE against BAME people. Our findings replicate a study undertaken by the Institute of Criminology at the University of Cambridge which found that of young people serving lengthy prison sentences, for those convicted under JE, 38.5% were white as compared with 57.4% who were BAME (37.7% Black/Black British, 4.7% Asian and 15.5% mixed race).³⁴

Chart 6 reflects that those JE prisoners who identify as Black, Asian or minority ethnic are significantly younger than their white counterparts.

All but ten individuals (4%) are serving JE sentences for murder, with this very small remainder imprisoned for GBH (Section 18) and other violent offences. The criminal histories of the prisoners are extremely varied. Nearly one quarter (23%) of the prisoners report having no previous convictions.

Three-quarters of the sample are serving prison sentences greater than 15 years, with all sentences in this survey ranging between 3 and 37 years.³⁵ It has been argued elsewhere that there has been an increase in sentence lengths for serious offences due to both legislative changes on minimum sentences and the

emergence of JE in the prosecution of murder offences.³⁶ We found that the BAME group were serving longer sentences on average (22.3 years) when compared to the white group (19.6 years).

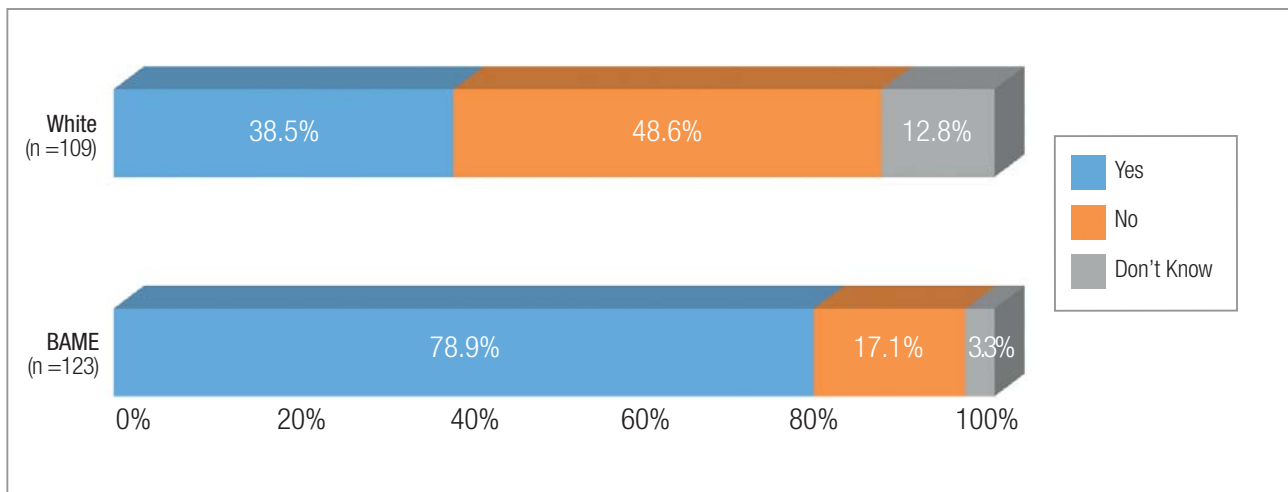
Almost half of respondents (48%) were under 25 years of age. This younger group were on average serving sentences of 20 years. It is noteworthy that 53 young people were serving sentences greater than 20 years in length, including ten young adult prisoners serving JE sentences of over 30 years. For those prisoners aged 17 years of age and under (n=21) the average prison sentence was 14 years, with one individual serving a sentence of 26 years in length. Given the contested nature of JE, these severe punishments for young people must be cause for alarm.

An oft-cited merit of JE is its capacity to secure multiple convictions of individuals for the same offence, despite their level of involvement or their role. Within our sample, the average number of co-defendants prosecuted for each case was four, rising to a maximum of 26 individuals. We can therefore calculate that upwards of 600 individuals are implicated in the JE offences for the prisoners within our sample.³⁷ It is notable that BAME prisoners had on average 4.11 co-defendants compared to a figure of 3.19 for white British prisoners.

The cumulative effects of JE prosecutions, and the consequent criminalisation and detention of so many prisoners, stretches far beyond the individual. Whole families and communities suffer when an individual is imprisoned for such extended periods, especially when in many cases there remain questions regarding the legitimacy of the conviction. The extensive literature on the

We found that the BAME group were serving longer sentences on average

Chart 7: JE prisoners reporting the gang being invoked at trial by ethnicity



Within our sample, the average number of co-defendants prosecuted for each case was four, rising to a maximum of 26 individuals

'pains of imprisonment' attest to the debilitating financial and emotional effects of imprisonment upon both family members and the incarcerated individual.³⁸ Our sample of prisoners further reveals the significant number of loved ones also 'serving time' with most prisoners reporting having dependents, either children (38%) or adult (38%).

