

Framework for Justice Sector Reforms in Scotland

July 2020



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Please contact **FJSS Group Secretary Frank Crowe** on info@fjssgroup.org Tel: 0131 285 1013 (after lockdown) for any further information about our work.

Executive Summary

The global Covid-19 pandemic and the global anger in response to the public killing of George Floyd in Minneapolis have exposed both the processes and the adverse impact of long-standing systemic injustice, inequality, racial discrimination, and inequality of opportunity for the BAME community.

Previously evidence has been provided to the Scottish Government contained in various reports over the years which have led to action plans to eradicate inequality (See appendix 3). Whilst the Equality Act 2010 provided effective identification of the most vulnerable groups, it has fallen short on implementation and outcomes and marginalised the racial message as effort has focussed on newer areas of discrimination.

Intersectionality has also masked the message where the RACE dimension has been stripped out of problem situations on the mistaken assumption that attitudes have moved on from the more blatant racism of the past. There is growing concern, anxiety, and distrust however within ethnic communities who still feel marginalised in Scotland because the organisations and processes of justice are neither safe nor fair for them to engage with and PROGRESS.

Following the Scottish Justice Conference held at the COSLA Conference Centre in Edinburgh on 4th June 2019, <https://fjssgroup.org/event/the-scottish-justice-conference-2019> a report was produced that outlines a community led approach to address the lack of representation in the legal profession.

This report calls on the Scottish Government, public, statutory and third sector organisations within our justice system to work with us and respond to this momentum through developing a short, medium and longterm strategic implementation plan to enable all minority ethnic groups to play a part in the development and upholding of Scots law.

Fair Justice System for Scotland Group is a registered charity which is carrying out grassroots work where, for example, former refugees help others seeking asylum in Scotland. They offer help and advice to anxious and vulnerable individuals in the BAME community but also wish to act as advocates for greater equality and diversity in the Scottish Legal System through policy reforms.

FJSS seeks a fair, just and inclusive Scotland and it recognises that changes among the personnel of the Scottish Legal System which better reflect the diversity of Modern Scotland would be an essential step forward. It seeks wider opportunities for employment, better integration and settlement for the BAME community across Scotland to create needed harmony. See for example *Kanu v Southwark* [2015] UKSC 30.

Executive Summary

This document will show the lack of progress since the Millennium and the Chhokar Reports and the lack of representation from the BAME community in the institutions and machinery of Government and the Scottish Legal system. For example out of 27 Scottish Governmental agencies employing 259 Board members only 1 is from the BAME Community. (See Table in Appendix 1)

In the Police Scotland Equality & Diversity Mainstreaming & Outcomes Progress Report 2019 out of a total of 17,427 police officers on the workforce as at 31 March 2018 only 245 were of BAME origin, similarly of 5,012 police staff only 75 were BAME. There were 639 Special Constables but only 10 were BAME a mere 2% but double the levels for employed police officers and staff against a BAME population of 4% of the Scottish population.

While it is said Police Scotland are keen to attract more diverse recruits, a recent freeze on recruiting has further delayed any progress and nothing is said about attracting BAME candidates from other forces to join at ACPO(S) Chief Officer level. Unlike the Metropolitan Police and other English forces, (NOTE) there seem to be no BAME senior officers in Scotland to provide a role model and inspiration to others.

It is appreciated that in the wake of the Chhokar case, Crown Office and the Procurator Fiscal Service did much active work to recruit from the minority ethnic community, the Scottish Legal system has been enhanced by solicitors and advocates from the Indian, Pakistani, Sikh and Bangladeshi communities but very few individuals from the Black or Chinese communities have entered the law. This is a source of concern.

Background context to Scotland's Justice System

The FJSS Group has established itself as a leading voice for Black People, People of Colour and other Minority Ethnic people in Scotland. Working since 2012 towards justice sector reforms in Scotland.

Over the last 20 years Scotland's demographics have fundamentally changed. The need for implementation of systemic actions to address inequity is now, and necessary change is achievable. There needs to be recognition and systemic reflection that the ongoing processes to address lack of representation and marginalisation within our systems of justice have not been effective in bringing about the required change. For example; Appendix 1 shows the ongoing lack of representation in appointment to our key public bodies.

