



Ministry of
JUSTICE

**Access to Justice:
a review of existing evidence of
the experiences of minority groups
based on ethnicity, identity and
sexuality**

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The views expressed in this report are those of the authors and are not necessarily shared by the Ministry of Justice (nor do they represent Government policy).

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Summary

Introduction

This report is an exploratory investigative review of access to justice for vulnerable groups. Under the broad heading of 'Ethnicity, Identity and Sexuality', the groups we focused upon were 'black and minority groups', 'Gypsies and Travellers', 'refugees and asylum seekers' and individuals in a minority group on the basis of 'sexuality'. It covers evidence available by early 2007 and therefore does not reflect additional evidence or policy changes since then.

Access to justice and social exclusion

At the time of the review the terms, 'justice', 'access to justice' and 'social exclusion' were subject to considerable debate as to their coverage and exact meaning. Within this review, justice referred to both fairness of process and fairness of outcome in addressing justiciable issues. Justiciable issues are those problems for which there is a potential legal remedy within a civil and/or criminal justice framework (Buck *et al.*, 2005, p. 302). In this report, we explore access to justice as a feature of social exclusion.

Analysis by Buck *et al.* (2005, p. 302) suggested those who may be considered to be 'socially excluded groups within the general population were more likely to suffer justiciable problems'. Therefore, whilst a lack of access to justice was seen to contribute to social exclusion, so access to appropriate and timely good legal advice was seen as an aid to subsequent social inclusion. Our groups were selected in this context; as recognised within both policy and research literature as vulnerable to social exclusion. The groups were chosen as illustrative and not to give comprehensive coverage of all minority or vulnerable groups.

Understanding perceptions and experiences of justice

'Justice' was not an objective concept, nor was there common understanding of, or agreement about, justice across society. Pleasence *et al.* (2003) summarised the different perspectives that people may hold at various stages in relation to a justiciable problem:

- whether they perceived an issue to be a problem;
- whether they sought a solution or put up with it;
- whether they had knowledge as to what might be done to resolve it (that is, whether they recognise it as a justiciable problem);
- the type of response sought, in particular whether a legal remedy was sought.

There was also a clear distinction to be made between the legal **process** and the **outcome** of legal proceedings. Access to legal services and systems (**process**) may or may not result in an **outcome** that was perceived as just by the person pursuing it.

Conceptualising vulnerability regarding access to justice

The theme of this review was the experiences of minority groups. Within this theme, we focused upon four groups: black and minority ethnic (BME) groups; Gypsies and Travellers; refugees and asylum seekers; and individuals in a minority group on the basis of their sexuality. Our choice of minority groups to include was not intended to be an exhaustive one. Rather it drew on our knowledge of key excluded groups to enable us to include a range of perspectives and experiences. We were further informed by consideration of the potential for a social model approach to vulnerability (Wishart, 2003) and how this can help us understand social exclusion by recognising that the social environment could create vulnerability.

Minority groups as vulnerable

Each of the groups considered in this report were minorities, in terms of ethnicity, identity or legal status, and sexuality within the overall population of the UK. This status appeared to make them vulnerable to social exclusion, with welfare and other services identified as failing to address needs that emerged. The issues raised here interact, so that access to justice was just one, under-recognised and under-researched, element of a broader exclusion problem. We understood groups as vulnerable within a 'social model of vulnerability'. Whilst not seeking to deny the problem of disability (Oliver, 1996, cited by Wishart, 2003, p. 23), the social model of disability separated out the disability from the original impairment. It argued that the causes of disability could be found in the social environment. This included the ways in which disability was talked about and understood, and the practical and material barriers to participating in society. Therefore, rather than being inherently vulnerable, due to characteristics of ethnicity or identity, social structures and processes created vulnerability.

The scope and methodology of this review

The research questions explored through the review relate directly to access to justice. The four questions were selected to give breadth of coverage to the ways in which access to justice might be experienced. They were agreed with the Ministry of Justice (MOJ) as appropriate to identify key evidence, and evidence gaps, for policy.

- What are their experiences of seeking advice and support with justiciable problems (including those experienced as consumers)?
- What are their experiences of civil and criminal justice systems, and legal processes?

- What evidence is there of barriers to access to justice for these groups?
- What policy and practice has been demonstrated to help overcome any barriers?

Initial scoping of the literature, to establish the parameters of the review, indicated a paucity of research exploring our themes. On the one hand, there was an enormous range of literature that had the potential to inform the review. On the other hand, searches that took a tight focus around our research questions returned very few sources. Given the breadth, we did not have the capacity to undertake systematic reviews for each of our themes. We therefore undertook an exploratory investigative review with a literature review that was supplemented by insights from broader knowledge. This highlighted key themes for policy makers and practitioners to consider and for further research to build upon. This review explored research and other literature available by early 2007. It was not a review of case law, nor does it reflect additional evidence or policy changes since this time.

Discussion and conclusions

Access to justice: the findings

The available evidence identified within this investigative exploratory review and presented in this report provided us with at least partial answers to our research questions. The groups we discussed in this report emerged as vulnerable in terms of access to justice. There was evidence of prejudice and discrimination within the systems, organisations and agencies of legal and civil justice. There was also evidence of legislation having negative impacts for these groups. There was evidence that perceptions and experiences lead to mistrust amongst minority groups, who believed their treatment will be prejudiced should they seek solutions to justiciable problems.

What are the experiences of seeking advice and support with justiciable problems (including consumer experiences)?

There was little research exploring the experiences of seeking advice and support with justiciable problems of individuals in minority groups. Available evidence suggested discrimination or perceptions of discrimination lead to a lack of advice seeking amongst these minority groups. Research exploring this in relation to BME communities suggested they were less likely to seek advice. Where they did receive advice, it was likely to be of a lower quality than that received by other (majority) groups.

What are the experiences of civil and criminal justice systems, and legal processes?

There was a body of evidence that indicated the negative experiences of these minority groups within civil, criminal and associated systems and processes. Discriminatory

outcomes for minority groups were demonstrated by research in the criminal justice system. In addition, individuals in minority groups were more likely to perceive prejudice and discrimination in their treatment. Legal status dominated the experience of some groups (i.e. Gypsy/Travellers and asylum seekers) so there was little research or literature that explored other dimensions of access to justice. Instead there was a focus on a narrow set of (highly important) issues. It also reflected the dominance of these issues in the lives of people from these communities and groups. There was a lack of monitoring of categories of ethnicity and identity, making identification of possible problems and their solutions difficult.

What evidence is there of barriers to access to justice?

Evidence suggested a lack of awareness of 'justiciable problems' and of the sources and availability of advice. Agencies within legal systems and structures may fail to recognise the needs of minority groups, leading to negative experiences that were likely to impact upon future advice-seeking behaviour in the pursuit of justice. Experiences that were prejudicial, either directly experienced or perceived, act as barriers. Legislation and legal status framed access to justice for Gypsies and Travellers and for refugees and asylum seekers. For refugees and asylum seekers, rapidly changing legislation presented additional problems. Evidence suggested a lack of available specialist advice, and legislation that further limited this.

A feature of social exclusion was that negative experiences of organisations and agencies (more broadly than those associated with 'justice') could lead to a lack of trust in institutions and therefore a lack of engagement with them.

What policy and practice has been demonstrated to help overcome barriers?

There were examples of legislation or initiatives that aimed to address barriers, but this did not always appear to have impacted upon front-line practice. The lack of research exploring our questions of 'access to justice' perhaps reflected a lack of policy and practice focus. Beyond those issues that define groups' experiences (for example, the provision of legal sites for Gypsy/Travellers), it appeared likely there was a lack of awareness, amongst those professionals working with minority groups, of the nature and incidence of justiciable problems and of routes providing wider access to justice.

Conclusions and recommendations

Based on the evidence available in 2007, there was a clear evidence gap in relation to understanding experiences of justiciable problems. Addressing the evidence gap is particularly important when we recognised access to justice as a central tenet of social

inclusion and the right of all to equality and fairness of process and outcome. The groups we considered in this report shared common experiences of social exclusion and vulnerability. Yet for each of the broad groups we were reminded that experiences and circumstance were heterogeneous. A social model of vulnerability appeared to be a useful framework for understanding how vulnerability was not a static state but was dependent on context.

Recommendations

This exploratory, investigative review enabled us to make some recommendations for consideration in policy, practice and research based on the 2007 context when the report was drafted. In order to promote access to justice and to tackle the barriers to this we suggest:

- Policy makers should recognise the importance of access to justice within strategies to address social exclusion and seek to enable access to justice as a tenet of social inclusion.
- Where legislation is enacted or guidance amended its application in practice should be closely monitored in order to ensure its translation into front-line provision. This would be particularly important if institutional racism and prejudice, and perceptions of this within minority communities are to be addressed.
- Service providers, organisations and agencies should focus upon training on an ongoing basis that addresses the needs of minority groups, with a focus on the need to be sensitive to ethnicity, culture and identity and on how individually tailored support could be provided, whatever people's circumstance.
- Policy and practice needs to reflect the reality that minority groups can be vulnerable due to processes from institutions and wider society. This is associated with conceptions of social exclusion rather than anything inherent within that identity.
- More language and literacy support services are needed. Issues associated with culture and identity also merit greater recognition.
- Outreach services may improve access to justice through increased visibility and thus increased awareness and accessibility of advice.
- Awareness raising campaigns should take place that target minority communities, increasing awareness of both justiciable problems and sources of advice and support.

- Routine monitoring of outputs and outcomes need to improve, in order that minority experiences are better demonstrated and understood.
- More research is needed that takes as its primary focus experiences, perceptions, and processes of access to justice for minority groups of ethnicity, identity and sexuality. Justiciable problems need to be at the centre of this research, in order to address the evidence gap.
- Research, policy and practice concerned with social exclusion must consider access to justice as a key dimension of this. In this context, consideration should be given to a social model of vulnerability.

1. Introduction

This report is an exploratory investigative review of access to justice for vulnerable groups. Under the broad heading of 'Ethnicity, Identity and Sexuality', the groups we focused upon were 'black and minority groups', 'Gypsies and Travellers', 'refugees and asylum seekers' and minority groups identified on the basis of 'sexuality'. The report begins with a discussion of access to justice, social exclusion and vulnerability in order to provide background and context. This is followed by an outline of the methods used. Subsequent chapters then examine the evidence identified. The report concludes with recommendations for consideration in policy, practice and future research. It covers evidence available by early 2007 and therefore does not reflect additional evidence or policy changes since then.

1.1 Access to justice and social exclusion

At the time of the review, the terms, 'justice', 'access to justice' and 'social exclusion' were subject to considerable debate as to their coverage and exact meaning. Within this review, justice referred to both fairness of process and fairness of outcome in addressing justiciable issues. Justiciable issues are those problems for which there is a potential legal remedy within a civil and/or criminal justice framework (Buck *et al.*, 2005, p. 302). In this report, we explore access to justice as a feature of social exclusion.

The Social Exclusion Unit (SEU) (2001) defined social exclusion as:

“a shorthand term for what can happen when people or areas suffer from a combination of linked problems, such as unemployment, poor skills, low incomes, poor housing, high crime, bad health and family breakdown”.
(SEU, 2001, p. 10)

The notion of social exclusion extended the focus of policy beyond limited considerations of income and poverty as the basis for understanding 'quality of life':

“social exclusion... focuses more on social relations and the extent to which people are able to participate in social affairs and attain sufficient power to influence decisions that affect them”.
(Pierson, 2002, p. 2)

Duffy (1995, p. 1) further related this to participation in society, defining social exclusion as:

“the inability to participate effectively in economic, social, political and cultural life, and, in some characterisations, alienation and distance from the mainstream society”.

Within this context, research and policy literature constructed access to justice as both an aspect of, and means to ensure, social inclusion and citizenship. The UK National Action

Plan on Social Inclusion (DWP, 2003) “gives access to justice similar priority to health care and education, thereby recognizing that access to justice is a basic right and a vital element in social exclusion policies” (Buck *et al.*, 2005, p. 319). It could also be considered an essential aspect of democratic society (Buck *et al.*, *ibid*; Sommerlad, 2004; Williams, 2004). Sommerlad (2004) positioned access to justice as ‘pivotal to the content of citizenship’. In doing so she cited Tony Blair who, in 1996, argued “Legally enforceable rights and duties underpin a democratic society, and access to justice is essential in order to make these rights and duties real”.

Legal rights, obligations, structures and processes could be complex and difficult to understand for all but the most ‘legally literate’. A lack of access to appropriate and timely legal advice (either by choice or due to lack of availability) was a contributing factor in creating and maintaining social exclusion.

“Poor access to advice has meant that many people have suffered because they have been unable to enforce their legal rights effectively, or have even been unaware of their rights and responsibilities in the first place.”

(Lord Chancellor’s Department/Law Centre’s Federation, 2001)

Negative experiences of the civil justice system could exacerbate social exclusion by reducing trust and confidence, and therefore the likelihood of further engagement:

“It is not enough for people to have rights, they must be confident they can enforce those rights if need be”. (Lord Chancellor’s Department, 1998, p. 2)

Analysis by Buck *et al.* (2005, p. 302) suggested that those who may be considered to be ‘socially excluded groups within the general population were more likely to suffer justiciable problems’. A lack of access to justice was seen to contribute to social exclusion. Therefore, access to appropriate and timely good legal advice was seen as an aid to subsequent social inclusion. Stein (2001, p. 48, as cited by Buck *et al.*, 2005, p. 304) argued:

“legal advocacy and advice for the poor and excluded is an effective engine of social inclusion and fighting poverty through insuring and expanding rights to critical benefits and services, and giving a voice to grievances and empowering people and communities”.

1.2 Understanding perceptions and experiences of justice

‘Justice’ was not an objective concept, nor was there common understanding of, or agreement about, justice across society. Firstly, the definition of a justiciable problem was based on the availability of a legal solution. However, understandings and perceptions of the availability of legal solutions were likely to vary across the population. Secondly, even when individuals knew about legal solutions, they may not consider it an appropriate remedy. In both cases therefore an issue might not be defined as a justiciable problem.

Analysis by Pleasence *et al.* (2003) indicated different groups perceived similar problems in different ways. Pleasence *et al.* (2003) summarised the different perspectives people might hold at various stages in relation to a justiciable problem:

- whether they perceived an issue to be a problem;
- whether they sought a solution or put up with it;
- whether they had knowledge as to what might be done to resolve it (that is, whether they recognise it as a justiciable problem); and
- the type of response sought, in particular whether a legal remedy was sought.

There was also a clear distinction between the legal **process** and the **outcome** of legal proceedings. Access to legal services and systems (**process**) may or may not have resulted in an **outcome** that was perceived as just by the person pursuing it. The 'law' might not therefore be synonymous with 'justice' for particular groups, contexts and situations. Blasi (2004, p. 870) described a "subjective sense of justice... largely independent of outcomes or of actual (as opposed to perceived) procedural fairness".

1.3 Conceptualising vulnerability regarding access to justice

In order to explore access to justice and its association with social exclusion, this report focuses on the experiences of certain minority groups. Within this theme, we focused upon four groups: black and minority ethnic (BME) groups; Gypsies and Travellers; refugees and asylum seekers; and those identified as minority groups on the basis of their sexuality. Our choice of minority groups to include within this theme was not intended to be an exhaustive one. Rather it drew on our knowledge of key excluded groups to enable us to include a range of perspectives and experiences. By exploring broad conceptions of vulnerability through the four groups, we also sought to draw attention to multiple problems facing groups and individuals, and their implications both for individuals and agencies.

Whilst chosen to reflect broad dimensions of potential vulnerability, our selection of particular social groups and themes for inquiry emerged from available literature. In particular, we were informed by the work of the Legal Services Research Centre (LSRC), including 2005 analysis of the English and Welsh Civil and Social Justice Survey – "a national periodic survey of justiciable problems" (Buck *et al.*, 2005, p. 306; see also Pleasence *et al.*, 2003, 2004a, 2004b, 2004c). Buck *et al.* (2005, p. 302) highlighted a range of vulnerable groups who were "more likely to suffer justiciable problems". For example, exploration of the experiences of BME groups (O'Grady *et al.*, 2005) concluded there was disparity of experience between white and BME people within the civil justice system.

