



Empowering Civil Society

Using the Public Sector Equality Duty to tackle race disparity in the criminal justice system

The Criminal Justice Alliance (CJA) advocates for changes to make the criminal justice system (CJS) work better. Our insight comes from our members: over 180 non-profit organisations with expertise across the whole CJS. Their broad remits enable us to piece together the right formula for lasting change.

One of our key strategic aims is to identify and challenge institutional and structural racism across the CJS and promote adherence to the Public Sector Equality Duty (PSED) by criminal justice agencies.

The 'Tackling Racial Inequality' Project was funded by the Baring Foundation to reduce racial inequality in the CJS through better adherence to the PSED and the improvement of Equality Impact Assessments (EIAs).

Why is the PSED an effective tool to tackle race disparity in the CJS?

The CJA's work across policing, courts and prisons has led us to believe that the Home Office, the Ministry of Justice and other public bodies (such as individual police forces, HM Prison and Probation Service (HMPPS) and Police and Crime Commissioners), are often failing to adhere fully to the PSED.

Despite acknowledging that some of their criminal justice policies and decisions will indirectly discriminate against Black, Asian and minority ethnic people, these public bodies regularly justify their policies as proportionate in achieving their aims. Recent examples include the rollback of safeguarding for the use of Section 60 'suspicion-less' stop and search, the introduction of Serious Violence Reduction Orders and other provisions in the Police, Crime, Sentencing and Courts Act 2021 and the use of PAVA spray in prisons.

Although not a legal requirement, Equality Impact Assessments (EIAs) are one way for public bodies to show how they have met their legal duties under the PSED. However, EIAs are often produced internally without involving external stakeholders and those directly impacted by the proposed policies; can lack evidence and effective analysis of the data available; and fail to consider intersectionality where any adverse impacts can be compounded due to a person's race, age, gender, religion or belief, or other multiple protected characteristics. Too often EIAs do not set out well-developed mitigation to effectively counteract any indirect discrimination that has been identified. EIAs also tend to be published after policy decisions have been made, if published at all. This results in organisations needing to request EIAs through submitting Freedom of Information (FoI) requests or by beginning legal action.

The PSED can therefore be a useful tool by which to both identify and challenge racial discriminatory policies impacting people in the criminal justice system.

How can Civil Society Organisations make better use of the PSED?

We have recognised that more could be done by criminal justice civil society organisations (CSOs), to hold the government and other public bodies to account on adhering to the PSED as a sector.

The ‘Empowering Civil Society’ toolkit sets out the ways in which CSOs can identify and challenge racially discriminatory criminal justice policies using the PSED. The toolkit will support organisations to feel confident in working with lawyers and how to take preliminary steps prior to a legal challenge. By building the confidence of CSOs in challenging public bodies through this practical toolkit, we hope this will increase transparency and accountability of public bodies, ultimately improving adherence to the PSED and reducing racial inequalities in the CJS.

What is in the toolkit?

The toolkit is made up of five individual guides, which help demystify the language and processes that CSOs may face when challenging a public bodies’ lack of adherence to the PSED. The toolkit sets out:

- Guide 1. What the PSED is, what it requires public bodies to do, and how to spot whether they have complied.
- Guide 2a. How to legally challenge public bodies who have not complied, as well as practical advice on how to fund your legal claim and working with lawyers.
- Guide 2b. The stages of a Judicial Review.
- Guide 3. Template letters for you to request information to support any legal action and to begin your claim.
- Guide 4. Key legal terms relating to equality law that you might need to know.

Initiating a legal challenge – The toolkit explains the resources, capacity and potential risks for organisations should they wish to pursue legal action. This toolkit is for information only and does not count as legal advice. We encourage all civil society organisations considering taking legal action to seek advice from specialist lawyers regarding their potential claim.

The guides contain case studies of recent successes where CSOs have challenged criminal justice policies based on a public bodies’ lack of adherence to the PSED.

Examples include the historical case that led to the removal of the Metropolitan Police’s Gangs Matrix database that targeted young Black men, led by UNJUST and Liberty and the successful challenge of South Wales Police’s facial recognition technology on the basis that there was a risk that the software might indirectly discriminate against individuals on the basis of race and sex.

You can find more information on the case studies referenced throughout the toolkit at criminaljusticealliance.org.uk/PSED-toolkit.

You can download the complete toolkit and individual guides from the CJA website: criminaljusticealliance.org.uk/PSED-toolkit.



All of the template letters in Guide 3 are also available to be downloaded as Word documents for you to use. You can also see examples of completed letters which have been used in legal actions against criminal justice bodies subject to the PSED.

Please contact info@criminaljusticealliance.org.uk if you have any questions about the toolkit or to tell us how you have used it to challenge a discriminatory criminal justice policy.