The Scottish Government should rethink its processes of engagement with these issues as the evidence indicates that there is need for a paradigm shift from the Scottish Government's approach of using designated "go to" organisations.

The FJSS Group's community-led strategic implementation approach focusing on the justice sector, is both novel and innovative. It has been developed through long-term understanding of, and navigation within, the local, national, and international organisations which seek to address racial equality but have not achieved positive outcomes for the BAME community for a number of reasons.

Our focus is to engage with the decision makers and organisations that have specific and identified policy interests as well as significant public finance budgetary remits. We have a recognised track record in advocating for justice sector reforms. This was demonstrated by our work that culminated in the Scottish Justice Conference in June 2019.

This community led participatory approach to policy and decision making is the only way forward and clearly demonstrated by the emergence of #Black Lives Matter Movement. For the BAME community in Scotland the persistent inequality of experience and opportunity has become a national emergency that requires an urgent ground-shifting policy trajectory led by the Scottish Government.

Background context to Scotland's Justice System

The racial inequity highlighted by the COVID 19 pandemic has created a greater understanding of the underlying reality. The BAME community is more likely to face greater levels of unemployment, poverty, homelessness, imprisonment and lack of meaningful opportunities. While the Equality Act 2010 has done much for many groups it has led to the BAME community being overlooked, its culture and history consequently being less valued and the challenges faced by its members being standardised among the public at large.

The BAME community needs to be recognised and its place in Scottish society improved by encouraging and mentoring the "Promise" shown at school to enable its members to enter the professions in more representative numbers. The Scottish Government Race Equality Action Plan, A Fairer Scotland published in December 2017 said at page 13: "In 2015-16, 85.6% of school leavers in Scotland achieved 1 or more award at SCQF level 5 or better. Asian pupils are high achievers with the highest achievers were pupils of Chinese origin at 96.4%, followed by African/Black/Caribbean at 95.4%; the lowest were 'Other' at 82.9% and white Scottish pupils at 85.4%." This achievement should be reflected in the job type in Scottish society, but it is not.

There are talented young people in every community in Scotland and all need the same access to achieve their dream and maximise their potential. This will enable Scottish society to better reflect its membership and broaden its approach to the development of policy with ideas and knowledge from individuals from other rich sources of cultural heritage. Scotland has always looked beyond its borders in the past with the Auld Alliance with France, trade with the Low Countries and Scandinavia and the part Scots have played in emigrating to other countries. FJSS can help harness this wider talent for the benefit of marginalised communities.

The Task Force for Justice Sector Reforms in Scotland

The task force was established after The Scottish Justice Conference <https://fjssgroup.org/event/the-scottish-justice-conference-2019>. It is an expert group of individual people and professionals who were constituted following recommendations from the June 2019 Scottish Justice Conference. The Taskforce is co-convened by Professor Sir Geoff Palmer OBE and Dr Ima Jackson, Senior Lecturer at Glasgow Caledonian University, and will provide the FJSS Group with a ready pool of community-led input for greater outcomes.

The Scottish Justice Conference Report was submitted in December 2019 to key targeted colleagues within the Scottish Government. The report highlighted that through the conference there was unanimous agreement that a pipeline approach to reducing inequality was no longer a viable option.

It has been noted that the onus currently remains on the FJSS Group to drive this work and that this approach in itself needs reviewed. The Task Force in March 2020 agreed that it was not established to undertake any more research or develop further findings on inequality as this is well evidence within the Scottish Government's own statistical and analytical functions. See the attached study highlighting recommendations for fundamental improvements in the BAME community from 1981 onwards. (See Appendix 3)

There is a vast amount of evidence nationally and internationally about the mechanisms of racially marginalisation people. Furthermore Scottish Government has commissioned as well as received (unsolicited reports) enough evidence to demonstrate the urgent case for addressing systemic inequality and racial stereotyping of marginalised communities in Scotland.

The Task Force for Justice Sector reforms was established to augment and take forward the FJSS Group's vision for the Scottish Justice landscape and support them to engage with the inequity of experience and outcomes created and sustained by the current Justice system architecture within Scotland.