We were further informed by consideration of the potential for a social model approach to vulnerability (Wishart, 2003) and how this could help us understand social exclusion. Whilst not seeking to deny the problem of disability (Oliver, 1996, cited by Wishart, 2003, p. 23), the social model of disability separated out the disability from the original impairment. It argued that the causes of disability could be found in the social environment. This included the ways in which disability was talked about and understood, and the practical and material barriers to participating in society.

Wishart extended the notion of a social model of disability to incorporate vulnerability more generally (and the sexual abuse of people with learning difficulties in particular). Using this approach, he highlighted its potential to provide “optimism in regard to tackling vulnerability” (Wishart, 2003, p. 24). If the social origins of vulnerability were recognised then it was open to manipulation and removal. However, such assertions were “tempered with a dose of realism”, as Wishart recognised the complexity of the task (*ibid.*, p. 26).

1.4 The scope and methodology of this review

The research questions explored through the review related directly to access to justice. The four questions were selected to give breadth of coverage to the ways in which access to justice might be experienced:

- What are their experiences of seeking advice and support with justiciable problems (including those experienced as consumers)?
- What are their experiences of civil and criminal justice systems, and legal processes?
- What evidence is there of barriers to access to justice for these groups?
- What policy and practice has been demonstrated to help overcome any barriers?

These questions were agreed with the Ministry of Justice (MOJ) as appropriate to focus the research on evidence and evidence gaps of interest to their policy agenda. Initial scoping of the literature, to establish the parameters of the review, indicated a paucity of research. On the one hand, there was an enormous range of literature that had the potential to inform the review. On the other hand, searches that took a tight focus around our research questions returned very few sources. Given their breadth, we did not have the capacity to undertake systematic reviews for each of our questions. We therefore undertook an exploratory investigative review - a literature review supplemented by insights from broader knowledge. This highlighted key themes for policy makers and practitioners to consider and for further research to build upon this initial work. More detail is included in the appendix.

This review explored research and other literature. It was not a review of case law. We searched databases of published, peer-reviewed research available in early 2007. Therefore, this report does not reflect additional evidence or policy changes since this time. Given the changing nature of legislation, policy and context we prioritised studies from 1997 to 2006. Due to the particular context provided by domestic legislation, the search prioritised UK evidence. International evidence was only included when the content was judged to be of relevance to a particular issue.

Decisions about what to include within the review were based upon a reading of the abstracts, where available, and if required a reading of the full text. A judgement was made by a member of the research team about whether or not the content contributed to our understanding of our research questions. This informed, professional judgement (see also Hasluck & Green, 2005; Orton & Rowlingson, 2007) was our key criteria for inclusion.

As described in the chapters for each of our groups, we identified material that gives insights into elements of access to justice, but the area appeared to be under-researched. Research that had taken place either had a very broad relevance or was focused on a specific aspect. We supplemented the results of the search of peer reviewed evidence with additional sources. This 'grey literature'¹ offered valuable insights into policy changes or new practice in the 2005 and 2006 period. Nonetheless, the research team had limited capacity to consider all possible grey literature that might be relevant. This was because the grey literature was dispersed and diffuse and therefore difficult and time-consuming to access.

This exploratory, investigative review included five types of sources:

- **Research studies:** empirical research exploring one or more of our research questions or judged as relevant to the dimensions of the review;
- **Research reviews:** these sources were structured reviews of research, such as meta-analysis but also less systematic reviews, which looked across evidence to explore an issue and reach a conclusion, related to our research questions or judged as relevant to the dimensions of the review;
- **Analytical or theoretical pieces:** these sources were those that presented an argument, developed or presented a theoretical position, or took an ideological position and drew on research in support of it;
- **Books or book chapters:** these sources were identified occasionally within the systematic review but also by contributing experts on the basis of existing knowledge. They were not peer reviewed but were considered

¹ 'Grey' literature was published literature but it was not published within peer reviewed academic databases. It comes from a range of sources, for example voluntary and community sector groups or government reports. It often contained or reported on research, analysis and argument based on evidence.

as of reasonable quality due to the processes associated with publication, which could include expert review; and

- **Grey literature:** these sources included a range of literature that was less likely to have been peer reviewed or published by formal sources, such as working papers, campaign group materials and policy documents.

Each chapter includes more detail on the sources included within each of the five categories outlined in the list above.

The content of each section is structured according to the evidence and themes within the material the review process identified. As a result, there were gaps in the review. We did not explore identifiable sub-groups under our broad headings unless they were identified within the sources themselves. In this respect the range of the review was broad, but without the depth that full reviews of each possible group might achieve.

This review considered legislation that had been explored in the literature. We did not review case law as this could be an extensive task and was therefore beyond the scope of our review. Where our sources cited or referred to case law as evidence we have included this.

This report is structured to consider each of our identified minority groups in turn. This is followed by a discussion and conclusion that includes recommendations for policy and practice as well as for future research. Each of the two main sections were structured by the issues that emerged from the material. As a result, there was not uniformity across the issues that emerged. However, there were common and comparable messages across the different groups.

2. Black and minority ethnic (BME) groups

2.1 Introduction

This report uses 'black and minority ethnic' as an inclusive term. However, we have used the language and terminology of the sources we drew on in order to accurately reflect them. As a result, there is some diversity of language used in this chapter on 'black and minority ethnic' (BME) groups.

Historically, the population of the UK has been predominantly 'White British' in ethnic background. Since the 1950s, patterns of migration had produced distinct black and ethnic minority groups within the population. The 2001 census included a more detailed breakdown of the population by ethnic group than any previous ones. This showed 11.8% of the population (6.7 million people) who were not 'White British'. These ethnicity groups were:

- Other White at 2.5%;
- Indians at 1.8%;
- Pakistanis at 1.3%;
- White Irish at 1.2 %;
- Mixed backgrounds at 1.2%;
- Black Caribbeans at 1%;
- Black Africans at 0.8%; and
- Bangladeshis at 0.5%.

At the time of writing, minority ethnic groups had a younger age profile than the White British and Other White groups. As the population ages, it is expected that greater proportions of the overall population will come from these minority groups, although trends are hard to predict (data and terminology taken from ONS, 2007a).

Providing the context to vulnerability and access to justice, the social exclusion suffered by minority ethnic groups was well documented. SEU stated:

“Minority ethnic communities experience a double disadvantage. They are disproportionately concentrated in deprived areas and experience all the problems that affect other people in these areas. But people from minority ethnic groups also suffer the consequences of racial discrimination; services that fail to reach them or meet their needs; and language and cultural barriers in gaining access to information and services”. **(SEU, 2000, p. 8)**

The same policy guide also highlighted the lack of data that was held about many minority ethnic groups.

2.2 The evidence

Issues in relation to 'race' and ethnicity within a **criminal** justice context had generated substantial policy and research interest. Our exploratory review identified a wide range of sources that explored and commented upon the experiences of BME communities both as victims of crime and as offenders or accused of offending. In particular, there was a focus upon the practices of the police and the courts in addressing crime within, and committed by members of, BME communities.

There was a more limited empirical evidence base associated with the experience of BME communities with the civil justice system and advice services in support of civil justice. There was minimal empirical evidence to demonstrate what policy and practice worked in overcoming barriers in this area.

The exploratory review identified 150 abstracts to be considered for inclusion. Many of these related to the US and were judged to have limited relevance to the UK due to their concern with different justice systems. Forty-four abstracts were selected for closer consideration, with 12 identified as relevant to our research questions. Eleven additional sources were identified through existing knowledge, including one item of 'grey' literature. Where a research study is cited, we have included some information on its nature. The 23 included sources across our five categorisations were:

- **Research studies**

Seven research studies identified by the review (Chakraborti & Garland, 2003; Kalunta-Crumpton, 1998; Newburn *et al.*, 2004; O'Grady *et al.*, 2005; Salisbury & Upson, 2004; Waddington *et al.*, 2004; Washington, 2001). Four additional studies added on the basis of existing knowledge (Choudry, 1996; Clancy *et al.*, 2001; Pleasence *et al.*, 2004c; Sharp & Atherton, 2007). Eleven research studies were included in total.

- **Research reviews**

Two reviews of research identified by the review (Garland *et al.*, 2006; Holdaway, 1997).

- **Analytical/theoretical pieces**

One source analysed policy (and drew on research findings) identified within the review (Bridges, 2001).

- **Books and book chapters**

Two book chapters where the basis was a research study identified by the review (Cole & Wardack, 2006; Mama, 2000). Existing and expert knowledge enabled these to be supplemented by six additional sources. Two books each described and discussed a different single and substantive research project (Hood, 1992; Shute *et al.*, 2005). Two books reviewed research as part of a theoretical and analytical argument (Bowling & Phillips, 2003; Rowe, 2004). A book chapter reviewed research as part of a theoretical and analytical argument (Bowling & Phillips, 2003). As well as a book chapter based upon the findings of a research study (Jefferson *et al.*, 1992).

- **Grey literature**

One item of grey literature was included due to relevance: a report of the Macpherson Enquiry (1999).

Our discussion was structured to reflect the themes that emerged from the literature identified in the exploratory review. We then considered our research questions.

The themes were:

- BME communities' experiences of victimisation;
- BME communities' experiences when accessing the criminal justice system;
- BME communities within the criminal justice system; and
- BME communities' experiences of civil justice.

2.3 BME communities and victimisation

This section outlines evidence related to the high rates of victimisation and racist victimisation within BME communities.

National and local crime surveys suggested people belonging to minority ethnic groups experienced high levels of victimisation. Findings from the British Crime Survey showed Pakistani and Bangladeshi people were significantly more likely than white people to be the victims of household crime (Clancy *et al.*, 2001, p. 2). They also indicated people from BME backgrounds were more likely to have high levels of worry about burglary, car crime and violence than white people (Salisbury & Upson, 2004, p. 1).

Chakraborti and Garland (2003, p. 566) sampled 567 BME individuals living in Suffolk for their study into the attitudes of rural minority ethnic communities towards crime, community

safety and the criminal justice system. Of these, 36% had been victims of crime in the previous 12 months. More than half of the victims were under age 30 (52%) and the vast majority were from black and Asian communities (80%). They found BME groups in Suffolk of all ages and ethnicities were worried about a range of crimes and incivilities. Racial harassment (75% respondents) and young people loitering (70%) were the offences that caused the highest degree of anxiety. Moreover, more than half of all victims of crime (55%) and 20% of the whole sample said they had suffered racial harassment or abuse during the previous 12 months.

Research indicated racist victimisation was significant when considering minority ethnic communities and their experiences of crime. Findings from the British Crime Survey suggested more than one third of assaults directed against Asian and black people were considered to be racially motivated by respondents (Bowling & Phillips, 2003). The impact of racist crime was particularly severe. The British Crime Survey (2000) indicated a much larger proportion of victims of racial incidents said they had been very much affected by the incident (42%) than victims of other sorts of incident (19%) (Clancy *et al.*, 2001, p. 37).

In light of such high rates of victimisation, it was important minority ethnic groups felt encouraged to go to the police and other organisations as a way of addressing their problems. Chakraborti and Garland (2003, p. 58) highlighted how for crimes like street robbery and property crime reported rates could be quite high (75%; 73%). But the reporting of racial harassment seemed to be much lower. Only 42% of individuals who had suffered racial harassment had reported the incident to police. Therefore it appeared racial harassment was less likely to be reported than other types of crime.

2.4 BME communities' accessing the criminal justice system

This section begins by looking at the legislation that defines racist crime and the possible role of cultural factors in the under-reporting of crime by BME communities.

The Crime and Disorder Act 1998 enacted race hate crime legislation. It introduced higher penalties for offences when they were racially aggravated. Within this approach, the definition of a racist crime as proposed by the Macpherson Report (1999) was used: "any incident which is perceived to be racist by the victim or any other person".

This indicated a significant shift for police crime recording practices. Police officers had traditionally sought to corroborate allegations rather than automatically accepting victims'

accounts. The new approach could be viewed as having the potential to address widespread concerns that police officers could deny incidents were motivated by racism, even though victims and witnesses were certain of their racist components (Rowe, 2004). Nonetheless, as the study by Chakraborti and Garland (2003) suggested, the under-reporting of racist victimisation continued to be a significant issue.

There appeared to be a number of factors that accounted for the under-reporting of crimes amongst BME communities. One factor identified in research related to how organisations supporting victims tended to ignore or marginalise ethno-cultural factors. Victims' accounts suggested these had an impact upon how people experience victimisation and therefore should be taken into account by agencies. Feminist research (for example Mama, 2000) had explored sexual and physical violence against minority ethnic women (including domestic violence). This suggested there was a substantial and significant cultural context to the offending that took place and to victims' experiences, their understandings and their survival strategies. Yet, mainstream victim support services often failed to take ethnic and cultural differences into account. Chakraborti and Garland (2003) highlighted how some of the respondents in their study argued that some agencies did not understand there were differences between the beliefs and cultural practices of British Asian communities.

Mama (2000) conducted the first detailed study of domestic violence as experienced by black women. During 1987-1988 she undertook in-depth interviews with over 100 women. She found some men might invoke 'tradition' or 'religion' to justify their violent actions. Some men used the justification that the women were too western. Women also often referred to 'tradition', in that they had tried to conform to idealised notions of a dutiful wife.

Extended families were likely to have a more significant role in minority ethnic women's experiences of victimisation. Some interventions were positive, although some could make the situation worse. Choudry (1996) undertook a small-scale study for the Home Office in order to explore the impacts of domestic violence for Pakistani women. Her study revealed the Pakistani women (n=14) felt they faced dishonour and rejection within their own community if their marriages failed. Language difficulties and restrictions of their personal freedom outside the family home also made it very difficult for women to seek help from external agencies.

Mama (2000) argued evidence from her research challenged western feminist understandings of domestic violence where domestic violence related to economic marginalisation and dependence upon men. Many of the minority ethnic women she studied

were assaulted by men who were economically dependent upon them. In the US, Washington (2001) undertook detailed interviews and case research with 12 black survivors of sexual assault. She argued understanding ethno-cultural differences between victims of sex crime was essential to improving the responsiveness of social institutions to sexual assault survivors and to facilitating the healing processes of black women survivors.

In their review, Garland *et al.* (2006) found the diversity within minority ethnic communities was a theme prevalent within research literature (Garland *et al.*, 2006). They highlighted it was important to take into consideration the specific histories and experiences of specific communities, rather than relying on broad racial categories. These general classifications could obscure significant differences between ethnic communities. In Chakraborti and Garland's (2003) research outlined above:

- 84% of respondents believed the police would provide a better service by employing a greater proportion of people from minority ethnic communities.
- 78% of respondents believed the court system would offer an improved service with greater minority ethnic representation.
- 77% of respondents believed the probation service would offer an improved service with greater minority ethnic representation.
- 74% of respondents believed the Crown Prosecution Service (CPS) would offer an improved service with greater minority ethnic representation (p. 569).

Nonetheless, some authors argued that the occupational cultures of the police, probation service, CPS and so forth might transcend the ethnic identity of personnel. Therefore ethnic minority staff members may not necessarily employ different tactics than their white colleagues (Holdaway, 1997; Rowe, 2004).

2.5 BME communities within the criminal justice system

This section explores the wealth of evidence related to the experiences of BME communities within the criminal justice system. The evidence related to the police and policing practices, the courts and sentencing.

Since the Home Office began monitoring for ethnicity, statistics had consistently shown black, particularly African Caribbean, men and women were over-represented in prison (Shute *et al.*, 2005). This over-representation had generated much research and policy attention. Questions had been raised about black people's offending rates and any discriminatory treatment they might experience in the criminal justice process.

Bowling and Phillips (2003) stressed any statistics generated by criminal justice agencies only provide partial information about the nature of offenders. This was because the vast majority of people who committed crime were not processed by the criminal justice system. As a result arrest statistics, or indeed any other kinds of criminal justice-generated statistics, did not provide conclusive evidence that black individuals were prone to greater criminality than their white counterparts.

Cole and Wardak (2006, p. 90) discussed the findings of a national survey of 483 black and Asian offenders on probation. They found a common feeling amongst respondents that treatment by agencies of the criminal justice system was generally fair. The exception was in relation to the police, where the majority felt their treatment was unfair. Examples of unfair treatment included being treated differently compared to their white counterparts, being looked down upon, or simply not being listened to. Cole and Wardak argued black and Asian offenders had experiences of social exclusion that resulted from their ethnicity, geographical location, economic positions and experiences of schooling. At the same time, these offenders also experienced discriminatory treatment. This could impact upon individuals' sense of the legitimacy of the criminal justice system.