The 'gang' as a prosecution resource in joint enterprise cases

Hitherto we have sought to establish the problematic nature of the construct of the 'gang', and found further evidence to support the emerging concern of a racialised application of JE. It is claimed that there has emerged a powerful discourse that stereotypically associates young BAME people with violent criminal and problematic behaviours.³⁹ According to the Young Review, it is such attitudes that contribute to the perennial over-representation of BAME people throughout the criminal justice system of England and Wales. Moreover, as suggested by Dr Ben Crewe of the Institute of Criminology at the University of Cambridge in evidence to the Justice Select Committee:

... there were probably two main reasons for the disproportionate impact of joint enterprise on young Black men, the first being that "BME men may be over-represented in the kinds of communities where young men typically hang around in groups that are labelled by outsiders as gangs" and the second that "an association may exist unconsciously in the minds of the police, prosecutors and juries between being a young ethnic minority male and being in a gang, and therefore being involved in forms of urban violence"

A key concern then for the remainder of this report is the extent to which the 'gang' discourse and application of JE are associated phenomena. Specifically how is the concept of the 'gang' deployed in the context of policing? And does prosecution result in the disproportionate application of JE to young Black men?

To this end, JE prisoners were asked to reflect upon whether the term 'gang' was raised during their court cases. In response, 59% of the sample indicated that the 'gang' was cited, while 31% said the term was not used in their case. A further 7.5% of prisoners 'did not know' were 'unsure' or 'could not remember' if 'gang' terminology was used. Of significance, only five prisoners within the sample disclosed as being a gang-member. With this in mind, the following evidences the significant relationship between

Whole families and communities suffer when an individual is imprisoned for such extended periods, especially when in many cases there remain questions regarding the legitimacy of the conviction

the use of a 'gangs' discourse in court for the prosecution of JE cases for Black, Asian and minority ethnic individuals.

Thus in JE cases where gangs were introduced within the court arena, 69% involved BAME prisoners and 30% white British prisoners.

Indeed, over three quarters of the whole BAME group (78.9%) reported that 'gangs' were introduced within the court arena. Comparatively, 38.5% of the 'White' group acknowledged the use of the 'gang' within the court arena. This finding provides new evidence to the hitherto anecdotal belief that the "gang" is statistically more likely to be employed in JE cases involving young BAME men.⁴⁰

For the overwhelming majority (97%) of those reporting that 'gangs' were introduced at their trial the gang label was contested and dismissed as untrue, a 'made up' feature of the prosecution's argument. These quotes begin to illustrate the contested nature of the 'gang' discourse.

'I have never been in a gang. I was a family man who had a good job.'

'No, I have never been in a gang and I have no previous convictions of being in a gang and there is no proof that I am in a gang. It's all made up.'

'Do not agree. I was the only female, I was a mother studying to be a midwife. My partner was an electrician, we had a life, we did not "hang around" with anyone.'

'I was not a gang member. The offence was not pre-planned, it was spontaneous. I know both of the intended victims and I had and do not have any conflict with them.'

In some instances, respondents acknowledged historic involvement or understood the application of the term 'gang member', but deny its relevance to themselves. Most challenged the prosecution statements of a relationship between 'gangs' and the offence committed. This was evident through attempts to clarify the nature

'I was the only female, I was a mother studying to be a midwife. My partner was an electrician, we had a life, we did not "hang around" with anyone'

and context of their association with their co-defendants. For example, some prisoners disclose childhood, friendship or familial relationships but categorically state that these were not gangs.

'I don't agree with the prosecution constantly using the word gang because we were not a gang. One was a friend and the other my customer.'

'I disagree with this description. This is because only [two] people out of the group of nine I was in were gang members. I have never classed myself as a gang member.'

'I went to prison at 18 and got out at 23 for robbery and during that time I realised the so-called gang wasn't what I thought it to be. You find out who's your real friends when you go jail. So when I got out I was no longer involved.'

'We are a group of young lads who smoke weed and fuck around, and we get labelled a gang!'

'We were just friends, normal working teenagers.'
'The prosecution and the judge said me and my [co-defendant] (principle) offend together.'

'I was brought up with the same group of people through school to holidays with family, we were very close and always together so the prosecution found it easy to call us gang members.'

'One of my [co-defendants] was an active 'gang member' but I was not. I was a friend of a gang member so I was also judged to be a gang member.'
'There was no gang, it was just two people from the same area.'