The Scottish Government needs to claim a higher stake in this partnership with the the FJSS Group as a ready source of BAME expertise does not exist currently within its structures. There is urgent need to shift from an aspirational input approach to this processes to a practical outcomes and impact approach.

The Task Force for Justice Sector Reforms in Scotland's recommendations

Therefore, and in view of the foregoing, the Task Force for Justice Sector Reforms in Scotland makes the following essential recommendations to Scottish Government:

Scottish Government leadership is urgently required to develop a focused implementation process leading to real change

- » Scottish Government is asked to provide leadership on the practical implementation of 'equality and diversity' processes across the justice sector through a clearly defined implementation plan with agreed accountability protocols and clearly defined outcomes rather than aspirations so as to build on the ambitions stated in the Race Equality Action Plan'
- » A senior Minister should be appointed to act as a champion and coordinate the different strands of government responsible for individual aspects of disadvantage in the BAME community.
- » Implementation of practical measures to enable Black People, People of Colour and other similarly affected Black Minority Ethnic people to enter the legal profession and obtain the qualifications and experience to secure appointment to the Scottish Judicial Bench within a realistic timescale.
- » Increased accountability and improved recruitment processes within the Judicial Appointments Board to ensure candidates for appointment to the Scottish Bench reflect the demographics of modern and future Scotland.
- » Determine and agree adequately resourced pathways to encourage under-represented BAME people to embark upon a legal or judicial career at any point in life regardless of age.
- » Support the creation of a well-resourced Scottish Government backed BAME skills audit to demonstrate the talent pool of suitably skilled BAME candidates as a kick-start towards a proactive monitored programme of recruitment and carrier advancement.

The Task Force for Justice Sector Reforms in Scotland's recommendations

Engagement with Public Bodies and Boards of Scotland

- » Create a transparent permanent selection/appointments committee dedicated to support the selection and appointments of candidates to the Boards of key organisations in the Scottish justice sector including the Scottish Government and Civil Service appointments
- » Introduce diversity and representation targets for Public Bodies for conduct, selection and appointment with clear obligations to complying with clearly set benchmarks and protocols.
- » Institute and maintain an external review of the selection, recruitment, appointment, retention, and promotion processes within justice sector organisations to ensure that they are in compliance with their public duty obligations on equality and diversity.

Adapting our Education system to recognise and accommodate the skills of those educated outside of Scotland

- » Create an additional adequately supported career path for internationally educated BAME lawyers and other interested professionals to undertake a dedicated accelerated law degree mature program to enable registration/recognition to work in Scotland.
- » Develop a viable, regularly monitored and efficiently run skills bank to document the BAME skills base in Scotland.
- » Redefine or further elaborate “personal attributes” in a way that addresses racial inequality in the Scottish justice sector.
- » To ensure that “weighting” of experience and qualifications does not impede advancement of BAME candidates. All experience of life is worthwhile and a broad range of such experience is required to judge fairly in a modern, diverse and changing society.

The Task Force for Justice Sector Reforms in Scotland's recommendations

Judicial appointments system supported to change

- » Establish a BAME appointments framework and government supported mentorship program to work alongside the public appointments and judicial appointment bodies in Scotland in cross checking qualifications, interview processes and other background checks.
- » To ensure that all public bodies in the justice system provide periodic updates of their recruitment and appointment, promotion, and retention statistics to be able to analyse and formally report levels of public duty compliance with Equality Act 2010
- » Redefining the credibility threshold to ensure this moves to an “outcome” rather than “input” approach.
- » To ensure all Government bodies have programmes to seek out talent at an early stage through career workshops, school debating competitions and mock proof/trial competitions to attract young people from a wider base than at present to consider law as a career.
- » A diverse society needs diverse management to progress successfully because there is efficiency in diversity of input

Reviewing the Equality Act

- » Re-examine the Equality Act 2010 with a view to repeal or replacement to ensure compliance and implementation of equal opportunity policies leading to better outcomes.
- » Strengthen liability aspects of the Act to ensure that boards of organisations that fail on their public duty compliance face more stringent accountability measures duties on organisations c.f. duties on bodies under Health & Safety legislation which is backed up by criminal sanctions.
- » To adopt a straightforward clear-cut headcount approach to equality and diversity as a way of measuring incremental process rather than a paper and committee-based approach which appears to cover the issues but merely masks a lack of progress.