The police and police practices

Police stop and search patterns generated considerable discussion amongst researchers. They showed an over-representation of particular racial groups, leading to questions being raised about whether police used racial profiling when deciding whom to stop and search. Available research highlighted this as a complex area with little clarity. Jefferson *et al.* (1992) carried out a comparative study of African Caribbean, Asian and white males, aged 10-35, in areas of Leeds. They looked at police arrest data, stop data and the outcome of arrest. They found over the whole of Leeds, that African Caribbean males (10-35 years old) had a higher arrest rate than white males. Data showed Asian male rates as being close to those for white males. When arrest rates were related to area of residence, the question of over-representation became more complicated:

- In those areas where there were more than 10% non-white households: white males had a higher arrest rate than African Caribbean males for the younger age group (11-21 years). Asian males had a lower rate than both African Caribbean and white males. For individuals in the older age group (22-35), differences were small.
- In those areas where there were less than 10% of non-white households: African Caribbean males had a higher arrest rate. The Asian male rate was much close to that of white males.

Waddington *et al.* (2004) undertook research into stop and search in two authority areas in England. They undertook observation, interviews with police officers (n=40) and analysis of stop and search databases (8,914 records). They found that when the ethnic composition of the **population available** in public places to be stopped and searched, rather than the **residential population** of a particular area, was taken into account there appeared to be no general pattern of bias in stop and search tactics. They argued ethnic patterns in stop and search should be compared with racial patterns. This was because ethnicity includes cultural differences. These cultural differences could manifest through behaviour and lifestyle, potentially leading to different levels of exposure to police stop and search. They criticised research and policy for using 'race' and 'ethnicity' interchangeably.

Newburn *et al.* (2004) argued that compared to visible 'street' policing, less attention had focused on what happened in the police station. They collected data on all persons arrested and held in police custody in one police station between May 1999 and September 2000. They examined more than 7,000 custody records. They found 'African Caribbean' arrestees were slightly more than twice likely as 'white European' arrestees to have been strip-searched. The rate at which strip searches were applied to 'Asian' arrestees was equivalent to that which was apparent among 'white European' arrestees. 'Arabs/Oriental' arrestees showed the lowest rate of strip search of all the ethnic groups. They argued that although stereotypical assumptions held by the police about BME groups may help to explain these differences, these assumptions did not act uniformly across all non- white groups.

Newburn *et al.* (2004) also found 'African Caribbean' arrestees were most likely to be charged and less likely to have received a caution, reprimand or warning than most other groups. 'White European' arrestees were the most likely to have received a caution, reprimand or warning. They argued that their results "raise the spectre of police racism, however, whether this is a product of institutional racism or unwitting racism is not possible to answer" (*ibid.*, p. 693). This study suggested there were policing practices and powers beyond stop and search that may be equally, if not more, revealing of the ways in which policing was unequally experienced.

Sharp and Atherton (2007) explored attitudes of minority ethnic young people towards the police, through in-depth interviews with 47 male and females aged 15-18 years. They found young men, in particular, had a lack of confidence in the police. Negative behaviour and misconduct by the police had led to wide mistrust. The police were seen to be uninterested in the concerns of minority ethnic young people. This was coupled with an over-exposure amongst the sample to contact with the police through stop and search.

A public inquiry, led by Sir William Macpherson and referred to above, found the police to be institutionally racist. This was defined as:

“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 disadvantages minority ethnic people”.

(Macpherson, 1999, 6.34)

Institutional racism might be considered as distinct from individual racism as it placed more emphasis upon the outcomes of procedures rather than focussing upon individual intent. Rowe (2004) argued that the implications of the Macpherson Report (from the public inquiry) were significant. He identified that it provided the political impetus to develop a wide range of policies and initiatives aimed at improving minority ethnic communities' trust and confidence in the police service, reducing racism within the police service, establishing a greater representation of minority ethnic police officers, looking at retention and promotion issues of minority ethnic staff, and increased and improved race relations training for officers. Rowe questioned the impact this policy focus would achieve. As noted above, police occupational culture might transcend the ethnic (or other) identity of police officers and so minimise differences between the tactics of officers from different ethnic backgrounds (Rowe, 2004).

According to Bridges' (2001) analysis of available research evidence, after charges had been brought by police, black people were more likely to have charges against them dropped or reduced by the CPS. They were also acquitted more frequently when tried before a judge and jury at Crown Court. He argued that this evidence indicated black people were often charged with offences more serious than could be supported by evidence. He suggested black people were discriminated against at earlier stages of the criminal justice system than by the courts.

The courts

Research focused upon minority ethnic groups' experiences and perceptions of court processes. Hood (1992) examined the sentencing decisions relating to all minority ethnic men at five Crown Courts in the West Midlands and compared these with an equivalent sized sample of white men (2,884 cases). A further sample of 433 minority ethnic and white women offenders was also explored. He found 'African Caribbean' males made up 21% of those found guilty at Birmingham and 15% at Dudley Courts, although they accounted for less than 4% of the general male population (in the age range 16-64 years). 'Asian' males were convicted only slightly more often than would be expected for the population at large.

There were significant variations between the proportions of minority ethnic individuals sentenced to custody. Hood found that when factors, such as the offender's previous criminal record or the seriousness of the offence were taken into account, the probability of a black male defendant being given custody was 5% higher than a white male. In one Crown Court, it was 23% higher. Furthermore, 'Asian' defendants who had pleaded 'not guilty' received longer sentences than similar white defendants. Hood concluded this evidence clearly pointed towards there being racial discrimination in the sentencing process.

Kalunta-Crumpton (1998) observed court proceedings involving 'black' and 'white' defendants with a drug offence at one Crown Court and one magistrates' court in London over a seven month period in 1991, collecting data on 71 defendants. She found categorisations of black defendants into images of socio-economic deprivation, crime, violence, rudeness and sexuality were employed within prosecution arguments to persuade the jury to convict the defendants in the Crown Court.

Shute *et al.* (2005) investigated the perceptions of members of BME communities who had appeared in the criminal courts. They observed 500 cases through the courts and interviewed over 1,200 people, including court officials. They found that between a quarter and a third of minority ethnic defendants believed their treatment by the criminal courts had been unfair in some way. About a quarter of tried minority ethnic defendants were not content with their juries. This was double the rate of white defendants. When asked for the possible reasons for this dissatisfaction, 18% of Asian defendants and 20% of black defendants said their dissatisfaction was due to race. Black defendants were more likely than white defendants to exercise their right to jury trial and to obtain acquittals or reductions in charges as a result. Bridges (2001) argued any attempts to limit the right to a jury trial would therefore be likely to impact disproportionately on black communities.

2.6 BME communities and civil justice

This section explores the evidence relating to BME communities and their experiences of accessing civil justice. Research in this area echoed the themes from criminal justice research and identified racism and a lack of recognition of diversity.

The main report on English and Welsh Civil and Social Justice Survey (Plesence *et al.*, 2004c, pp. 55-56) found BME respondents were less likely to take action to seek to solve a justiciable problem (23% of BME respondents taking no action, 19% of white respondents). Asian respondents were least likely to take action (27% taking no action). Plesence *et al.*

stated that their findings:

“Suggest that culturally rigid services and the unavailability of multiple language service provision or translation facilities can present significant barriers to the obtaining of advice.” (p. 111)

O’Grady *et al.* (2005) undertook further analysis of this data. They found differences in ‘consumer behaviour’ with regard to problem-handling strategies and the use of advice and legal services. Key differences found were between white and BME groups and between BME groups themselves. For example, a higher proportion of Asian respondents contacted their local council as first adviser, whereas a higher proportion of black respondents contacted an ‘other’ source of advice. They suggested these differences might be a result of differences in language ability, of cultural differences between communities (although they don’t elaborate on this) or they could be the result of provision less likely to target BME communities.

Regardless of advisers contacted, BME respondents to the survey had an increased tendency to receive assistance and advice that they found unsatisfactory. BME individuals generally reported advice to be of less utility. In some cases, the utility of advice could be explained by the type of adviser contacted. However, this did not account for roughly a quarter of such instances. O’Grady *et al.*’s analysis suggested BME respondents were more likely to receive poor quality advice in connection with a justiciable problem than white respondents. They argued their findings presented “manifest implications to be addressed, in terms of quality and appropriateness of advice given to BME populations in England and Wales” (p. 643).

There were concerns within the legal community, and BME led organisations in particular, about changes to the system of legal aid pending in 2005/6. The Constitutional Affairs Select Committee had highlighted concerns from their consultation. They suggested changes to the legal aid system would impact disproportionately upon BME-led law firms, as minimum contract sizes may limit the work these firms could undertake (Constitutional Affairs Select Committee, 2007). They stated BME-led firms were best placed to serve these communities and this was agreed by government in their response. There was not comprehensive monitoring of BME communities use of legal aid.

2.7 BME groups and access to justice

This chapter presented evidence that demonstrated discriminatory and exclusionary experiences of BME communities when seeking access to justice. We had seen evidence that established members of BME communities were more likely to be victims of crime, and

a significant number of these victims had experienced racist crime. The reporting of this appeared to be lower than other types of crime, suggesting even higher levels of victimisation. Evidence indicated there were some negative and discriminatory police practices, linked to 'institutional racism'. However the evidence relating to stop and search and other features of practice was complex. There was also evidence of discriminatory treatment by the courts.

We found less evidence relating to experiences of civil justice and advice seeking. Yet, the evidence we were able to draw on suggested members of BME communities were more likely to receive poor quality advice in connection with a justiciable problem than white respondents, and less likely to seek this advice.

We now consider our research questions. For BME groups:

What are their experiences of seeking advice and support with justiciable problems (including those experienced as consumers)?

- There appeared to be limited evidence available on the basis of our exploratory, investigative review. The research explored suggested members of BME communities were more likely to receive poor quality advice in connection with a justiciable problem than were white respondents. They were also less likely to seek this advice.
- The reporting of racial harassment and racist crime to the police appeared lower than other crimes, such as street robbery and property crime.

What are their experiences of civil and criminal justice systems, and legal processes?

- There was a lack of evidence relating to the civil justice system, other than that identified in relation to advice seeking behaviour.
- BME defendants, offenders and members of BME communities often considered their treatment by the police to be unfair.
- There was evidence of discrimination throughout the criminal justice system, but this picture was complex. Discrimination was not uniform across the police, the courts, or in relation to the diversity within a broad categorisation of 'BME' groups.
- Evidence indicated that after charges had been brought, black people received more acquittals and charges against them being dropped or reduced than other groups. This indicated initial prejudicial treatment by the police or prosecutors.
- Evidence suggested BME defendants were likely to believe their treatment by the criminal courts had been in some way unfair. BME defendants were also likely to be more unhappy with their juries than white defendants.

- There was evidence 'Black' defendants were more likely to be sentenced to prison than their white counterparts. African Caribbean men and women in particular were over-represented in prisons in comparison to their representation in the population.

What evidence is there of barriers to access to justice for these groups?

- Research suggested services failed to take account of ethno-cultural factors within particular BME communities, instead they focused on the white majority community.
- Victims' accounts suggested these factors were significant in terms of how people experienced victimisation.
- Services failed to recognise the diversity within BME communities and groups.
- There was a lack of refined and nuanced use of race and ethnicity language within research, policy and practice.
- BME communities perceived prejudice within the civil and criminal justice systems.
- Young men from BME communities were particularly likely to perceive the police as uninterested in their concerns and to perceive them as racist.
- BME communities experienced prejudice within the criminal and civil justice systems.

What policy and practice has been demonstrated to help overcome any barriers?

- We identified little evidence of policy and practice making a positive impact to BME communities' perceptions and experiences.
- The Macpherson Report highlighted the police as 'institutionally racist'. Researchers highlighted that the 'occupational culture' of the police could have a negative impact upon initiatives to change police practices.

3. Gypsies and Travellers

3.1 Introduction

At the time of writing Gypsies and Travellers had a status as ethnic groups and related legal protections, but there was a lack of reliable data about their numbers and their locations. The categories did not appear on the census and information about Gypsies and Travellers was rarely gathered in the systematic way that it was for other groups (Morris, 1999). The Gypsy Caravan Count System was a twice yearly count by local authorities. Although it was recognised as inaccurate and inadequate, an alternative had yet to be agreed (Niner, 2006). SEU (now replaced by the Social Exclusion Taskforce), with a remit to focus on those most disadvantaged groups in society, had not focused upon Gypsy/Travellers in any of their policy work (Morris, 1999). The police were only beginning to collect data on Gypsies/Travellers (Metropolitan Police, 2006). This lack of data and policy focus made it difficult to know the numbers of Gypsies, Travellers and others leading travelling lifestyles. There were estimated to be around 120,000 nomadic Gypsies and Travellers and a further 200,000 people of Gypsy and Traveller ancestry living in housing (Traveller Law Reform Coalition, 2007).

Research consistently showed Gypsies and Travellers suffered from: poor health and low life-expectancy; a lack of access to formal education coupled with under-recognition of the alternative skills and knowledge (young) Gypsy/Travellers possessed; and a lack of social care services that were accessible or reached out to communities (Cemlyn, 2000; Morris, 1999).

Within this report 'Gypsy/Travellers' is used for convenience. The term was used here inclusively to include all travelling people, including 'New (Age) Travellers'. Where appropriate, necessary distinctions were made.

3.2 The evidence

The dominant themes within literature and research identified by our exploratory investigative review related to Gypsy/Traveller's experiences of justice and the law stem from the issues of authorised and unauthorised encampments and sites. This covered both the legal framework and the policing and enforcement of this. For Trevor Phillips, writing as Chair of the Council of Race Equality in 2004:

"The provisions [of law] that impact most on Gypsies and Travellers are highly complex, so that many are not adequately aware of their rights and not empowered to challenge justice". (quoted in Johnson and Willers, 2004, p. vi)

The searches of academic databases identified just 29 abstracts to be considered for

inclusion. Most of the material returned by initial searches related to the Roma in Europe and were not judged to be relevant to the UK context. Thus, from these 29 just four were identified as relevant to our research questions. Searches of Gypsy and Traveller online resources, government policy and other leads were undertaken and a further 16 sources were identified. This was mostly categorised as 'grey' literature although it did include research. Where a research study is cited, we included some information on its nature. The 20 included sources across our five categorisations were:

- **Research studies**

Three research studies were identified by the review (Cemlyn, 2000; James, 2006; Okely, 2005). Two additional studies were added through existing knowledge and by following references from other included sources (Pizani Williams, 1998; Power, 2004). In total, five research studies were included.

- **Research reviews**

One review of research was identified by the review (Morris, 1999).

- **Analytical/theoretical pieces**

One source analysing policy (and drawing on research findings) was identified through Traveller websites (Morris, 2001).

- **Books and book chapters**

An edited collection aimed to provide information on the law and guidance to practitioners was identified through library searches (Johnson & Willers, 2004). This contained six useful chapters (Hunt & Willers, 2004; Johnson & Willers, 2004; Jones *et al.*, 2004; Murdoch & Johnson, 2004; Watkinson & Johnson, 2004).

- **Grey literature**

Six items of grey literature were included. One research study was not from a peer reviewed source but published by the authors' (academic) institution (Richardson, 2005). One piece of research carried out for government as part of an exploration of policy was identified (Niner, 2006). Two guides to the law for Gypsy/Traveller groups and communities were included (Clements & Morris, 2001; FFT, 2007). One policy guidance document for local authorities (ODPM, 2004) and one factual source (Metropolitan Police, 2006) were also included.

Our discussion was structured to reflect the themes that emerged from the literature identified in the exploratory review. We then considered our research questions. The themes were:

- Issues associated with the definition of Gypsies and Travellers and their status as ethnic groups alongside other nomadic or travelling communities.
- Authorised and unauthorised sites and encampments, and the centrality of this to the experiences of Gypsy/Travellers.
- The role of the police and policing.
- The experiences of Gypsy/Travellers within the criminal justice system.

3.3 Defining Gypsies and Travellers

This section considered the important but complex issue of how Gypsies and Travellers were defined.

English Gypsies and Irish Travellers were recognised ethnic groups under the Race Relations Act (1976) (amended 2000) on the basis of their having common ‘ethnic origins’ (Pizani Williams, 1998).