'I don't agree as we're just neighbours! I have a little bond with the brothers as they helped me out in school from bullies, etc., and one was going out with my cousin for a short period.'

'My 3 [co-defendants] I grew up with and that is what the prosecution described as a gang. We were friends.'

'To me a gang is a group of mates but the prosecutor made it sound as if we are a gang walking around with weapons protecting the area.'

In the Christie case study, there was one defendant for whom no evidence had been presented that he knew the other five co-defendants with whom he received a minimum sentence of 30 years, on the basis of this approach to establishing possible foresight. Similarly, we found that a number of prisoners responding to the questionnaire did not personally know some or all of their co-defendants or other secondary parties, with whom they were alleged to have committed the offence.

'They said we were a drugs gang but I only knew one of my [co-defendants].'

'I didn't even know the alleged shooter before my arrest. No link to him whatsoever.'

'We knew each other from school and two of my [co-defendants] I'd never met.'

The multiple accounts captured represent different individual JE cases, yet the similarity in the experience and the language used to describe the reality reflects a striking commonality. These accounts begin to reveal how the ethnically imbalanced discourse of the gang emerges in JE cases, yet is a discourse that remains contested by individual prisoners.

Use of the 'gang' discourse in court

In light of the clear limitations and the imprecise nature of both academic and policy definitions of the 'gang' established in the first half of this report, the problematic application of the 'gang' discourse as a prosecution strategy is reliant upon a 'common-sense', racialised and stereotypical discourse that links BAME men with an involvement with gangs, drugs and violence. This strategy is illustrated clearly by the Christie case study, where such claims to the affiliation of a local 'gang' are dismissed by the Judge in his summing up of the case. Yet by this stage the inference is made and the signifiers have arguably taken effect. The repeated use of such narratives was revealed in the questionnaire responses from the JE prisoners.

Populist signifiers included the use of synonymous 'gang' names:

'They said we was Gooch, but I ain't no Gooch member and I wasn't even there.'

'Apparently we were all Gooch'

‘Just because we are from the same area and are of a certain colour does not make us a gang’

‘Burger Bar Boys’

‘Kray Twins’

Frequently, language is used to elicit images of street-based or violent collectives such as ‘crew’, ‘hoodlums’, ‘click’, ‘soldiers’, ‘troops’ or ‘posse’:

‘A group of young hoodlums’

‘Telling the Jury I sent out my soldiers for revenge’

In some cases, there was reference to a particular racialised neighbourhood, or more broad references to geography such as ‘turf’ or ‘territory’ often associated with drug dealing, again conjuring the popular discourse of ‘gangs’:

‘Just because we are from the same area and are of a certain colour does not make us a gang’

‘St Anns where we are from has this reputation. The term ‘St Anns’ was used to group us together’

The ultimate signifier used in six different cases to group the accused was to dehumanise:

‘Animals baying for blood’

‘A pack of wolves’

‘A pack of animals’

What emerges then are a number of linguistic cues and signifiers, which serve to link the accused to the construct of the ‘gang’ and thus neatly demonstrates common purpose. For example, in the Lewis case study the police were called as experts and provided an account of elaborate networks of ‘gangs’ and rather than being used to clearly establish the membership of the defendant, this narrative served as a ‘backstory’ to the event. In addition, a number of (criminal) behaviours were routinely inferred to prosecute JE cases. For example, the above reference to ‘drug dealing’ and ‘turf wars’ presents a powerful signifier precisely related to the stereotypical construct of the Black gang.

The successful prosecution of JE cases necessitates a demonstration of possible ‘foresight’ - that other (secondary) parties could have predicted the committal of the eventual offence. As in the Christie case study where there was ‘no sure proof’ of the identity of the killer, the

prosecution argues that each defendant ‘must have known’ what was going to happen. Establishing foresight therefore requires prosecution teams to present evidence of a connection, relationship or association between co-defendants as a driver to their group offending. Crucially then, there is a need to further unpick the strategies used to make associations which link the principal and secondary parties in order to secure JE convictions. Within the questionnaires we found a series of repeatedly reported mechanisms, adopted to demonstrate relationships between individuals (principles and secondary parties) and in this way ‘place’ (be it virtual or physical) the individual at the scene. The questionnaires reveal how different strategies are adopted for different groups.