The Fair Justice System for Scotland (FJSS) Group's recent and current work

- » In February 2020, the FJSS Group implemented one of the main agreed outcomes of the 2019 Justice Conference and established the Task Force for Justice Sector Reforms in Scotland.
- » Led by FJSS the task force is vitally independent- it was established by the community and its recommendations are drawn from community.
- » In June 2019, the FJSS Group hosted the first ever grass roots-led Scottish justice conference. The FJSS Group has played a huge part in Scottish Government consultations including the Hate Crime Bill consultation <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/115036.asp>
- » The FJSS Group is currently in the process of exploring a pilot consultancy role to provide policy support to the justice department of the Scottish Government through the Justice Civil Law and Legal System division. The FJSS Group's envisaged role will be mainly providing specialist Black and Asian Minority Ethnic (BAME) guidance and advice to teams developing policy proposals with the Scottish Government.
- » The FJSS Group is (the only UK organisation) that is part of a 52 organisation global initiative working under the auspices of the UNHCR's Global Refugee Forum and Global Refugee Compact to mobilise legal resources for refugees within a globally implemented framework

In conclusion this initiative is to ensure that BAME people have a real prospect of advancement so they may play a meaningful role in shaping key policy in Scotland to reflect its increasing diversity. Ideas should be drawn from all Scots. The BAME community must be allowed to enter the professions and play its part.

Appendix 1: Scottish Government agencies not complying with equality and diversity policy at January 2020

Name of Organization	Board Members	Male Members	Female Members	White Members	BME Members	SG Funding (£M)
Scottish Prison Service (SPS)	9	5	4	9	0	£394m
Scottish Legal Aid Board (SLAB)	6	3	3	6	0	£17.3m
Scottish Police Authority (SPA)	11	6	5	11	0	£1bn
Community Justice Scotland (CJS)	9	5	4	9	0	£34.6m
Children Hearings Scotland	6	3	3	6	0	£3.7m
Scottish Courts and Tribunals Service	13	7	6	1	0	£87m
Police Investigations and Review Commission	5	3	2	5	0	£4.162m
Risk Management Authority	8	5	3	8	0	£1.07m
Scottish Children's Reporter Administration	8	3	5	7	1	£23,208k
Scottish Funding Council	16	8	8	16	0	£1.88
Scottish Environmental Protection Agency	11	7	4	11	0	£33.8m
Scottish Criminal Cases Review Council	7	4	3	7	0	£1.03m
Scottish Futures Trust	7	3	4	7	0	£9.051m
Scottish Land Commission	7	4	3	7	0	£1.4m

Appendix 1: Scottish Government agencies not complying with equality and diversity policy at January 2020

Name of Organization	Board Members	Male Members	Female Members	White Members	BME Members	SG Funding (£M)
Scottish Legal Complaints Commission	9	1	8	9	0	£3.55m
Scottish Natural Heritage	10	5	5	10	0	£46.5m
Scottish Qualifications Authority	11	6	5	11	0	£23.4m
Scottish Social Services Council	11	4	7	11	0	£17,562m
Sport Scotland	12	7	5	12	0	£34.9m
Visit Scotland	7	3	4	7	0	£49.9m
Disclosure Scotland	5	4	1	5	0	£15m
Scottish Human Rights Commission	4	1	3	4	0	£990k
Scottish Information Commissioner	4	1	3	4	0	£1.04m
HMIC	8	3	5	8	0	£2m
HMIPS	11	7	3	11	0	£400K
Social Security Council	6	4	2	6	0	£177.3m
Scottish Parole Board	38	19	19	38	0	£1.97m

Appendix 2:

The legal context of the Equality Act 2010 and Scottish Government Equality Policy

The Equality Act 2010

The Equality Act 2010 is the principal legislation dealing with equality, diversity, and equal opportunity policy in Scotland. This legislation was promoted by Gordon Brown's Labour administration with the Bill being introduced in April 2009. It had been a Labour Party manifesto commitment, following that administration's election in May 2005, to advance workplace equality by introducing a "Single Equality Act" to modernise and simplify equality legislation and to establish the Commission for Equality and Human Rights.