The Caravan Sites Act 1968 defined Gypsies as:

“Persons of nomadic habit of life, whatever their race or origin... but does not include members of an organised group of travelling showmen, or persons engaged in travelling circuses, travelling together as such”.

(Section 19, quoted in Pizani Williams, 1998, p. 7)

Clarification of this definition had been sought in law through appeals over rights to land and human or citizen rights more generally. A particular focus had been in seeking to recognise the ethnic status of Gypsies and Irish Travellers as groups with a nomadic history but who may now be ‘settled’ or who do not travel in a constant and consistent pattern, but preserved their cultural traditions and identity. In 2004 the Office of the Deputy Prime Minister (ODPM) issued guidance that ‘Gypsies and Travellers’ meant:

“A person or persons who have traditional cultural preference for living in caravans and who either pursue a nomadic way of life or have pursued such a habit but have ceased travelling... but does not include members of an organised group of travelling show people or circus people, travelling together as such.”

(quoted in Richardson, 2005, p. 2)

The Human Rights Act 1998 (HRA, 1998) enabled Gypsies and Travellers to seek protection and challenged discrimination on the basis of their ethnic identity and their cultural heritage of nomadism as the traditional way of life of a minority.² A guide to law for Gypsy/Travellers and those working with them concluded:

² Article 14 required that no-one shall be discriminated against in the enjoyment of their Convention rights on any ground, including matters, such as race, sex, national origin, or any other status. What must be established was that other people in an analogous or relevantly similar situation had been treated more favourably and that there was no objective or reasonable justification for such difference of treatment (Hunt & Willers, 2004).

“[By] requiring public authorities to justify interferences with Gypsies’ and Travellers’ way of life, and to demonstrate the necessity of treating members of those communities differently from the settled community, [the HRA 1998] is a potentially empowering step for this most marginalised of groups”.
(Hunt & Willers, 2004, p. 45)

3.4 Authorised and unauthorised sites and encampments

This section outlined the development of legislation for authorised and unauthorised sites and encampments and the impacts upon Gypsy/Travellers. It provided further background to the central themes of this chapter.

At the time of writing, although they had rights under the HRA, the law relating to rights to sites and encampments was complex and confusing for Gypsy/Travellers and those working to support them. The conclusion of the first and most comprehensive guide to the law as it affects Gypsy/Travellers concluded:

“It is clear that the lack of provision of suitable sites for Gypsies and Travellers is the root cause of most, if not all, of the difficulties that they face living in Britain today”.
(Johnson & Willers, 2004, p. 268)

ODPM published research in 2004 that found,

“There is no clear, widely understood national policy towards accommodation for Gypsies and other Travellers in England”.
(ODPM, 2004, p. 2)

The Organisation on Security and Co-operation in Europe (an EU-wide regional security organisation developed by member states) reporting on minorities within EU States catalogued ‘the substantial legal prejudice experienced by Gypsies and Travellers’ (Clement & Morris, 2001). The report quoted Justice Henry:

“If there are not sufficient sites where gypsies [sic] may lawfully stop, then they will be without the law whenever and wherever they stop”.
(cited in Clement & Morris, 2001, p. 5)

There had been a range of legislation relating to encampments over the last 60 years in the UK (all from Pizani Williams (1998) unless otherwise stated):

- The **Town and Country Planning Act 1947** resulted in local authorities restricting the areas where Gypsy/Travellers could stop.
- The **Highways Act 1959** specifically identified Gypsies for prosecution for camping on the roadside.
- The **Caravan Sites and Control of Development Act 1960** aimed to control private caravan sites and resulted in the closure of many private sites used by Gypsy/Travellers.

- The **Caravan Sites Act 1968** placed a duty on local authorities to provide adequate sites for Gypsies residing in their areas unless they could demonstrate only small numbers. However there was no timescale specified and there were no records of sanctions being taken against authorities that failed to develop provision. Also, the focus was on permanent sites and not the support of nomadic culture (FFT, 2007).
- The **Criminal Justice and Public Order Act (CJPOA) 1994** increased the powers of police and local authorities to evict Gypsy/Travellers camping illegally. It also removed the duty for site provision whilst abolishing central government grants for the development of legal sites.
- The **Anti-Social Behaviour Act (2003)** Section 62 allowed police to move Gypsy/Travellers on from unauthorised sites where there was local authorised provision (Richardson, 2005).

Those working with Gypsy/Travellers argued that:

“Although nomadism and unauthorised camping are not, in themselves, illegal, the effect of legislation has been to criminalise a way of life. In addition to this, the systematic closure of traditional stopping places through ditching, gating and boulders has resulted in the Traveller community having nowhere legal to stop. This has devastating consequences, especially for families with young children”.
(FFT, 2007, p. 5)

Gypsy/Traveller communities had mounted a number of legal challenges to the provisions. They secured some important individual judgements over rights to remain on sites. Yet these appeared to have been individual cases. There was a consensus across the research and policy literature that legislation had severely curtailed access to legal sites for Gypsy/Travellers. It had enabled local authorities to limit sites and spaces in the face of ongoing discrimination and stereotyping amongst the settled community.

The CJPOA 1994 was followed by a local authority circular. This circular advised that Gypsy/Travellers should be encouraged to purchase and develop their own land as a solution to the anticipated closure and limited availability of sites. However, analysis showed, whilst most planning applications from the settled community were allowed, most applications by Gypsy/Travellers were refused (Jones *et al.*, 2004). The planning application process could take many years to work through and so failed to address the lack of site provision (FFT, 2007).

ODPM issued advisory and non-compulsory guidance for local authorities on the management of unauthorised camping in 2004 (ODPM, 2004). Thus, there was still no duty for local authorities to provide places for Gypsy/Travellers to stop, on a temporary basis or otherwise. In addition, Gypsy/Travellers were treated differently within law to other users of caravans and mobile homes, who were afforded protection similar to those in council housing under the Mobile Homes Act 1983 (Watkinson & Johnson, 2004).

More positively, the Housing Act 2004 required local authorities to assess the accommodation needs of Gypsy/Travellers. One council had been reprimanded for not including their needs in their local development plans (as required by the Planning and Compulsory Purchase Act 2004) (Richardson, 2005, p. 3).

3.5 Police and policing

This section reviews the evidence relating to the police and police practices in relation to Gypsies and Travellers.

Gypsy/Travellers' experiences of the police and policing emerged from research and other literature as overwhelmingly negative. In their 2006 consultation with Gypsy/Traveller groups the Metropolitan Police found,

“The police response to unauthorised encampment appeared to be confrontational rather than consultative”. **(Metropolitan Police, 2006, p. 4)**

The consultation also found the police were seen as enforcers of the settled community's law against Gypsy/Travellers, rather than an institution that was willing and able to respond to their concerns and issues (Metropolitan Police, 2006). Gypsy/Travellers were rarely consulted by the police or by Community Safety Partnerships in developing crime and community strategies. This was despite the fact they could be victims of crime and anti-social behaviour from within and from outside their communities (Morris, 2001).

In her analytical paper for a police professional journal, Morris (2001) identified “a number of areas of policy and practice employed by some police forces in the UK which may not be in keeping with [race equality legislation]” (p. 44):

- Raids on sites in pursuit of crime and disorder considerations, in which all vehicles were searched.
- ‘Blanket’ raids could be shown to be discriminatory, as police operations concerned with a suspect or suspects in a house would not usually involve all other houses in the vicinity.

- Gypsies and Travellers excluded from ethnic monitoring, for example the use of discretionary powers, such as 'stop and search'.
- Recently evicted Travellers escorted to county boundaries.
- Evicted all Travellers from an unauthorised encampment on the grounds of criminal or anti-social behaviour, when prosecution of a few members of a group would be appropriate under those grounds. **(Adapted from Morris, 2001, pp. 44-5)**

James (2006) interviewed 14 New (Age) Travellers and 18 police officers across England. She argued the law and legislation around encampments and what is and is not allowed under the myriad of laws and associated guidance was so complex it created difficulties for the police. On the basis of her research she identified 'guerrilla tactics' developed by the police to make life difficult for New (Age) Travellers. These included:

- Blocking mobile phone signals to disrupt organisation.
- Excessive stop and search.
- Raids on whole sites.
- Variable use of other legislation depending on circumstance. For example, vehicle legislation employed to stop and search but also waived when moving on and out of the constabulary area.
- The blocking of roadside sites through the use of ditch digging, dumping of hardcore or gravel and blocking of land by vehicles. **(James, 2006)**

Power (2004) included evidence from a police sergeant who described 'flyering' areas where Travellers were expected to stop in order to warn residents of possible problems, something that was prejudicial and illegal. Pizani Williams (1998) reported how Gypsy/Travellers on official authorised sites described 'intensive and provocative policing' (p. 19). Examples included: police cars parking at site entrances to monitor vehicle movements; night tours of sites using high intensity torches to look inside trailers; searches of all trailers on site; and confiscation of legitimately owned goods.

James (2006) highlighted how the police found the law confusing and their tactics were a pragmatic response to the need to restrict unauthorised encampments, however temporary, as they would always be illegal. Richardson's (2005) interviews of police officers (n=5) indicated the police themselves would welcome the provision of authorised sites. The police recognised the negative consequences for their relations with Gypsy/Traveller communities of the enforcement required of them.

Pizani Williams (1998) used questionnaires and interviews to research the experiences of Gypsy/Travellers within the criminal justice system in one county of England (Kent). At the

time of her study, Kent had the highest numbers of Gypsy/Travellers of any county. She found 15 of 21 questionnaires indicated excessive stop and search by the police. These respondents had been stopped more than five times in the previous 12 months. Five of these respondents were stopped more than 20 times.

“The personal interviews revealed frequent questioning by the police, described as harassment... if they were driving vehicles some Travellers reported daily questioning by the police. If they were arrested, the Travellers felt that excessive force was used and physical attacks by police officers were said to not be uncommon, any injuries were attributed to ‘resisting arrest’.”
(p. 19)

Power’s (2004) research with Irish Travellers in two English cities echoed these findings. The study took place over three years and included focus groups (n=7) and 60 in-depth interviews with Irish Travellers. Eighty interviews with service providers, including the police and the prison service staff, were also conducted. Travellers reported excessive use of police powers and negative experiences of policing. For example, there was heavy policing of Traveller funerals, where the police anticipate trouble on the basis of large numbers of Travellers. Power argued this was unfounded as little trouble had actually been experienced.

Similarly, Morris (2001) reported a case brought by a Gypsy family with support from the Commission for Racial Equality in 1999 following a family wedding. A venue had been booked. When the police learnt it was a Gypsy wedding they met with the local council. Conditions were subsequently attached to the wedding party taking place there in order to minimise trouble. A subsequent venue was used with no incidents. In passing judgement, the judge at Bristol Crown Court:

“I find that there is no foundation for the assertions of the police that the gypsy [sic] problems of 1997 were linked to the Smith family. The trust is that as soon as the word ‘gypsy’ [sic] appears assumption are made that large numbers will descend and cause trouble”.
(quoted in Morris, 2001, p. 43)

Police forces had Gypsy Traveller liaison officers (GTLOs), but their roles and responsibilities varied (Power, 2004). They were seen by Gypsy/Traveller communities as assisting local authorities, focused upon the eviction process and therefore supported the settled community rather than Gypsy/Travellers themselves (Metropolitan Police, 2006). In recognition of these problems, the Metropolitan Police developed a new policy with,

“A new role for the GTLO giving it a community and intelligence based focus”.
(Metropolitan Police, 2006, p. 6)

This supported Richardson’s (2005) finding that there was a ‘cultural intelligence gap’ in the policing of Gypsy/Travellers. Richardson undertook a literature review, followed by interviews with 5 police officers and email correspondence with (an unstated) number of

Gypsy/Travellers and local authority GTLOs. Richardson reported that across the police new training was being developed in recognition of the negative attitudes held towards Gypsy/Travellers and the impact of this upon police practices. Cultural awareness training for police officers had been identified as insufficient by both Richardson (2005) and Power (2004). Power found,

“A six week diversity training course is shrunk to two days and committed training teams are undermined by the impossibility of challenging embedded prejudice with so few resources and so little time”. *(ibid., p. 83)*

The Macpherson Report (referred to in chapter 2) found there were problems in changing the attitudes of the police through training (cited in Power, 2004, p. 83). We saw, in the chapter on ‘BME communities’, concerns about the occupational culture of the police. Police officers interviewed by Richardson (2005) highlighted how prejudice towards Gypsy/Travellers was made explicit by their colleagues in a way it would not be for other minority groups. Pizani Williams (1998) concluded on the basis of her interviews with the police that officers were resistant to Gypsy/Traveller awareness training.

Evidence suggested negative experiences of policing made Gypsy/Travellers unlikely to report crime to the police or to seek justice through formal (settled community) routes. The Metropolitan Police found in their 2006 consultation with Gypsy/Travellers they were subject to hate crime but this was not being reported. The monitoring of racist crime against Gypsy/Travellers within the Metropolitan Police area was introduced in light of the Macpherson Report (Metropolitan Police, 2006).

It was not only crime against the Gypsy/Traveller community but within it Gypsy/Travellers were unlikely to report to the police. In her research involving a survey of 39 local authorities, including 43 interviews across 4 case-study areas, Cemlyn (2000) found evidence domestic violence was also under-reported. In her anthropological work, Okley (2005) had drawn attention to the internal ‘Gypsy Justice’ systems within Gypsy/Traveller communities. She highlighted how deep mistrust of the police and of the settled community lead to solidarity within Gypsy/Traveller communities and solidarity against the police and settled community’s legal systems in addressing problems. The exceptions to this were incidents of rape or murder of women and children. In these incidents “the [settled community’s] dominant system of law enforcement coincides entirely with the value system of Travellers” (p. 705). She identified a number of ways in which Gypsy/Travellers resolved disputes and crime within their communities without resorting to the settled community legal systems. Based on 30 years of work with Gypsy/Traveller communities, including extended periods of residence, she concluded that examples where Gypsy/Travellers had used the

law were exceptional.

“Having regularly had unfavourable experiences of the courts, Gypsies rarely initiated contact with such formal legal institutions to settle internal problems.”
(Okely, 2005, p. 696)

Pizani Williams (1998) argued that young Gypsy/Travellers were subject to community sanctions and strong family ties. Young Gypsy/Travellers were bonded together and discipline runs from older to younger young Gypsy/Travellers. She suggested expectations of **older** (teenage) young Gypsy/Travellers in supervising **younger** (children) young Gypsy/Travellers were responsible for low Gypsy/Traveller youth crime rates.

The Metropolitan Police found, alongside an under-reporting of race and hate crime, there was a lack of prosecution of media organisations where they had incited racial hatred with “prosecutions and even more so convictions... the exception rather than the rule” (Metropolitan Police, 2006, p. 7). Incidences of ‘No Gypsies or Travellers’ signs being ruled as illegal under the Race Relations Act were rare (Morris, 2001).

3.6 Gypsy/Travellers and the criminal justice system

This section discusses the small-scale and exploratory studies that explored the experiences of Gypsy/Traveller within the criminal justice system. The evidence continued the picture of negative experience and prejudicial or discriminatory practice, leading to disengagement amongst Gypsy/Travellers from legal structures.

There were perceptions within the police and the settled community that Gypsy/Travellers were responsible for disproportionately high rates of crime and anti-social behaviour, yet there was no evidence this was the case (Richardson, 2005; Pizani Williams, 1998).

Pizani Williams (1998) identified prejudicial assumptions and discriminatory practice within the Probation Service. She found pre-sentence reports (PSRs) failed to take account of Gypsy/Travellers’ circumstances. They did not recognise their culture and assumptions were made about the appropriateness of sentences on the basis of offenders coming from Gypsy/Traveller backgrounds. This examination of PSRs and her interviews with probation officers revealed officers were unlikely to recommend probation orders (aiming to support offenders to address their offending behaviour, supervised by a probation officer) and more likely to recommend Community Service Orders (CSOs)³ (where the offender is sentenced

³ CSOs and other community sentences have been replaced by one generic Community Order with a range of possible requirements for offences committed after 4 April 2005.

to do unpaid work in the community and is a higher level of punishment) for Gypsy/Travellers. They were commonly seen as difficult to supervise but hard workers within community work. She noted CSOs could increase the likelihood of custodial sentences for subsequent convictions.