Making association(s) – establishing possible ‘foresight’

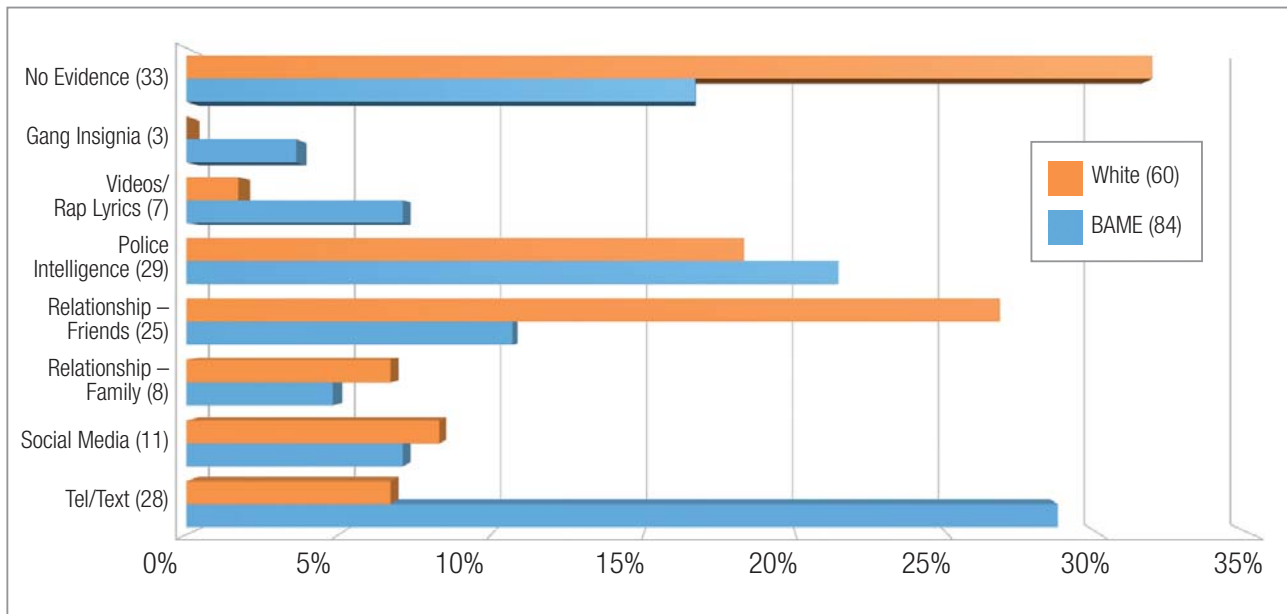
Chart 8 reflects the 144 JE cases where respondents confirmed that the gang was invoked at trial, examining the relationship between ethnicity and the type of evidence used at trial. This information reveals personal accounts regarding the evidence provided by the prosecution, in some cases drawing on expert witnesses including police officers, face mapping and cell-site analysts. These strategies are also all evident in the two case studies presented of Michael Christie and Jermaine Lewis. This evidence, used to create an association, is a key step in connecting the individual to the event and establishing possible ‘foresight’.

This report is particularly concerned with the disproportionate impact of JE upon BAME groups, importantly then the processes and strategies through which association or common purpose is established show differences between the BAME and white group. White prisoners were almost twice as likely to express that whilst the gang had been invoked at the trial there was ‘no evidence’ brought by the prosecution to demonstrate association (32% vs. 17%).

A number of sources which we classify here as ‘police intelligence’ such as CCTV, Stop and Search information, and telephone and text messages ‘cell site’ data, was used to track the movements of individuals and construct their associations or proximity to the event or individuals at the event. Such methods were reported as having been used in half of cases involving BAME prisoners, compared to their use in just one quarter of white cases. As illustrated in the case studies the cell site evidence is used to both establish connection and piece together the movements of the defendants. In the Lewis case, even when there is an absence of cell site data this was still used to infer the movements of the group.

'A range of assumed negative sub-cultural traits are called upon by the prosecution ... so even where there is no significant evidence of criminal history the inference of a criminal character is drawn.'

Chart 8: Evidence used to establish 'foresight' by ethnicity (percentage responses)⁴¹



Further, prosecution teams were reported as being more likely to appropriate discourses of 'gang insignia' (tattoos, colours and gang names) and music videos or lyrics, particularly 'hip hop' and 'rap' genres, as a way of building a JE case against BAME prisoners. Such strategies were used in 11% of BAME cases, compared to less than 2% of cases of white prisoner cases. The Lewis case provides a clear example of how a range of *assumed* negative sub-cultural traits are called upon by the prosecution. In this case, such characteristics were then coupled with reference to negative attitudes to the police and bad character, so even where there is no significant evidence of criminal history the inference of a criminal character is drawn. For white prisoners relationships with friends were more likely to be cited to make associations (27% of cases involving white prisoners, compared to 11% of BAME prisoners). Arguably, the 'friend' link is less likely to be disputed, which may then explain the reduced use of elaborate methods and intelligence to prosecute JE cases against white prisoners.