This Commission was formed in October 2007 and took over the work of the Commission for Racial Equality and Commissions for Equal Opportunities and Disability Rights. A consultative Equality Review had been set up in February 2005 by the Government.

Also, in October 2007 the Government Equalities Office (GEO) was set up to provide policy papers. During the Commons stages of the legislation a Public Bill Committee took evidence from organisations with an interest in this area.

Diane Abbott, the first black woman to be elected to Parliament, was among the Committee members. <https://services.parliament.uk/bills/2009-10/equality/committees/houseofcommonspublicbillcommitteeontheequalitybill200809.html>

It is of major concern to note that a quick perusal of the 20 Committee meetings shows almost no involvement by black people or any witnesses from that community being called to give evidence. Maybe the Committee thought the topic had been dealt with in the Race Relations Acts 1965, 1968, 1976, the Race Relations (Remedies) Act 1994 and the Race Relations (Amendment Act) 2000 and been given a profile by the Commission for Racial Equality.

Instead the debate concentrated on the "new" areas for legislative reform namely, Disability, Sexual Orientation, Gender, the Gender Pay Gap, Contact Workers etc. "Much of the debate in Committee revolved around whether the government had struck the right balance between competing interests and principles."

(Blackstone's Guide to the Act 3rd Edition page 9 para 1.28).

Appendix 2:

The legal context of the Equality Act 2010 and Scottish Government Equality Policy

The Race Equality Framework for Scotland

The Race Equality Framework for Scotland <https://www.gov.scot/publications/fairer-scotland-race-equality-action-plan-2017-2021-highlight-report/> sets out how the Scottish government aims to progress this ambition over a 15-year period from 2016 to 2030. To achieve this, the Race Equality Framework for Scotland will take a long-term, partnership-based approach, working with all sections of society including the Scottish Parliament, public sector bodies and agencies, established networks and forums, voluntary sector equality bodies and communities. **“The Scottish Government acknowledges that inequalities remain in many areas of life for minority ethnic people in Scotland.**

Within the BME communities in Scotland, many people continue to face poorer outcomes than majority of Scots, including higher risk of poverty and in-work poverty, lower employment rates, and under-representation in political and public life. In developing this Action Plan, we have drawn heavily on the report which Kaliani Lyle, the Independent Race Equality Adviser, has produced recommendations for actions. We share her belief that the actions can begin to make progress in tackling racial inequality in Scotland, while recognising, as she does, that they do not tackle every aspect of inequality, but are a platform from which further actions can be progressed.” – **Introduction, Race Equality Framework 2017-2021**

Fairer Scotland Action Plan

In October 2015, the Scottish government launched the Fairer Scotland Action Plan link <https://www.gov.scot/publications/fairer-scotland-action-plan/> to bring about a fairer, more socially just country by 2030. The fairer Scotland Action Plan sets out 50 actions to tackle these issues through better public services and social security, the provision of more skills and employment opportunities for young people, more opportunities for flexible, well paid work and greater support for older people.

Appendix 2:

The legal context of the Equality Act 2010 and Scottish Government Equality Policy

The objective of this commitment has three elements. Firstly, to deliver the 50 actions by 2020; secondly, to engage citizens on the progress on the implementation of the 50 actions: and thirdly, to consult them on developing 50 new actions, also by 2020. The focus of the commitment as it applies to the timeframe of the OGP Subnational Pilot Program (by the end of 2017) is the second of these elements.

Scotland faces a range of challenges related to poverty and inequality. A recent Oxfam report noted that one in five people in Scotland currently live in poverty. According to the Scottish government, after housing costs, 20% of people in Scotland live in relative poverty while the richest 1% own more wealth than the bottom 50% put together. Relative poverty is defined as “individuals living in households whose equivalised income is below 60% of median income in the same year <http://www.gov.scot/Resource/0051/00515392.pdf>

The above statistics read even worse for BAME communities particularly young people and older people. A survey by the FJSS Group after the Justice Conference in 2019 revealed that a young person of BAME background was twice as likely to miss out on an opportunity than a white young person of the same age. An older BAME man was three times more likely to be adversely affected by lack of services such as housing, mental health support or social care than a white male of the same age.