Pizani-Williams (1998) also examined the work of a magistrates' court. She found adult Gypsy/Travellers were over-represented in the court on the basis of levels of offence, and they were significantly more likely to receive a restrictive sentence than non-Gypsy/Travellers. Her interviews with magistrates' court clerks revealed they regarded the court's treatment of Gypsy/Travellers as differential. The research also found Gypsy/Travellers regarded the police, courts and local defence solicitors as colluding in discrimination against Gypsy/Travellers.

The second study we drew on was Power's (2004) research with Irish Travellers. Unlike Pizani Williams (1998) he also researched the experiences of Travellers within the (youth) secure estate and (adult) prison system. He cited research that showed how Gypsy/Travellers were disproportionately remanded into custody pending trial, less likely to receive bail and more likely to receive custodial sentences. His own research found prison officers acted in discriminatory ways towards Irish Travellers, possibly due to often having military backgrounds (and having served in Northern Ireland during 'the troubles'⁴) and therefore prejudice against Travellers as both Irish and Travellers. He argued the concerns of the Irish community in general were ignored within the criminal justice system. He found the lack of permanent address lead to the denial of bail and created problems for the criminal justice system, which was geographically organised. He argued the perceived inability of sanctions to be enforced upon a mobile or nomadic person lead to punitive and custodial sentencing. Youth Offending Teams were identified as perceiving problems in working with travelling young people, although examples of sharing responsibility across administrative boundaries were found. Issues of illiteracy and the impact this could have upon Travellers' ability to engage with formal processes were also rarely recognised within the criminal justice system (also Watkinson & Johnson, 2004).

⁴ 'The troubles' was a time of violent conflict in Northern Ireland between Nationalists, who believed in a united northern and southern Ireland, and the Unionists who believed that Northern Ireland should remain part of Britain. The modern troubles began in 1963 and the Good Friday Agreement was signed in 1998, eventually leading to the establishment of a democratically elected Northern Ireland Assembly. This was a complex history, and a good summary can be found on the BBC History website www.bbc.co.uk/history/recent/troubles/#conflict_in_context

3.7 Gypsies and Travellers and access to justice

At the time of writing the discrimination suffered by Gypsy/Travellers was well established, but there was a lack of research that focused upon Gypsy/Travellers experiences of law, the criminal justice system, and access to justice (Power, 2004). Although the law offered Gypsy/Travellers legal protections, these were rarely enforced. The dominant issue for Gypsy/Travellers was the limited access to legal sites to camp and stop. The illegality of their culture outside of the limited official sites meant Gypsy/Travellers were frequently, by definition, outside of the law and thus its protections.

We now consider our research questions. For Gypsy and Travellers:

What are their experiences of seeking advice and support with justiciable problems (including those experienced as consumers)?

- We did not have evidence of advice seeking behaviour and support with justiciable problems in formal structures.
- Internal and traditional forms of justice and dispute resolution provided alternatives to the formal criminal and civil justice systems for Gypsy/Travellers when resolving disputes. Even where they were inadequate they were preferred to formal structures.

What are their experiences of civil and criminal justice systems, and legal processes?

- There was a history of legislation that was restrictive of Gypsy/Travellers lifestyle and culture.
- Whilst most planning applications from the settled community were allowed, most applications by Gypsy/Travellers were refused.
- There was evidence of under-reporting of crime by Gypsy/Travellers, including racist crime and victimisation.
- The evidence of Gypsy/Travellers' experiences of the police and of policing was overwhelmingly negative.
- There was evidence of discriminatory treatment throughout the criminal justice system – the courts, prisons and the probation service.

What evidence is there of barriers to access to justice for these groups?

- By lacking legal places to stop and establish temporary or permanent camps, Gypsy/Travellers were frequently living in unauthorised camps and, by definition, outside the law and thus its protections.
- There was a lack of monitoring and data in relation to Gypsy/Travellers, making it difficult to recognise their experiences and understand their needs.
- Gypsy/Travellers perceived the police and the criminal justice system as serving the settled community. This framed Gypsy/Travellers experiences of, and attempts to access, justice.
- There were unfounded perceptions that Gypsy/Travellers were responsible for disproportionately high rates of crime.

What policy and practice has been demonstrated to help overcome any barriers?

- There was little evidence of positive policy and practice in this area.
- The Metropolitan Police had begun routine monitoring that recognised Gypsies and Travellers as ethnic groups.
- The Metropolitan Police had developed a new policy for the role of Gypsy/Traveller liaison officer (GTLO).
- Community groups working with Gypsy/Travellers provided specialist advice and support.

4. Refugees and asylum seekers

4.1 Introduction

At the time of writing it was estimated there were approximately 20 million 'people of concern' to the UNHCR (the United Nations High Commissioner for Refugees: the UN Refugee Agency) in the world. This figure had steadily increased. Of the 775,000 asylum seekers known to UNHCR worldwide, 30,000 applied for asylum in the UK in 2006 (UNHCR, 2007). Applications for asylum in the UK had been decreasing steadily since 2003, with the 22,750 applications made in 2006/7 being 10% lower than 2005/6 and down more than 50% from 49,405 in 2003 (Home Office, 2004, 2007). Seventy-five per cent of applications in the first quarter of 2007 were refused, a level maintained since 2003 (Home Office, 2003, 2007).

Refugees and asylum seekers were not a homogeneous group; they had a range of different experiences, expectations and needs. Papadopoulos (2002) stated

"The loss of home is the only condition that all refugees share". (p. 9)

Evidence indicated refugees and asylum seekers faced a range of inter-related problems that contributed to their social exclusion. These included material poverty, poor quality housing, discrimination, poor diet and problematic access to health and social care services. Researchers argued understanding of these issues was rarely developed as the focus of policy was to manage the asylum process (Beirens *et al.*, 2007; Duke *et al.*, 1999). Refugees and asylum seekers had not been a focus of the SEU despite their remit to focus on the most disadvantaged groups in society.

4.2 The evidence

Much of the literature in this field, particularly in relation to adult refugees, documented the history of immigration, immigration controls and integration policies. It looked at how legal conventions, their interpretation and application impacted upon refugees and asylum seekers. Asylum is an area of civil law. We identified some examples of research and commentary on the wider impacts of legal issues and experience of these processes. There was also some evidence in relation to broader service access and welfare issues.

This exploratory investigative review identified 45 abstracts for consideration for inclusion. Of these just four sources were judged to have relevance to our research questions and were included in the final review. An additional 35 sources were identified, on the basis of existing and expert knowledge. We found the most relevant sources of information and

evidence were found within the 'grey literature'. This was due in part to the rapidly changing nature of legislation in this area and thus any associated impacts. Specialist legal expertise was drawn on in the construction of this chapter. The 42 sources included across our five categorisations were:

- **Research studies**

No relevant research studies were identified. Three studies in peer reviewed journals were identified from existing and expert knowledge (Hamilton *et al.*, 2003; Mynott & Humphries, 2003, Thomas *et al.*, 2004). One study was supported by the Economic and Social Research Council (Candappa & Egharevaba, 2000). In total, four peer reviewed research studies were included.

- **Research reviews**

One research review, undertaken for the Joseph Rowntree Foundation (independent funder of social research), was included on the basis of existing knowledge (Rutter, 2003)

- **Analytical/theoretical pieces**

Three sources analysing policy and presenting theoretical argument (and drawing on research findings) were identified within the review (Bloch *et al.*, 2000; Chakrabarti, 2005; Nykanen, 2001). Three additional sources were identified (Duke *et al.*, 1999; Joly, 1996; Lynch & Cunningham, 2000) giving six sources.

- **Books and book chapters**

One book chapter was identified through the systematic review (Bhabha & Shutter, 1994). Two books were identified through expert knowledge (Crawley, 2001; Papadopoulos, 2002) and five book chapters (Hayes, 2004; Loizos, 2002; Power *et al.*, 1998; Russell, 1999; Sales & Hek, 2004). In total, eight sources from this category were included.

- **Grey literature**

Twenty-three sources classified as 'grey literature' were identified for inclusion outside of the initial review process. Three factual sources were used (Home Office, 2004, 2007; ICAR, 2007). Six guides to policy and its impacts, produced by or in association with campaigning organisations were included (CAB, 2004; ILPA, 2004; Refugee Council 2004b, 2004c; Ruxton, 2000; UNHCR, 2007). The remaining 14 sources all consisted of research. They are classed as 'grey' literature as they come from charities and organisations working with refugees and asylum seekers.

The sources were: Asylum Aid, 2005; Ayotte, 1998; BAAF & Refugee Council, 2001; BiD & Asylum Aid, 2005; Crawley, 2006; Dennis, 2002; Kelly & Meldgaard, 2005; Kelly & Stevenson, 2006; Kidane, 2001; Gosling, 2000; Penrose, 2002; Refugee Council, 2004a; Stanley, 2001; Wolde-Giyorgis *et al.*, 1998.

Our discussion is structured to reflect the central themes that emerged from the literature identified for inclusion. We then consider the available evidence in relation to our research questions. The themes were:

- Issues associated with defining who refugees and asylum seekers were.
- The legislation and rights that impacted upon refugees and asylum seekers.
- The plethora of legislation in the UK and its fast changing nature.
- The use of and access to health and other welfare services.

4.3 Defining refugees and asylum seekers

This section considers who we meant by refugees and asylum seekers.

At the time of writing the terms 'refugee' and 'asylum seeker' had specific legal meanings. An asylum seeker was a person who had crossed an international border in search of safety and applied to be given refugee status under the 1951 Geneva Convention (Geneva Convention, 2007). A refugee was someone who had gained refugee status under the Convention. 'Unaccompanied' refugees and asylum seekers were children under the age of 18 years of age who had been separated from both parents and were not cared for by an adult who, by law or custom, was responsible to do so (UNHCR, 2007).

Chakrabarti (2005) noted the terms 'refugee' and 'asylum' had, in the past been used to cover both those in flight and those granted legal protection and 'asylum' related specifically to any protections offered. She went on to argue, as immigration laws had become more punitive and less protective the term 'asylum seeker' had become used in an increasingly pejorative fashion. This was a view also supported by Hayes (2004).

There was a lack of clarity and enormously differing estimates of how many refugee and asylum seeking children and young people lived in the UK. This remained an ongoing area of concern for those working with young refugees, because these children could 'disappear'. Therefore they would not receive the services they were entitled to, or without protections they might be at risk of exploitation. These problems were highlighted in a study that mapped

the educational and social services provision for young refugees in one area of the UK (Hamilton *et al.*, 2003). Researchers found that in West Sussex special arrangements were put in place to protect looked after children from trafficking as 66 children had 'gone missing' from placements. Information regarding unaccompanied children was collated in another mapping study, *Where are the Children?* (BAAF & Refugee Council, 2001). The research found the information was unclear as local authorities had vastly different approaches to how they kept figures about unaccompanied children, if they kept them at all. The research found 10% of unaccompanied young people lived independently compared with just 2% of other 'children in need' (as defined under section 17 of the Children Act 1989).

4.4 Immigration and legislation

This section provides an outline of issues relating to immigration, the impacts of legislation and the nature of refugees' and asylum seekers' experiences of the law and access to justice in this context.

Refugees had been coming to the UK for generations, fleeing persecution from a variety of countries and leaving behind them situations, such as war, abuse and economic hardship (Chakrabarti, 2005). The numbers of asylum seekers entering Britain rose significantly during the late 1980s as civil and military conflict, environmental devastation and the break-down of state structures in Eastern Europe forced many people from their homes. From this time British governments had implemented increasingly restrictive policies on asylum that had made it more difficult for refugees to gain entry to Britain, and reduced the rights of asylum seekers to social support and welfare provision (Joly, 1996). Successful asylum applications declined from 59% in 1982 to less than 10% during the 1990s (Home Office, 2004).

Conditions of entry dominated debate and policy making (Duke *et al.*, 1999). Refugees' needs had been met by mainstream services that were deemed inadequate by providers and users, and by *ad hoc* specialist services operating with constrained budgets. Refugee community organisations had often played an important role in providing practical and emotional support for newly arrived refugees, and had increasingly found themselves in the position of providing for basic needs (Duke *et al.*, 1999).

In 1999, responsibility for support was transferred from local authorities to a central body within the Home Office (National Asylum Support Service (NASS)). Local authorities provided support through contracts with NASS. Asylum seekers in the current support system had no choice about where they were accommodated and were dispersed around

Britain. They might also be detained or forced to live in accommodation centres. These measures separated asylum seekers from mainstream society (Duke *et al.*, 1999). Dispersal resulted in asylum seekers placed in areas of the country that did not have the infrastructure of specialist providers, and this infrastructure had taken time to develop (Asylum Aid, 2005). Kelly and Meldgaard (2005) undertook research with 33 local authorities, interviewing those responsible for assessing families under Section 9 of the Asylum and Immigration Act 2004. (This Act restricted the entitlements to representation amongst other restrictions; details of the legislation follow below.) They found families often did not understand their legal circumstances or the options for support and provision they had.

Drawing on their interviews with 125 unaccompanied asylum seekers, Mynott and Humphries (2003) argued that immigration status and awaiting the outcome of asylum claims for young refugees was “an issue that permeates all other aspects of their lives” (p. 24). Young people experienced a constant underlying sense of anxiety in relation to this issue and their ability to settle was compromised by long waits and lack of information. Kidane’s (2001) research for the British Association for Adoption and Fostering (BAAF) involved focus groups and interviews with (an unstated) number of unaccompanied asylum seekers and refugees. They found although children and young people had varying levels of knowledge regarding their immigration status, it was an important area of their lives. This was also found by Wolde-Giyorgis *et al.* (1998) in their research with 19 refugee families for Camden Family Service Unit. For unaccompanied young people, the resolution of immigration status was a major factor in how happy and secure they said they felt. They also found those children who knew about their status were “troubled and affected by it” (p. 27). A review of policy and research by Crawley (2006) for the Immigration Law Practitioners’ Association (ILPA) criticised government policy for treating children as asylum seekers first rather than ‘children in need’.

The 1951 Geneva Convention formed the basis for international law governing the granting of refugee status. To be granted this status, a person must have left his or her own country and be unable to return to it:

“Owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion”.
(Geneva Convention, 1951)

The Geneva Convention laid out standards relating to the treatment of refugees and Nykanen (2001) argued in her commentary that the most important of these standards was the principle of *non-refoulement*. This prohibited a refugee being returned to a country or situation where his or her life or freedom was threatened. The Convention applied to all

refugees irrespective of age and gave equal importance to the social rights of refugees within the country of asylum. These included residence rights, employment, social welfare, education and housing. Chakrabarti (2005) noted that in 1997 with the impending advent of the HRA (1998) there was a move to place the rights of refugee's alongside those of British nationals or citizens in a white paper, *Rights Brought Home* (Home Office, 1997). She argued that instead, increasingly damaging immigration legislation was brought in that counteracted the effects of the HRA (Chakrabarti, 2005). Nykanen (2001) argued the Convention did not meet the "protective needs of child refugees" (p. 316), as the convention was geared to the needs of adult males.

Over half the world's refugees were children (Russell, 1999) and two thirds of the world's refugee's were female (Bhabha & Shutter, 1994). Much of the available literature had only started to address issues specific to women and children (Bloch *et al.*, 2000). This perhaps reflected that in the UK 70% of refugees and asylum seekers were adults and 70% of these were males (ICAR, 2007). Bloch *et al.* described how women were likely to experience different forms of persecution and were offered less legal and procedural protection than men (for more discussion see also Crawley, 2001; ICAR, 2007). Ruxton (2000), in her review of EU policy, argued that evidence showed children's mental and physical health and general development were more affected than any other group by 'flight' and the 'reasons for flight'.

Rutter's (2003) research review established most young refugees had experienced high levels of anxiety, had to flee from their homes (often on their own), and would have travelled through a number of countries. Many children and young people would also come to this country due to living in situations of serious poverty and deprivation, or as a result of trafficking for exploitation in the sex industry (*ibid.*). Thomas *et al.* (2004) looked at the cases of 100 unaccompanied asylum seekers. They considered data from lawyers and social workers as well as from young people themselves. A third of the young people, both male and female, reported they had been raped. They found approximately 10% of the young people continued to be exploited in the UK.

Bloch *et al.* (2000) argued in order to ensure that all refugees and in particular those who were most vulnerable had equal access to justice, it needed to be recognised people were individuals with different needs and experiences and "policies must be implemented which recognize and cater for these differences" (p. 185).