The case studies further reveal the lengths to which criminal justice system (CJS) protagonists deploy new technologies in some instances, to 'place' the individual at the scene or in contact with others at the time of the offence. In Michael Christie's case, a number of face mapping experts were called on as prosecution witnesses, yet none could prove that Christie was at the scene.

Similarly, in the case of Jermaine Lewis, the defendant maintains that he drove away from the scene, and no evidence was presented to the court which categorically proved that he was at the scene as events unfolded. We found that 45% of our sample reported not to have been at the scene of the offence. That there are people serving long custodial sentences for offences, which may have occurred in their absence, is perhaps one of the most noteworthy features of these JE convictions.

They have cellsite evidence going back months before the incident and I am never with my [co-defendant] and I don't have the number or have been in contact with the other co-accused. This defeats the purpose of being a stereotypical gang they tried to sell to the jury.

There was only a slight difference in proximity figures between the white (42%) and BAME (47%) groups who reported not being present at the crime scene.

Placing the individual at the scene

Examining the self-report narratives from the prisoners, individuals were particularly candid in their responses to JENGbA's questionnaire. Their accounts allows us to see from their perspective if or how the basis for an association to the crime was constructed. There were

45% of individuals said they were not at the scene of the crime for which they were convicted

cases where individuals confirm they were at the scene at the time of the offence. Yet 45% (n=100) of individuals said they were not at the scene of the crime for which they were convicted. Of those saying they were not at the scene, the overwhelming majority (70%) also reported they had no contact with co-defendants ahead of or during the events.

Further, the data reveals some important differences between the types of evidence used to support the invocation of the gang for those either 'at the scene' or 'not at the scene'. In the case of individuals who were at the scene there was a higher proportion of cases where no evidence was presented to support the gang discourse. However, those cases where evidence included gang insignia, music videos or telephone / text evidence the individual was more likely to report not being at the scene, hence, the use of the gangs discourse potentially required more elaborate link making between the individual and the event. JE simplistically, yet powerfully, draws upon fluid connections between individuals to demonstrate the 'common purpose' of the principal and secondary parties in a case. Our findings demonstrate that JE allows prosecution teams to construct associations, which in some cases transcend the individual's proximity to the offence.

Discussion of findings

This research project sought to examine the extent to which 'gang' discourses influence processes of criminalisation for BAME individuals. Prior to presenting the substantive findings from this report, it is necessary to acknowledge the wider context within which the data presented has been both collected and understood.

Challenging to the strategic silence

The understanding presented has been inhibited by a number of obstacles which exist in relation to the official data sources capturing information on 'gangs' and JE. Data protection, data-monitoring and data ownership issues all pose organisational barriers to accessing that information which would inform our understanding of the complex relationships between 'race', ethnicity and collective punishment.

Central to the barriers are the lack of transparent definitions and an absence of accountability in the attribution of the gang-label and particularly the identification, registration and deregistration of people to police 'gang lists'. The inclusion of individuals in both London and Manchester who have no proven convictions

and of those who have been assessed by criminal justice professionals as posing minimal risk further demonstrates the unreliable use of the gang label. Remarkably, a Freedom of Information request undertaken for this project revealed that Job Centres pan-London have registered almost four thousand (3,934) of their clients with a 'gang' flag (as 'being in a gang or at risk of gang involvement'). Yet we cannot unearth and examine the tensions underlying such attributions, as the processes driving them remain hidden.

Beyond these definitional challenges, there are also difficulties in requesting and receiving data with sufficient contextual understanding of the process through which the data has been collated (by who and driven by what judgement or understanding) and the time or geographical parameters that they cover. Multiple organisations, both local criminal justice agencies and centrally placed analytical teams, hold information on different 'cohorts'. For example, some capture data on the 'accused', whilst other on those 'convicted', and in the probation context convicted groups are now split into the regional National Probation Service and the local Community Rehabilitation Companies. With central teams lacking the resource to extract data, and local team holding only a partial picture, the ability to undertake analysis that is reliably connected to place and time is challenging. The strength of the Manchester Problem Profile data was the ability to access individual level data which enabled precise data merging, manipulation and analysis to take place.

A similar lack of access to data informed by clear and transparent definitions inhibits our ability to examine the application of JE, whether at charge or conviction. In the interests of challenging the application of the doctrine there is an urgent need for the publication of official data on the charge and prosecution processes for JE cases. Given the findings of this report, this information must also include the demographic profiles of those people subject to JE prosecutions.