4.5 UK asylum and immigration legislation

Since the late 1980s, an increasing amount of political and media attention had been focused on the issue of immigration and asylum. There had been an unprecedented amount of new asylum and immigration laws passed in the UK (1993, 1996, 1999, 2002, 2004, 2006 and legislation pending at the time of writing in 2007). The three pieces of legislation in the 1990s were the first pieces of asylum legislation in the UK. Interest groups working with refugee and asylum seekers argued legislation impacted upon them disproportionately to other groups. Restrictions on access to the legal system and to advice and support applied to asylum seekers that did not apply to other groups (BiD & Asylum Aid, 2005). This section gives summary detail about UK asylum and immigration legislation and the ways in which it impacts upon refugees and asylum seekers and restricts their rights.

The Asylum and Immigration (Appeals) Act 1993 removed the right of asylum seekers to secure social housing tenancies and differentiated their rights due to their status. It also meant if asylum seekers had any access to a roof, however temporary, they were not housed by local authorities. This led to increased mobility amongst asylum seeking families. Continuity of access to education and healthcare services for children in these families became difficult and fragmented (Power *et al.*, 1998).

The Asylum and Immigration Act, 1996 removed the right to social security benefits from 'in-country' asylum applicants and those appealing a negative decision. Following a successful legal challenge, it was established local authorities had a duty to provide care for the destitute under the National Assistance Act 1948 and to children and families under the Children Act 1989. Support under the former had to be 'in kind' with cash only in extreme circumstances. Therefore, they were given vouchers for food exchangeable at supermarkets. This again marginalised asylum seeking children, young people and families who often could not get access to religious or culturally appropriate foods. They were also marked out by the vouchers, often leading to racism (Sales & Hek, 2004). It was at this time social services departments set up asylum teams to discharge the duties placed upon them by the Act. The Act also introduced restrictions on employment so asylum seekers could not work legally (Penrose, 2002).

The Immigration and Asylum Act, 1999 set up NASS and the system of dispersal of asylum seekers to various parts of the UK. This was in order to limit the numbers of asylum seekers congregating in communities around ports of entry and the south east more generally. It removed any remaining benefit entitlement from asylum seekers. It stopped asylum seekers working and brought in a new voucher system, which stopped cash payments other than £10 per week. NASS also became responsible for the allocation of housing following dispersal. Only one offer of housing would be made and there would be no choice of area. This applied to all new asylum seekers other than unaccompanied children. The Act also introduced 'One Stop Warnings'. This required all possible legal arguments related to a person's (or their dependant's) right to remain in the UK, must be argued at the same time.

The Act also removed the obligation under the Children Act 1989 for local authorities to provide accommodation or for the essential living needs of refugee and asylum seeking children. Although Lynch and Cunningham (2000) commented this appeared to breach their rights under the UN Convention on the Rights of the Child, the UK placed a reservation on the Convention so the rights did not apply to asylum seeking children (Crawley, 2006).

A further effect was on legal advice. The Office of the Immigration Services Commissioner was created and a criminal offence introduced for providing legal aid unless it was from a 'qualified person'. This was intended to improve the quality of legal advice, but the initial impact was a reduction in the availability of legal advice (CAB, 2004).

The Nationality, Immigration and Asylum Act 2002 established Induction Centres in which newly arrived asylum seekers had to lodge their asylum application and their application for support from NASS. Seven days after this, children and their families could be treated in one of three ways:

1. Adults and children could be moved to a detention centre for removal from the UK.
2. Refugee children might be moved to the community to live with family or friends. Then they were dispersed, and received support from NASS. However, the length of time for this support was discretionary.
3. They might be moved to an accommodation centre where they had to stay until a decision had been reached on their application. During this time, they would have basic needs met.

A further change came with the introduction of Section 55 of the Act. This allowed the Home Office to withdraw support for in-country applicants, who did not apply for asylum 'as soon as is reasonably practicable'. Unaccompanied young people would not be affected by this immediately. However, if they had entered the UK and not claimed asylum within 72 hours, then this section would apply retrospectively when they became 18 years old.

The other group of young people Section 55 particularly affected were those where there was an age dispute and who were already being treated as adults. Many refugee support, children's and homelessness organisations voiced concerns about this section of the Act. The Refugee Council (2004a) published a report detailing the levels of destitution the section had caused.

Section 54 of the Act, Schedule 3, removed the right to access social services for refugees from other EU states and failed asylum seekers (as those 'unlawfully present'). It was accompanied by moves to limit access to healthcare (see 'Health and other welfare services' below).

The Asylum and Immigration (Treatment of Claimants, etc) Act 2004 gave rise to further concerns about the way that people were treated in the UK asylum process. As the legislation was being passed, the Refugee Council (2004b, 2004c) highlighted a number of areas of concern in relation to children. The Act proposed the withdrawal of basic support for families, under Section 9. This amended Schedule 3 of the 2002 Act so failed asylum seekers with families would have support withdrawn should they resist procedures for them to return. This would leave them destitute. Kelly and Meldgaard's (2005) research for Barnardo's highlighted concerns amongst local authorities of the implications of withdrawing support from vulnerable families. The Home Office subsequently amended the provision so it should not be used 'as a universal tool'.⁵

The Act removed the right of asylum seekers to challenge unlawful decisions made on their cases, restricted the right to appeal on cases and increased removal powers so asylum seekers could be sent to 'safe third countries'. Section 2 of the Act created a criminal offence for failing to produce the required immigration documentation to support a claim for asylum. As criminals charged under the Act, asylum seekers were referred to criminal lawyers who had no specialist understanding of immigration law. Thus they were unsuccessfully defended even where there was a defence available to them. These provisions had subsequently been successfully challenged and thus annulled by case law (ILPA, 2004).

2004 also saw the introduction of a new system for funding appeal case representation (from the 'sufficient benefit' test) so decisions on whether to fund representation were not made until the case had been concluded ('retrospective funding'). This system did not apply to anyone seeking legal aid other than asylum seekers. As a consequence, representation was only given in those cases where firms were confident of success. This reduced the availability of legal provision. Since 2004 there had also been a cap on the amount of time that could be funded for providing advice and asylum to asylum seekers, explicitly limiting access to legal support (Asylum Aid, 2005; BiD & Asylum Aid, 2005).

Many authors and commentators highlighted the process, and in particular the waiting time, for asylum decisions. Living with a great deal of uncertainty was stressful and anxiety provoking and research had found many people had to wait considerable lengths of time for their claims to be processed (Ayotte, 1998; Stanley, 2001). Waiting times had however begun to be reduced (Home Office, 2007).

Stanley (2001) and Mynott and Humphries (2003) reported on their collaborative research with 125 young people and 125 professionals across England, conducted for Save the Children. They found the asylum process was intimidating and unpleasant for them and

⁵ Transcript of Ministerial Statement by Liam Byrne 25 June 2007 www.theyworkforyou.com/wms/?id=2007-06-25a.9WS.1.

there was little good practice being adhered to in this area. Young people spoke about their experience of legal representatives. Whilst most of the young people felt their solicitors were reasonably competent, there was little communication and support available. Solicitors changed without young people being told. Interpreters were often not skilled enough. These findings echoed those from Ayotte's research (1998) with 26 young asylum seekers and their families and 27 professionals, also for Save the Children.

These issues were compounded by funding arrangements in place for solicitors since 2000, whereby there was a set monthly fee per number of cases. This set fee did not include payment for interpreting services. Additional changes to the system of legal aid risked restricting this lack of access to justice further (BiD & Asylum Aid, 2005).

4.6 Health and other welfare services

This section identifies issues that are important to the equality of treatment in the UK for refugees and asylum seekers. It highlights how, at the time of writing, they lacked access to health and other welfare services, and the links between restrictive legislation and service access. Such experiences were seen as shaping and thus limiting contact with broader support services.

Gosling's (2000) study collected evidence through interviews (34) with young refugees and asylum seekers. Half the young people interviewed felt their health had deteriorated since arriving in the UK.⁶ Kelly and Stevenson (2006) discussed 2004 legislation affecting NHS services that accompanied the 2004 Act discussed above (that removed the right to social services). The 2004 NHS (Charges to Overseas Visitors) (Amendment) Regulation ended free entitlement to NHS care for refugees and asylum seekers, beyond primary services. They highlighted the negative impact of these changes on those seeking secondary and acute healthcare (hospital services, including consultation). They also highlighted confusion amongst primary care services (GPs). Research had shown many refugees and asylum seekers talked of their problems in accessing primary health care on arrival in the UK, and many had found it extremely difficult to register with a GP (Kidane, 2001). Language problems and a lack of interpreters had been found to lead to a lack of access and disclosure. But confusion amongst primary care services of legislation and entitlement meant often this level of care was refused (Kelly & Stevenson, 2006).

⁶ There was a considerable amount of literature in relation to the mental health needs of refugee children and young people, how they coped with trauma and upheaval and uses of various therapeutic interventions. See Papadopoulos (2002) for a useful edited collection.

Stanley (2001) found around a third of the 125 young asylum seekers in this study said they experienced racist bullying. Rutter (2003) reviewed policy and practice in this area and argued that for policies to be effective they needed to promote: effective monitoring and sanctions against racism and bullying; a school ethos of inclusion and respect; an inclusive and diverse curriculum; and work with other agencies in the community to challenge racism outside of school. This was particularly important in light of a study by Candappa and Egharevba (2000). This research involved interviews with 36 refugee children and a survey of 200 refugee and non-refugee children across two secondary schools in Glasgow. It found the education system was often the only statutory agency involved with, and offering formal support to, refugee and asylum seeking children.

4.7 Refugees and asylum seekers and access to justice

At the time of writing access to justice for refugees and asylum seekers was a complicated concept and research and commentary was dominated by the impact of legislation, both for adults and young people. There was a lack of research or literature concerning access to justice beyond this focus and in particular on seeking solutions to justifiable problems. But, there was research and commentary related to a broader exclusion problem.

We now consider our research questions. For refugees and asylum seekers:

What are their experiences of seeking advice and support with justiciable problems (including those experienced as consumers)?

- Asylum is an area of civil law. Legislation had limited the rights of refugees and asylum seekers to access advice and support but had also limited the supply. This was because of the way in which legal aid was funded. It was also due to the dispersal of refugees and asylum seekers to areas without expert infrastructure.
- Young refugees and asylum seekers could be 'hidden' from official view. School could be the only agency these young people and children had contact with.
- There was evidence of young people having their support changed without consultation.
- There was evidence of limited understanding amongst refugees and asylum seekers of their rights, including to advice and support.

What are their experiences of civil and criminal justice systems, and legal processes?

- Legislation had become more punitive. It was restrictive of rights within the criminal and civil justice systems.
- Legislation restricted the broader rights of refugees and asylum seekers to welfare services, for example NHS services.
- Refugees and asylum seekers could be criminalised due to failure to comply with legislative requirements. There was evidence of a lack of specialist legal support in this context.
- There were delays in the legal processes that impacted upon refugees and asylum seekers. There was evidence the resultant uncertainty had negative affects for wellbeing and mental health of individuals.

What evidence is there of barriers to access to justice for these groups?

- There was limited provision of legal advice and support, including to appeal decisions.
- There was limited provision of interpreting services.
- The dispersal of refugees and asylum seekers to areas without the infrastructure to support them made access to appropriate advice and support difficult.
- Lack awareness of the numbers, particularly of young unaccompanied asylum seekers, made effective targeting and accessible services unlikely.

What policy and practice has been demonstrated to help overcome any barriers?

- There was no evidence of positive legislation, policy and practice to support refugees and asylum seekers. Positive support was provided voluntary and community sector organisations.

5. Sexuality

5.1 Introduction

The previous sections of this report had touched upon issues of identity where they were aspects of ethnicity and associated with legal status. This section takes an explicit focus upon sexuality and sexual identity. At the time of writing lesbian, gay and bisexual (LGB) people faced discrimination and social exclusion not just in the UK but across Europe. Research suggested, on the basis of their sexuality, they suffered from: violence; a lack of rights and protections as individuals and couples; discrimination and disadvantage in accessing health and social care services; in the labour market and education; and were marginalised by society, often remaining invisible to policy and practice. Yet, considerations of their experiences had been conspicuous by their absence from research and policy (Ward, 2005). As with refugees and asylum seekers and Gypsy/Travellers, LGB people had not been the focus of activity from the SEU or the newly constituted Taskforce at the Cabinet Office despite evidence of their exclusion.

There were no official statistics about the number of LGB people in the UK. Stonewall, the campaigning organisation for LGB people stated:

“The Government is using the figure of 5-7% of the population which Stonewall feels is a reasonable estimate. However, there is no hard data on the number of lesbians, gay men and bisexuals in the UK as no national census has ever asked people to define their sexuality. Various sociological/commercial surveys have produced a wide range of estimates, but there is no definitive figure available”. **(Stonewall, 2007)**

There were no plans to include requests for this information in the next census (ONS, 2007b). Difficulties in arriving at a number included what was measured, for example behaviour or identity, the role of self-definition and the reluctance of some LGB people to identify themselves as such (ONS, 2007b). Using the 5-7% estimate, we could calculate there were an estimated 1.8-2.5 million LGB adults in the UK.

Their minority status and lack of policy focus led to their identification for inclusion in our exploratory, investigative review of access to justice for vulnerable groups.

5.2 The evidence

Within this review articles had been included where they related to sexual orientation, specifically those relating to LGB people. Many theoretical discussions and debates did

combine a consideration of lesbian, gay, bisexual and transgender perspectives. The study of sexuality commonly included these and other aspects of sexuality. However, the focus here was explicitly on LGB experiences. Some of the articles identified in the initial search discussed sexuality and justice from the perspectives of gender and transgender. The aspects of the legislative system which applied to trans-people were quite different to those which related to LGB populations, falling largely under the remit of gender equalities legislation and policy (see for example Whittle 2002; Whittle *et al.*, 2007). For that reason, they were not explored here. It should however be noted, for those trans-people who identified as lesbian, gay or bisexual, they had to negotiate both of these systems.

In common with other sections of this report, little research was identified that addressed the issue of access to justice as defined by our research questions. Legislative changes in the mid-2000s meant LGB people were now covered by anti-discrimination legislation in relation to employment (EE (SO) Regulations, 2004), access to goods and services (EA (SO) Regulations, 2007) and hate crime (Criminal Justice Act, 2003) as well as access to partnership rights (Civil Partnership Act, 2004). This represented a significant change from a situation where LGB people were criminalised in the law to one where they were now offered some protection. This protection however was not universal and there were still areas where LGB people received differential treatment with regard to employment law (EE (SO) Regulations, 2004) and marriage (Civil Partnership Act, 2004) for example. The rapid pace of legislative change over the past few years had an impact on the amount of research accessible for this review by 2007. Much of what had been written and published was out of date. There had not yet been a sufficient time-lapse since the implementation of the legislation for research to be conducted on experiences and the impact of change. The review process also identified many US-based sources that were deemed unsuitable for inclusion due to that particular legislative context. Some US research was included as it was helpful in considering issues that were not legislation specific (e.g. health impacts of victim experiences). We also drew on grey literature from pressure groups and organisations, like Stonewall, GALOP (Gay London Police Monitoring Group) and ILGA (International Lesbian and Gay Association) to supplement the limited amount of research.

Our searches of academic databases identified 89 abstracts to be considered for inclusion. Ten sources were judged to have relevance to our research questions and were included in the final review. Eighteen additional sources were identified, including 13 we could classify as 'grey literature'. The 28 included sources across our five categorisations were:

- **Research studies**

Seven research studies were identified by the review (Cochran *et al.*, 2002; Grattet & Jenness, 2005; Green *et al.*, 2001; Herek *et al.*, 2002; Mason, 2005; McDevitt *et al.*, 2001; Otis, 2007). One additional one was identified through existing knowledge (Heaphy *et al.*, 2003). In total, eight research studies were included.

- **Analytical/theoretical pieces**

Three sources analysing policy and presenting theoretical argument (and drawing on research findings) were identified within the review (Currah, 1997; Diduck, 2001; McGhee, 2003).

- **Books and book chapters**

Three books were identified through expert knowledge (Fish, 2007; Moran & Skeggs, 2004; Wilton, 2000). A further book chapter was also identified (Mooney-Somers & Ussher, 2000).

- **Grey literature**

Thirteen sources we had classified as 'grey literature' were identified for inclusion outside of the review process. Four were guides for professionals who may be working with LGB people (ACPO, 2000; LGBT Mind Matters, 2005; Age Concern, 2006; Alzheimer's Society, 2007). One was an unpublished PhD thesis (Ward, 2005). Three other sources reported research carried out by organisations commissioned to undertake independent research by campaigning or interest groups (GALOP, 2004; King & McKeown, 2003; O'Connor & Molloy, 2000). Another source was research carried out by an organisation working with BME lesbian and bisexual women (Jivraj *et al.*, 2003). One source was a general policy document from central government (SEU, 2002). Another source was an interview with a leading academic on homosexuality and the law (Moran, 2007). The final source was the proceeds of a conference exploring LGB and older people (Age Concern, 2002).

Our discussion was structured to reflect the two central themes that emerged from the literature identified for inclusion. We then considered our research questions. The themes were:

- Sexuality and hate crime (the dominant theme to emerge within the literature).
- Homophobia and societal and institutional experiences and processes, which impacted upon and shape the behaviour of LGB people and framed their rights.

5.3 Sexuality and hate crime

This section discusses evidence related to homophobic hate crime, its reporting and its effects.

Experience of hate crime was the predominant theme of the articles we identified for inclusion. Hate crime was defined as criminal conduct motivated by prejudice. The Association of Chief Police Officers (ACPO) suggested in their guidance that hate crime was “a crime where the perpetrator's prejudice against an identifiable group of people is a factor in determining who is victimised” (ACPO, 2000, p. 10, cited in Mason, 2005).

The perpetration of hate crime was motivated by **perceptions** of difference. This perceived difference might relate to identifiers, such as ‘race’, ethnicity, religion, sexual orientation, homelessness or citizenship status. The perpetrator(s) made a judgement about the status and behaviour of the victim. It was not necessary that the person be of the identity perceived. Straight people could be ‘gay-bashed’.

There were a number of barriers to understanding and assessing the extent of homophobic hate crime. These in turn presented barriers to access to justice. LGB people were reluctant to come forward and report crimes. Many feared they would be victimised by the authorities. ACPO acknowledged the barriers presented by a lack of trust meant:

“...many lesbian, gay, bisexual and transgendered (LGBT) people believe that homophobia is widespread within the [police] service. They are wary of reporting crime for fear that the police will investigate their lifestyle along with the crime”.
(ACPO, 2000, p. 18)

Herek *et al.*'s (2002) US research, with 450 LGB people in California, suggested this was more likely in relation to hate crime than in relation to other crimes experienced by LGB people. Consequently, the true picture of hate crime was not known and this made it difficult for support agencies to respond effectively. Hate crime had been shown, by US research, to have a greater impact on psychological well-being than other types of crime. McDevitt *et al.* (2001) undertook a survey of all victims who reported hate crime in Boston from 1992-1997. They also had a comparable randomly selected sample of non-victims. They received responses from 91 victims and 45 non-victims. The research showed how hate crime had particular impacts on feelings of safety, nervousness and depression. These findings were reinforced by research from Otis (2007), in her US survey of 272 lesbian women and gay men. She also discussed how links between fear of crime and the assessment of risk lead to alterations of behaviour. Fear of crime, victim experiences and knowledge of the victim experiences of others lead to heightened assessments of risk. She argued this resulted in social exclusion.

Mason (2005) analysed police reports of 20 racially motivated and 20 homophobic motivated hate crimes in the UK to explore relationships between victim and perpetrator. Contrary to the common assumption, the findings suggested hate crime was being perpetrated by people known to the victim. The victim had no knowledge of the perpetrator in only 5% of the incidents examined.

The US research conducted by Herek *et al.* (2002) (see above) also supported these findings. They found hate crimes were perpetrated by people known to the victim including neighbours, family, co-workers and supervisors. For lesbians, people living in rural areas and younger victims the likelihood of knowing the perpetrator increased. This was a pertinent issue because the assumptions that organisations made about the nature of hate crime might influence the categories under which it could be reported. It might also affect the way that crimes were constructed by agencies. They might expect the crime to fit limited criteria and therefore incidents might not be judged as hate crime. Grattet and Jenness (2005) studied 397 police records of hate crime and undertook interviews with officers (number not stated in study). They drew attention to the central role of the police in defining an incident as a hate crime or not, and the frequency with which they might not recognise these crimes. An additional issue was identified in the research undertaken by GALOP, a London organisation that monitored anti-gay violence and the police. Professor Moran led the research from the School of Law at Birkbeck College. Their survey was returned by 164 people from across the Bexley and Greenwich local authority areas. Their findings suggested hate crime often occurred in localities familiar to the victims, for example in the vicinity of their home, or work place. This made it difficult to manage risks:

“These locations provide a series of contexts in which perpetrators get to ‘know’ those against whom they commit acts of violence. It is perhaps in these locations where it is most difficult for victims to avoid the perpetrators and thereby manage the violence, threats and harassment”.

(GALOP, 2004, p. 46)

McGhee (2003) analysed initiatives that were associated with the policing of hate crime in the context of multi agency working requirements outlined in the 1998 Crime and Disorder Act. McGhee noted the experience of hate crime could result in social and democratic detachment both for the victim and for the communities at whom it was aimed. This detachment from social and political participation and the consequent exclusion that resulted could be seen as presenting a barrier to justice.

5.4 Homophobia and societal and institutional experiences and processes

This section explores evidence and analysis of the impacts of homophobia and the exclusionary processes linked to accessing justice for this group.

Some aspects relating to exclusion became apparent in research that took a broad focus to explore the lives of LGB people and communities. Moran and Skeggs (2004) recorded low level harassment and abuse as well as more serious attacks in their discussion of the politics of violence. Ward (2005) identified the impact of low level harassment, heterosexism and homophobia on well-being. Fish (2007) illustrated the impact of institutional and personal homophobia in access to services (see also Wilton, 2000).

One aspect of the law that explicitly supported homophobia existed in the 'homosexual panic defence'. Also known as 'the Portsmouth defence', this related to a defence of provocation where someone was charged with murder. The accused person could claim a homosexual advance was made and this contributed to their loss of control and subsequent attack on the victim. No research evidence could be found related to this aspect of the law, however Stonewall (no date) outlined the following case:

"In 1994 Al Francisco Delamotta was murdered in Ramsgate. Delamotta was a married man with three children; there is no evidence to suggest he was bisexual. He was stabbed in the chest and back by David Hunt, an unemployed labourer at Hunt's home in Ramsgate. Hunt claimed that Delamotta, whom he had met while out drinking, made homosexual advances to him. There was no evidence other than Hunt's word that this was the case; nevertheless Hunt's plea of provocation was accepted and he was sentenced to five years for manslaughter". **(Stonewall, no date b)**

Currah (1997) argued we needed to recognise the power of officers of justice (police, judiciary) to interpret and define groups and thus their right to access to justice. Diduck (2001) explored European-level legal decisions and noted that the ideal against which many relationships was measured was that of a stable, monogamous, married heterosexual couple. This ideal was enshrined in relationships between the family and the state. Diduck argued this had a particular impact on those families who did not or (in the case of lesbian and gay couples) could not achieve this ideal. Despite developments in relation to Civil Partnership in the UK, lesbians and gay men were still excluded from the institution of marriage.

Moran (2007) noted the invisibility of sexuality in diversity monitoring of the judiciary, and suggested sexuality was notable by its absence. Ward noted the absence of issues of sexuality from SEU reports (Ward, 2005), despite research that demonstrated how LGB

populations might be more at risk of experiencing homelessness, family breakdown, mental ill health (King & McKeown, 2003; LGBT Mind Matters, 2005; Mooney-Somers & Ussher, 2000; O'Connor & Molloy, 2000; SEU, 2002; Cochran *et al.*, 2002).

Lesbians and gay men had rights in relation to immigration law. However, appeal tribunals had been found to dismiss many applications by genuine gay refugees. The adjudicators say gay people would not be at risk of victimisation in violently homophobic countries like Jamaica, Iran, Algeria and Zimbabwe if they hide their identity, avoid effeminate mannerisms, and either never had sex or had sex with extreme discretion (Jivraj *et al.*, 2003; Outrage, 2004, 2005). This denied LGB their rights to their sexual identity.

Research into the needs and experiences of older LGB populations had noted the difficulties in accessing services that were appropriate to older lesbians, gay men and bisexual people. This research had also established that assumptions of heterosexuality could exclude LGB people from services (Age Concern, 2002, 2006; Alzheimer's Society, 2007; Heaphy *et al.*, 2003). There were also impacts for younger people. Family relationships could suffer, leading to a lack of family-based support. They could also be bullied at schools, often without support being provided (SEU, 2002; Mooney-Somers & Ussher, 2000; Stonewall, no date a).

5.5 Sexuality and access to justice

We have seen how our exploratory investigative review indicated there was an overall lack of knowledge and attention to this area, making it difficult to identify clearly the experiences of LGB people and communities in accessing justice and the barriers they experienced. We have seen how the issue of hate crime was a central one. Considerations around reporting but also around recording of hate crime, and the detail on victim perpetrator relationships might influence 'understanding of causation, recidivism and prevention that may flow from this' (Mason, 2005, p. 854).

We now consider our research questions. For LGB groups:

What are their experiences of seeking advice and support with justiciable problems (including those experienced as consumers)?

- There was evidence of mistrust of agencies and services amongst LGB communities, based on experiences of, or perceptions of, homophobia.
- Experiences of, or perceptions related to, one service or agency could lead to withdrawal from contact with other agencies and a broad lack of trust in institutions.

What are their experiences of civil and criminal justice systems, and legal processes?

- The true extent of homophobic crime was hidden due to under-reporting.
- LGB peoples' perceptions and experiences of the legal system acted as a barrier to seeking access to justice. We did not identify evidence of homophobia within agencies, rather evidence of perceptions based on reported experience.
- There was evidence of discrimination within law. For example, asylum seekers could be deported on the assumption that if they hide their sexuality they would be safe from harm.

What evidence is there of barriers to access to justice for these groups?

- Policy and practice was dominated by the heterosexual norm, excluding LGB communities.
- The police, other agencies and services could hold assumptions about the nature of homophobic crime that were not borne out by research evidence. For example, it was often assumed perpetrators were likely to be unknown to the victim.
- The police and other agencies could act as 'gatekeepers' to homophobic incidents being recognised and defined. They might not recognise such incidents. LGB communities were aware of this and it impacted upon their reporting and thus on their advice and support-seeking behaviour.
- Hate crime could have more severe consequences for mental health and wellbeing than other forms of crime.
- Distrust in the institutions of justice appeared to be related to conceptions of how the police and courts addressed crime against lesbians, gay men and bisexual people. Thus, as with other groups, LGBs perceptions and experiences of the legal system acted as a barrier for their seeking access to justice.

What policy and practice has been demonstrated to help overcome any barriers?

- There was a lack of policy-focused research exploring LGB communities' experiences.
- There was a lack of material that considered the sources of advice for LGB people and their strategies for seeking justice, beyond broad recognition of homophobia and discriminatory treatment from services.

6. Discussion and conclusions

In this final section, we discuss how the examples used within this review enabled us to understand how issues related to 'Ethnicity, Identity and Sexuality' impacted upon access to justice. The focus of our research questions and 'access to justice' as a theme within the exploratory review had indicated there were broader literatures that could inform our understandings. There were gaps in the research and other literature in recognising access to justice as an issue for policy and practice and its broader relevance to understandings of social exclusion and vulnerability in this context. The research and literature we were able to identify often focused upon features of legislation as they impact upon particular groups. Or there was a focus upon processes and systems, for example police practices or the working of the courts. There was limited research exploring advice seeking behaviour.

The evidence and analysis presented in this report suggested access to justice should be understood beyond the achievement or not of justice as an outcome itself. The processes and qualitative experiences of groups could interact with perceptions to inform action and inaction.

Here we consider cross-cutting issues that emerged, and highlight recommendations for policy, practice and future research.

6.1 Minority groups as vulnerable

Each of the groups considered in this report were minorities in terms of ethnicity, sexuality and identity/legal status within the majority population of the UK. This status appeared to make them vulnerable to social exclusion with welfare and other services failing to address needs that emerged. These issues interacted so that access to justice was one, under-recognised and under-researched, element of this broader problem of exclusion. We could understand groups as vulnerable within a 'social model of vulnerability'. Whilst not seeking to deny the problem of disability (Oliver 1996, cited by Wishart, 2003, p. 23), the social model of vulnerability and disability separated out the disability from the original impairment. It argued the causes of disability could be found in the social environment. This included the ways in which disability was talked about and understood, and the practical and material barriers to participating in society. Therefore, rather than being inherently vulnerable due to characteristics of ethnicity, identity or sexuality, instead social structures and processes created vulnerability.

The groups we discussed in this report emerged as vulnerable in terms of access to justice. This was as a result of identifiable prejudice and discrimination within the systems, organisations and agencies of the law, criminal and civil justice. There was legislation that had negative impacts for these groups. We also saw how perceptions and experiences lead to mistrust amongst minority groups, who believed their treatment would be prejudiced should they seek solutions to justiciable problems.

6.2 Police and policing practices

In considering the issues relating to minority groups, we saw evidence of minority groups' experience of prejudicial and discriminatory treatment by the police. These experiences remained beyond the time of the Macpherson Report (1999) and inquiry and the subsequent reforms. The evidence concerning the police and policing practices reminded us that legislative and policy changes were not enough by themselves. This suggested attention must be paid to ensuring top-down initiatives impact at the front-line, where they were intended to achieve change.

For crime and victim experiences, the police were at the vanguard of routes to access justice. Where mistrust in the police was found, evidence indicated this impacted directly on the reporting of crime, particularly when it was related to or associated with identity, ethnicity, sexuality and culture.

6.3 The criminal justice system

Each of the chapters in this report outlined or indicated problems minority groups could face, and disadvantages they perceived, within the criminal justice system. The chapters on BME and Gypsy/Traveller communities included evidence of over-representation within the prison and criminal justice system. They also showed evidence that experiences and perceptions of court processes were seen as discriminatory. BME defendants were not content with their juries at almost double the rate of white defendants. For LGB communities, there were concerns about the ways in which crimes against them would be understood and defined. There was a lack of research that explored this fully. Overall, there was a lack of monitoring of the experiences of, and outcomes for, minority groups.

There were concerns within the legal community that changes to legal aid proposed in the 2006-07 period would impact disproportionately on minority groups. This was because minority groups required specialised knowledge and expertise, which might be dispersed or diffuse in new centralised arrangements.

6.4 Justiciable problems

We found little research that had explored minority groups' experiences of seeking solutions to justiciable problems. Research and related literature that explored the experiences and outcomes for minority groups tended to centre around the key and dominant issues for those groups. For BME groups, research focused upon experiences of racism and racist crime but also institutional racism within the police and criminal justice system. For Gypsy/Travellers, the lack of legal places to stop and have encampments meant for much of the time they were by definition outside of the law and thus without its protection. Refugee and asylum seeker focused research and literature was almost exclusively concerned with legal processes and civil law structures around them. Finally, a lack of monitoring of LGB identity was coupled with a similar lack of research that considered these groups' experiences of seeking solutions to justiciable problems.

One research study indicated BME communities were more likely to receive low quality advice when seeking solutions to justiciable problems (O'Grady *et al.*, 2005). Other evidence described the lack of trust minority groups appeared to have in the institutions of civil and criminal law. This was related to their experiences and perceptions of the police, courts and criminal justice system. It might be that minority groups lacked confidence in formal sources of advice and support and their ability to enable them to access justice. By recognising a social model of vulnerability, we could understand a reluctance to seek advice and a lack of available appropriate advice as dimensions of social exclusion.

6.5 Access to justice: the evidence gap

The available evidence (in 2007) identified within this exploratory, investigative review and presented in this report provided us with at least partial answers to our research questions. Here we summarise the messages from our main chapters.

What are the experiences of seeking advice and support with justiciable problems (including consumer experiences)?

There was little research exploring minorities' experiences of seeking advice and support with justiciable problems. Available evidence suggested discrimination or perceptions of discrimination lead to a lack of advice seeking amongst minorities. Research exploring this in relation to BME communities suggested they were less likely to seek advice, and that this was of a lower quality when it was received than that received by other (majority) groups.