Summary of the key findings

The key findings from the analysis will now be summarised in relation to the research questions identified at the outset of the project.

What is the relationship between the 'gang' and those convicted of serious youth violence?

Finding 1: The ethnic profile of those identified on police data lists as 'gang nominals' in Manchester,

Nottingham and London confirms that this label is disproportionately applied to young BAME men.

Finding 2: In contrast to this, a comparison of the ethnic profile of those individuals accused or convicted of serious youth violence in both Manchester and London reveals a disconnect between the racial composition of these individuals and those labelled as 'gang involved' in the same geographic locations.

Finding 3: By grouping individuals differently according to ethnicity, focusing on young Black British, Black Caribbean and Black Mixed Race individuals, the analysis reveals a more stark disproportionality between those engaging in violence and those labelled as 'gang involved'.

How is the 'gangs' discourse used to support prosecution within joint enterprise cases?

Finding 4: The ethnic profile of the 241 prisoners who responded to the questionnaire provides support for the emerging evidence of a disproportionate use of the JE doctrine against BAME individuals. Further, the sample indicates that those JE prisoners who identify as BAME are significantly younger than their white counterparts.

Finding 5: The number of individuals involved in the JE cases was alarming, on average there were four but in one case there were 26 co-defendants. This coupled with the sentence lengths for the JE prisoners, with almost half of the sample under 25 years old and for these young men an average sentence length of 20 years, reveals an intensification of collective punishment.

Finding 6: The sample indicates that those individuals who identify themselves as BAME serve both longer average sentences and the cases involve a greater number of co-defendants than their white counterparts.

Finding 7: Fifty-nine percent of the prisoners responding to the survey reported that 'gangs' had been cited by the prosecution during their court case.

Finding 8: The 'gangs' discourse was significantly more likely to be cited in the prosecution of BAME JE defendants.

Finding 9: Whilst some individuals recognised connections to their co-defendants, be those through family or friendship ties, the overwhelming majority contest that such associations reflect 'gang' involvement.

Finding 10: The making of associations to establish foresight is key in cases of JE. The questionnaires

reveal in detail the reality of the relationships between individuals and their co-defendants, which in some cases includes no previous contact with or knowledge of others involved in the case.

Finding 11: The qualitative responses within the questionnaire reveal the use of a range of powerful signifiers in court. These include reference to synonymous crime family or gang names, reference to racialised neighbourhoods and dehumanising comparisons e.g. to 'packs of animals'.

Finding 12: The questionnaires point to a number of different evidence strategies used by the prosecution to 'place' the individual at the scene, and thus establish foresight. With almost half of the questionnaire respondents reporting not being at the scene of the offence, such strategies are particularly relevant in the process of collective punishment.

Finding 13: The data reveals some key differences in the mechanisms used by criminal justice protagonists, with greater use of police intelligence strategies such as 'cellsite' evidence and reference to music lyrics or videos in the case of BAME defendants.

Conclusion

[T]oo often groups of Black and Asian men are seen as 'gangs', criminalised and then dealt with on this basis, by the police, in schools, in their communities and on the streets.⁴²

A persistent feature of the criminal justice practice in England and Wales is the overrepresentation of BAME people throughout all agencies of the CJS.⁴³ There remains an absence of studies to explain the precise processes of differential treatment and disproportional practices, which contribute to this overrepresentation of BAME groups. This study was undertaken in response to emerging evidence of the latest representation of this disparity, the use of the JE doctrine against young BAME people. The above findings offer a troubling insight into the complex processes of criminalisation of young Black men, indicating the system is more flawed than we might imagine.

However, the prosecution of serious violence through a 'gang' construct that appears un-evidenced has the very real consequence of undermining justice and further raising the question of procedural (un)fairness with BAME communities.⁴⁴ The Young Review further highlights the continuities in stereotypical and negative assumptions of young Black and/or Muslim men engaged in extreme forms of violence. In light of the ambiguous nature of

'gang' definitions, the lack of transparency in the attribution of the gang-label and the declared (over) punishment as deterrence, of those who are defined as gang-involved or associated with the gang, we believe it imperative that there are both research and policy responses to the above findings.

The Metropolitan Police's letter to alleged gang members reproduced on page 6 in this report is the latest, and perhaps the ultimate conflation of the strategies, which have been the focus of this report – the deployment of both the 'gang' discourse and JE doctrine in the police's response to alleged involvement in serious youth violence.⁴⁵

A serious response to the violence and harm experienced by individuals and communities is not under question within this report. However, we conclude that responding to serious youth violence through the 'gang' construct is deeply flawed and likely to be unsuccessful. The perpetration of violence is not aligned to 'race' or ethnicity in ways that are imagined by the current strategies deployed to identify, police and prosecute violent individuals. The findings point to a need to examine and respond to the drivers of violence and harm outside of the contemporary UK 'gangs' discourse.