What are the experiences of civil and criminal justice systems, and legal processes?

There was a body of evidence that indicated the negative experiences of minority groups within civil and criminal law and associated systems and processes. Discriminatory outcomes for minority groups were demonstrated by research in the criminal justice system. In addition, individuals within these groups were more likely to perceive prejudice and discrimination in their treatment. Legal status dominated the experience of some groups (i.e. Gypsy/Travellers and asylum seekers) so there was little research or literature that explored other dimensions of access to justice or kept any focus except on the narrow (though highly important) set of issues. It also reflected the dominance of these issues in the lives of people from these community and groups. There was a lack of monitoring of categories of ethnicity and identity that made identification of possible problems and their solutions difficult.

What evidence is there of barriers to access to justice?

Evidence suggested a lack of awareness of 'justiciable problems' and of the sources and availability of advice. Agencies within legal systems and structures might fail to recognise the needs of minority groups, resulting in negative experiences that were likely to impact upon future advice seeking behaviour in the pursuit of justice. Experiences that were prejudicial, either directly experienced or perceived, acted as barriers. Legislation and legal status framed access to justice for Gypsies and Travellers and for refugees and asylum seekers. For refugees and asylum seekers, the rapidly changing legislation presented additional problems. Evidence suggested a lack of available specialist advice and legislation that countered this.

A feature of social exclusion was negative experiences with organisations and agencies (more broadly than those associated with 'justice') could lead to a lack of trust in institutions and therefore a lack of engagement with them.

What policy and practice has been demonstrated to help overcome barriers?

There were examples of legislation or initiatives that aimed to address barriers, but this did not always appear to have impacted upon front-line practice. The lack of research exploring questions of 'access to justice' perhaps reflected a lack of sustained policy and practice focus on these issues. It appeared likely there was a lack of awareness amongst those professionals that worked with minority groups of the nature and incidence of justiciable problems and of routes aiming to provide access to justice, beyond those issues that defined groups' experiences (for example, the provision of legal sites for Gypsy/Travellers).

6.6 Conclusions and recommendations

Based on the evidence available in 2007, there was a clear evidence gap in seeking to understand experiences of justiciable problems. Broad discussions of social exclusion failed to consider access to justice beyond a cursory inclusion (where it was acknowledged at all). Minority groups' experiences were often unrecognised or under-researched.

The uneven coverage of research meant whilst we were able to highlight some common areas to emerge, we were unable to understand access to justice as experienced by the

minority groups that were our focus. Although barriers to access to justice were sometimes identified or identifiable, the lack of research and policy focus given to access to justice was reflected in the scope of sources identified within the focus of review. Some aspects were discussed in the 'grey literature'. However some issues did not appear in the research literature. This was perhaps because changes to legislation or practice in the mid-2000s were too recent for this 2006-07 review to capture research focused at their effectiveness or outcomes or because peer reviewed research was not yet published. The review was guided by the content of the sources we could identify. The broader literature suggested much fuller research was required for all of the groups considered here, to fully understand their experiences of access to justice. Addressing the evidence gap was particularly important when we understood access to justice as a central tenet of social inclusion and the right of all to equality and fairness of process and outcome. A social model of vulnerability appeared to be a useful framework for understanding how vulnerability was not a static state but was dependent on context.

The groups we considered in this report shared common experiences of social exclusion and vulnerability. Yet for each of the broad groups, we were reminded experiences and circumstance were heterogeneous. Agencies within, and organisations supporting, the civil and criminal justice systems appeared to fail to deal with the needs of vulnerable groups but also the variety of need within them. This suggested there needed to be greater awareness and flexibility amongst professionals of the experiences of different groups, but also an awareness that stereotypes should be avoided. The problem(s) experienced should be the primary definer of support and advice, and of processes stemming from this.

It is also possible there was a lack of awareness amongst minority communities of any problems they had or issues they experienced as being ones that were 'justiciable', as well as appropriate places to obtain advice and support. Coupled with a lack of trust in agencies and the process of civil and criminal law, this added to the vulnerability of minority groups. This lack of 'legal literacy' might be overcome by awareness raising campaigns and services that reached out to communities. Legislation and policy change by itself was unlikely to be sufficient in changing practice and perceptions of this. Changes to legal aid might further limit access to justice for minority groups. The Constitutional Affairs Select Committee highlighted concerns that changes to the legal aid system would impact disproportionately upon BME communities (Constitutional Affairs Select Committee, 2007). No consideration was given to the other minority groups whose experiences we explored within this report. These findings again highlighted the importance of monitoring across minority groups.

Recommendations

The findings from our exploratory, investigative review enabled us to make recommendations for consideration in policy, practice and research based on the 2007 context when the report was drafted. In order to promote access to justice and to tackle the barriers to this we suggested:

- Policy makers should recognise the importance of access to justice within strategies to address social exclusion and seek to enable access to justice as a tenet of social inclusion.
- Where legislation is enacted or guidance amended, its application in practice should be closely monitored in order to ensure its translation into front-line provision.
- Service providers, organisations and agencies should provide on-going training to address the needs of minority groups, with a focus on the need to be sensitive to ethnicity, culture and identity and on how individually tailored support can be provided whatever people's circumstance.
- Policy and practice needs to reflect the reality that minority groups can be vulnerable on the basis of their identity due to processes from institutions and wider society that we can associate with conceptions of social exclusion rather than anything inherent within that identity.
- More language and literacy support services are needed. Issues associated with culture and identity merit greater recognition also.
- Outreach services may improve access to justice through increased visibility and thus increased awareness and accessibility of advice.
- Awareness raising campaigns should take place that target minority communities, increasing awareness of both justiciable problems and sources of advice and support.
- Routine monitoring of outputs and outcomes needs to improve, in order that minority experiences are better demonstrated and understood.

- More research is needed that takes as its primary focus experiences, perceptions, and processes of access to justice for minority groups of ethnicity and identity, and with justiciable problems at the centre, in order to address the evidence gap.
- Research, policy and practice concerned with social exclusion must consider access to justice as a key dimension of this. In this context, consideration should be given to a social model of vulnerability.

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Appendix: Methodological information

In this appendix we provide some detail about the methods employed in undertaking this exploratory, investigative review. In particular we discuss the role of the research team, the search process, and the addition of 'non-research' and grey literature.

The research team involved academics with expertise in relation to each particular vulnerable group and with generic expertise relating to the civil and criminal justice systems. Reeves *et al.*, (2002) highlighted a number of benefits of a team approach to (systematic) literature reviews, including the potential for the 'group to debate, clarify their ideas and obtain peer support during the lengthy process of completing a review'. In particular, they noted the advantage of 'fusing together our different knowledge bases and skills to enrich our work' (pp. 358-9).

In seeking to explore 'ethnicity, identity and minority groups' we initially considered using a systematic review methodology. A systematic review required the searching and analysis of all available evidence in a methodical and transparent fashion. We began the review by undertaking a scoping stage, searching databases of peer reviewed research using search terms and search strings that focused upon our research questions and our themes. It became clear there was a paucity of research exploring our research questions. On the one hand, there was an enormous range of literature that had the potential to inform the review. On the other hand, searches that took a tight focus around our research questions returned very few sources. For example, searching for 'sexuality' AND 'access to justice' returned zero abstracts; searching for 'homophobia' brought 884. It was clear a systematic review would require an enormous amount of literature to be included in order that all possible dimensions of our research questions were considered. Given this breadth, we did not have the capacity to undertake systematic reviews. Instead, we undertook an exploratory investigative review. This contained a focused literature review supplemented by insights from broader knowledge. This highlighted key themes for policy makers and practitioners to consider and for further research to build upon this initial work.

Our literature review was structured to contain the core elements of a systematic review (Orton & Rowlingson, 2007):

- **searching** (the systematic identification of potentially relevant studies based on key search terms and strings (combinations of terms));
- **screening** (using criteria to decide what is considered for inclusion);

- **data extraction** (the in-depth examination of studies); and
- **synthesis** (the identification of key themes).

The literature review focused upon published, peer reviewed research evidence. We did not review case law. The searches were primarily undertaken through the gateway to social science and law literature, 'CSA', which searches across 22 social science databases. Searches were also undertaken via WestlawUK, a specialist legal resource. Details of our search terms follow below. We then supplemented this with searches of the internet through the Google search engine, both by using our search terms but also through the searches of sites relating to our questions (for example Friends and Families and Travellers). We did not search for all the possible sub groups that were identifiable within each of our broad headings. For example, by individual ethnic group.

The literature search occurred in two distinct phases. The first search phase saw an initial general search in relation to notions of 'access to justice' and 'barriers'. The details of each source identified were reviewed and those that were judged as of possible relevance were saved. Decisions about what to include within the review were based upon a reading of the abstracts, where available, and if required a reading of the full text. A judgement was made by a member of the research team about whether or not the content contributed to our understanding of our research questions. This informed, professional judgement (see also Hasluck & Green, 2005; Orton & Rowlingson, 2007) was our key criteria for inclusion.

Additional and refined search terms were then suggested, based on this reading of the initial abstracts. The team considered together any issues that emerged and any key words or terms related to these in order to explore them across the groups. The team also considered any issues that were expected to emerge but which had not, and suggested search terms that might identify sources addressing this. MOJ (as commissioners of the study) were provided with the search terms suggested for the review and were invited to contribute ideas.

The second phase of the search then applied these additional terms. Some groups returned very little information we identified as being of possible relevance and more terms were therefore identified. Some terms returned high numbers of sources that were judged as suitable for review and searches were less complex as a result.

The abstracts from this literature searching were provided to contributors, and a record was kept as they reviewed the sources identified. This record provided a database of information

for inclusion and exclusion decisions to be made. It provided space for reviewers to note the type of source, its content, details about the research where possible, and a note on the content as well as an initial indication of whether the source was relevant to our questions. A judgement of the relevance of the source content was our key inclusion criteria. If no abstract was available, the full text of the source was reviewed.

Where the source under review was a research study, the reviewer was asked to use one of two frameworks for assessing the quality of that research:

- The Scientific Maryland Scale (SMS) (Farrington *et al.*, 2002), which ranked evaluation studies on a five-point scale according to several criteria, with randomised control trials (RCTs) as the highest of 5 ranks. This framework was only suitable for quantitative studies.
- The 'Global Assessment of Evaluation Quality' (GAEQ) (Moran *et al.*, 2004), which used six criteria for assessing qualitative research, including: data collection tools; sample representativeness; sample size; analytic methods; programme integrity; and type of evaluation.

All of the research included in this review can be considered 'high' quality: of the studies included all scored 5 or 6, except for one that scored 3, on the GAEQ scale where 6 indicated the highest quality. This framework was prioritised as it was able to include both qualitative and quantitative research.

In a systematic review design, a classification of quality according to the scales was commonly used as the primary organiser for inclusion and exclusion decisions. Although we did not use a systematic design, we did apply these frameworks to the empirical sources we identified for inclusion. As databases of peer reviewed sources includes non-research items, our searches also returned reviews of research and pieces where authors drew on research to support or present arguments. Non-research items included should also be considered high quality, due to their inclusion in peer reviewed journals, but they cannot be classified in the same way.

The review process identified little research that explored our research questions directly. As described in the chapters for each of our groups, we were able to identify material that gave insights into elements of 'access to justice' but the area appeared to be an under-researched one. Research that had taken place had either a very broad relevance, or was focused on a specific aspect, so that there was not even or comparable coverage across the 'vulnerable groups' or across our research questions. We found 'grey' literature (published literature that was not usually peer reviewed and came from a range of sources, for example

voluntary and community sector groups or government reports) offered valuable insights into more recent policy changes or new practice to supplement the often narrow focus of the results of our literature searching. Nonetheless, the research team had limited capacity to consider all possible grey literature that might have relevance. This was because grey literature was dispersed and diffuse and therefore time-consuming to access.

The total number of sources included in this exploratory review is detailed in the table below and stated in the introduction to each chapter. The table indicates: the number of sources returned from our literature searches; the sources identified as of possible relevance and therefore reviewed for inclusion; the sources included from that stage due to a judgement of relevance; the number of these that were empirical research studies; and finally, the number of additional 'grey literature' sources that were included. Each chapter included more detail on the sources included within each of the five categories outlined in chapter 1.

Topic	Total sources returned by searches	Sources reviewed	Sources included	Of which: empirical research	Additional sources	Total
Black and minority ethnic groups	1530	150	12	7	11	23
Gypsies and Travellers	29	29	4	3	16	20
Refugees and asylum seekers	863	45	4	0	35	42
Sexuality	1654	89	10	7	18	28

Search terms used

The search terms used within this review are listed below, together with the numbers of sources returned by the CSA ASSIA database.

BME

Search term	Number
BME AND access to justice	0
Black AND access to justice	5
Black or ethnic minority or minority ethnic AND justice (not social justice)	265
Black or ethnic minority AND victimisation	2
Ditto AND criminalisation	0
Ditto AND criminal*	42
Stop and search	10
Gender AND ethnicity	536
Faith AND ethnicity	10
Black or ethnic minority AND immigration	23
Ditto AND victim*	7
Ditto AND crim*	273
Faith AND justice	77
Black or ethnic minority or minority ethnic AND hate crime	167
Ditto AND policing	69
Contract law or consumer or contract AND black or ethnic minority	44

Gypsy/Traveller

Search term	Number
Gypsy or Traveller AND access to justice	0
Gypsy or Traveller AND justice	15
Gypsy or Traveller AND law	10
Gypsy or Traveller AND crime	4
Gypsy or Traveller AND victim*	0
Contract law or consumer or contract AND Gypsy or Traveller	0

Refugees and asylum seekers

Search term	Number
Refugee or asylum seeker AND justice	36
Refugee or asylum seeker AND legal	463
Refugee or asylum seeker AND access to justice	1
Refugee or asylum seeker AND legal advice	0
Refugee or asylum seeker AND advice	19
Refugee or asylum seeker AND contract or consumer	20
Refugee or asylum seeker AND victim	45
Refugee or asylum seeker AND victim*	252

Sexuality

Search term	Number of references
Sexuality AND access to justice	0
Sexual* or lesbian or gay AND justice (not social justice)	61
Ditto AND hate crime	51
Homophobi* or homosexual* or queer* AND hate crime	25
Lesbian or gay or homosexual AND policing	27
Heterosexism	153
Homophobia	884
Hate Crime	175
Queer bashing	1
Sexuality* AND Justice	39
Lesbian* AND Justice	33
Gay* AND Justice	51
Homophobi* AND Justice	6
Homosexual* AND Justice	18
Queer* AND Justice	16
Sexual* or lesbian or gay AND justice (not social justice)	61
Ditto AND hate crime	51
Homophobi* or homosexual* or queer* AND hate crime	25
Lesbian or gay or homosexual AND policing	(27 found 12 chosen)
Contract law or consumer or contract AND gay or lesbian or sexual*	27

The databases searched via the CSA gateway were:

- ASSIA: Applied Social Sciences Index and Abstracts
- Communication Studies: A SAGE Full-Text Collection
- Criminology: A SAGE Full-Text Collection
- Education: A SAGE Full-Text Collection
- ERIC
- Health and Safety Science Abstracts
- Health Sciences: A SAGE Full-Text Collection
- Index Islamicus
- CSA Linguistics and Language Behavior Abstracts
- LISA: Library and Information Science Abstracts
- Management & Organization Studies: A SAGE Full-Text Collection
- National Criminal Justice Reference Service Abstracts
- Physical Education Index
- PILOTS Database
- Political Science: A SAGE Full-Text Collection
- Psychology: A SAGE Full-Text Collection
- Risk Abstracts
- Social Services Abstracts
- Sociological Abstracts
- Sociology: A SAGE Full-Text Collection
- Urban Studies & Planning: A SAGE Full-Text Collection
- Worldwide Political Science Abstracts

Also explored were:

- Westlaw UK
- Web of Science
- International Bibliography of Social Science
- The internet, via the Google search engine

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Access to Justice: a review of existing evidence of the experiences of minority groups based on ethnicity, identity and sexuality

This report was commissioned as part of the 2006 Research Programme of the Department for Constitutional Affairs (now Ministry of Justice). It explores research and other literature available by early 2007 on the experiences of the justice system of black and minority groups; Gypsies and Travellers; refugees and asylum seekers; and minority groups identified on the basis of sexuality.

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