Notes

- 1 Joint Enterprise: Not Guilty by Association (JENGBA) is a grass roots campaign launched in 2010 by families wanting to highlight the abuse of the Joint Enterprise doctrine.
The sample was drawn from those prisoners either directly engaged with the JENGBA organisation, or through an association with such prisoners. In the context of no formal mechanism for counting or identifying JE prisoners this sample (241 direct responses, reflecting over 800 individuals connected to these JE cases) is clearly valuable in facilitating an understanding of the experiences and circumstances of JE prosecutions. The survey took place between May and July 2015, with questionnaires sent to prisoners previously registered to the JENGBA database. The questionnaire was distributed to 550 prisoners in England and Wales, to which 241 prisoners have responded. This represents a respectable response rate of 44%.
- 2 Eady, D. (2013), 'Perceptions of People Maintaining Unjust Conviction under Joint Enterprise Law', University of Cardiff.
- 3 Smithson, H., Ralphs, R. and Williams, P. (2013), 'Used and abused: the problematic usage of gang terminology in the United Kingdom and its implications for ethnic minority youth', *British Journal of Criminology*, Vol. 53, 1, pp. 113–28.
- 4 Fraser, A. and Atkinson, C. (2014), 'Making up gangs: looping, labelling and the new politics of intelligence led policing', *Youth Justice*, Vol. 14, 2, p. 2.
- 5 Medina, J. and Shute, J. (2013), "Utterly appalling": why official review of UK gang policy is barely credible', Manchester Policy Blogs, University of Manchester, <http://blog.policy.manchester.ac.uk/featured/2013/12/utterly-appalling-why-official-review-of-uk-gang-policy-is-barely-credible>.
Shute, J., Aldridge, J. and Medina, J. (2012), 'Loading the policy blunderbuss', *Criminal Justice Matters*, Vol 7, (1).
- 6 Hallsworth, S. (2014), 'Gang talking criminologists: a rejoinder to John Pitts', *Youth and Policy*, 112, pp. 35–43.
Pitts, J. (2012), 'Reluctant criminologists: Criminology, Ideology and the violent street gang', *Youth and Policy*, 109, pp. 27–45.
Joseph, I. and Gunter, J. (2011), *What's a Gang and What's Race Got to Do With it?* London, Runnymede Trust.
Hallsworth, S. and Young, T. (2008), 'Gang talk and gang takers: a critique', *Crime Media and Culture*, Vol 4, pp. 175 – 195.
- 7 Fraser, A. and Atkinson, C. (2014), 'Making up gangs: looping, labelling and the new politics of intelligence led policing', *Youth Justice*, Vol. 14, 2.
- 8 www.gov.uk/government/publications/ending-gang-and-youth-violence-cross-government-report
- 9 HM Government (2011), 'Ending Gangs and Youth Violence: A Cross Government Report', www.gov.uk/government/uploads/system/uploads/attachment_data/file/97861/gang-violence-summary.pdf
- 10 Clarke, R., Crossley, C. and Williams, P. (2012), 'Gang and Youth Violence in Manchester City: a partnership problem profile', unpublished report, Manchester City Violent Gangs Board.
- 11 Serious Violence is defined through the offence categories of Murder, Attempted Murder, Manslaughter, Wounding, Actual Bodily Harm and Grievous Bodily Harm by the Home Office 'Ending Gangs and Serious Youth Violence' agenda, (web link).
- 12 Generic term adopted by the police to describe those suspected of gang involvement or association.
- 13 Mayor of London (2014), 'Strategic ambitions for London: Gangs and Serious Youth Violence, London: MOPAC.
- 14 Smithson, H., Ralphs, R. and Williams, P. (2013) 'Used and abused: the problematic usage of gang terminology in the United Kingdom and its implications for ethnic minority youth', *British Journal of Criminology*, Vol. 53, 1, pp. 113–28.
- 15 Medina, J. and Shute, J. (2013), "Utterly appalling": why official review of UK gang policy is barely credible', Manchester Policy Blogs, University of Manchester, <http://blog.policy.manchester.ac.uk/featured/2013/12/utterly-appalling-why-official-review-of-uk-gang-policy-is-barely-credible>
- 16 New Economy (2013), *Integrated Greater Manchester Assessment*, New Economy: Manchester, April.
- 17 Williams, P. (2015), 'Criminalising the Other: challenging the race and crime nexus', *Race and Class*, Vol. 56(3), pp.18–35.
Katz, J. and Jackson-Jacobs, C. (2004), 'The criminologists gang', in C. Sumner, C. (ed.), *The Blackwell Companion to Criminology*, Oxford: Blackwell, pp. 91–124.
- 18 Smithson, H., Ralphs, R. and Williams, P. (2013), 'Used and abused: the problematic usage of gang terminology in the United Kingdom and its implications for ethnic minority youth', *British Journal of Criminology*, p. 117.
- 19 www.gov.uk/government/news/changes-in-legislation-reflected-in-new-gang-definition
- 20 HM Government (2015), *Ending Gangs and Youth Violence Annual Report 2014/15*, London: The Stationery Office.
- 21 Williams, P., Kinsella, R. and Crossley, C. (2013), 'Gang and Youth Violence in Manchester City: revisiting the problem profile', unpublished report, Greater Manchester Probation Trust.
- 22 Crown Prosecution Service (2012), '*CPS Guidance on Joint Enterprise Charging Decisions*', December.
- 23 McClenaghan, M., McFadyean, M. and Stevenson, R. (2014), 'Joint Enterprise: An investigation into the legal doctrine of joint enterprise and criminal convictions', Bureau of Investigative Journalism.
- 24 Ibid
- 25 Ibid
- 26 Crewe, B., Hulley, S. and Wright, S. (2014), 'Written submission on joint enterprise', Institute of Criminology, University of Cambridge, available at: www.crim.cam.ac.uk/research/ltp_from_young_adulthood/evidence_to_justice_committee.pdf
- 27 Crewe, B., Hulley, S. and Wright, S. (2014), 'Written submission on joint enterprise', Institute of Criminology: University of Cambridge, available at: www.crim.cam.ac.uk/research/ltp_from_young_adulthood/evidence_to_justice_committee.pdf

- 28 Ibid
- 29 *Birmingham Evening Mail* (2005), 'Gang six jailed for 30 years', 3 December.
- 30 Bridges, L. (2015), 'The Met Gangs Matrix: Institutional racism in action', London: Institute of Race Relations. www.irr.org.uk/news/the-met-gangs-matrix-institutional-racism-in-action
- 31 Nottingham Crime and Drugs Partnership (2012), Ending Gangs and Youth Violence in Nottingham City: Strategic Profile.
- 32 <http://content.met.police.uk/Article/History-of-Trident/1400014986671/1400014986671>
- 33 Williams, P., Kinsella, R. and Crossley, C. (2013), 'Gang and Youth Violence in Manchester City: revisiting the problem profile', unpublished report, Manchester City Violent Gangs Board.
- 34 Crewe, B., Hulley, S. and Wright, S. (2014), 'Written submission on joint enterprise', Institute of Criminology: University of Cambridge, available at: www.crim.cam.ac.uk/research/ntp_from_young_adulthood/evidence_to_justice_committee.pdf
- 35 This analysis of sentence length excludes four responses where the question of sentence length was responded to with 'life'.
- 36 Crewe, B., S. Hulley, S. and Wright, S. (2014), 'Written submission on joint enterprise', Institute of Criminology: University of Cambridge, available at: www.crim.cam.ac.uk/research/ntp_from_young_adulthood/evidence_to_justice_committee.pdf
- 37 This finding is based upon the calculation of the number of co-defendants reported in all questionnaires (n= 860), minus the number of respondents to the questionnaire (n=241) in order to remove the potential for double counting.
- 38 Scott, D. (2008), *Penology*, London: Sage.
- 39 Alexander, C. (2008), 'Re-Thinking "Gangs"', report prepared for the Runnymede Trust, available online at www.blackeducation.info/upload/docs/RethinkingGangs-2008.pdf
- 40 This result was analysed using a Chi-squared test and was statistically significant at the .000 level.
- 41 Percentages represent proportions of the base total for the BAME group and for the White group respectively.
- 42 Alexander, C. (2008), 'Re-Thinking "Gangs"', report prepared for the Runnymede Trust, available online at www.blackeducation.info/upload/docs/RethinkingGangs-2008.pdf
- 43 The Young Review, 2014, released 10 December.
- 44 Medina, J. and Shute, J. (2013), "Utterly appalling": why official review of UK gang policy is barely credible', Manchester Policy Blogs, University of Manchester, <http://blog.policy.manchester.ac.uk/featured/2013/12/utterly-appalling-why-official-review-of-uk-gang-policy-is-barely-credible>
- 45 www.theguardian.com/uk-news/2015/sep/03/met-police-criticised-over-gang-call-in-letter



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