“I am proud that Scotland has become home to people from all over the world seeking safety. Scottish Ministers have always been clear that people who seek asylum in Scotland should be welcomed and supported to integrate into our communities from day one. When refugees and asylum seekers arrive, they need understanding, support and hope for their future; and children should be able to be children, whether they arrive with their family or on their own

This is Scotland’s second New Scots refugee integration strategy. New Scots recognises that refugees and asylum seekers face challenges which can limit their inclusion in our society, but it also recognises that refugees bring strength, knowledge, and skills. They are assets to our communities and, as they rebuild their lives here, they help to make Scotland stronger, more compassionate and more successful as a nation” **Angela Constance MSP - former Cabinet Secretary for Communities, Social Security and Equalities.**

Appendix 2:

The legal context of the Equality Act 2010 and Scottish Government Equality Policy

The Public Sector Equality Duty

The public sector equality duty came into force on 5 April 2011 and is defined in s 149(1) in as follows:

“A public authority must, in the exercise of its functions, have due regard to the need to –

- (a) Eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under this Act
- (b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- (c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.”

Matters (b) and (c) apply to the protected characteristics of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation, but they do not apply to the protected characteristic of marriage and civil partnership [2010 act, s 149(7)].

Courts and tribunals, in addition but not limited to local councils and the police, are considered public authorities [See 2010 act, sch. 19 for full list of public authorities which includes, Scottish Ministers, the Scottish Parliament and Scottish Government Departments] for these purposes, although the exercising of “judicial functions” or functions exercised on behalf of, or on the instructions of, a person exercising a judicial function are excluded from the duty [2010 act, sch. 18(3)]. Section 149(2) states that a person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to all the matters above.

Appendix 2:

The legal context of the Equality Act 2010 and Scottish Government Equality Policy

Section 149(6) of the 2010 Act

<https://www.equalityhumanrights.com/en/corporate-reporting/public-sector-equality-duty> makes clear that complying with the duty might mean treating some people more favourably than others. This would include treating disabled people more favourably than non-disabled people and making reasonable adjustments for them, making use of exceptions which permit different treatment, and using the positive action provisions in 158 and 159 where they are available.

The Equality and Human Rights Commission <https://www.equalityhumanrights.com/en> (EHRC) (formerly the Commission for Racial Equality, the Disability Rights Commission and the Equal Opportunities Commission) exists to promote the importance of equality and diversity with a view to eliminating unlawful discrimination in society. The EHRC also has powers to initiate proceedings in its own name as well as intervene in relevant litigation.

The Human Rights Act 1998 <http://www.legislation.gov.uk/ukpga/1998/42/contents> also has a significant impact on the extent of protection against discrimination by public bodies in the United Kingdom. The 1998 Act gives domestic effect to the European Convention on Human Rights in particular to Articles 8 (right to respect for private and family life), Article 9 (right to religious freedom) and Article 14 (Right to Non-Discrimination in the enjoyment of the substantive rights). Section 6 requires that public authorities, including the judiciary, comply with the European Convention for the protection of Human Rights and Fundamental Freedoms.

Policy versus best practice

Research has identified significant barriers for people from minority ethnic communities when involved in the justice system. These barriers, which are shared by many large organizations, have been defined in the Macpherson Report https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/277111/4262.pdf as being

Appendix 2: The legal context of the Equality Act 2010 and Scottish Government Equality Policy

“the collective failure of an organization 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 behaviours which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantages minority ethnic people” [Sir William Macpherson, Stephen Lawrence Inquiry Report (Cm 4262-I, 1999), para 6.34].

Reviews were carried out by Sir Anthony Campbell, a recently retired Northern Irish appellate judge from their Supreme Court and Dr Raj Jandoo Advocate in the wake of the Chhokar case. The Lord Advocate, Colin Boyd, now Lord Boyd of Duncansby accepted the recommendations of the reports describing “a catalogue of incompetence, ignorance and institutional racism” which prevented convictions being secured at the time for those involved in the murder of Surjit Singh Chhokar.

There had been serious failures by police and prosecutors to communicate properly with the family and the deceased’s girlfriend. The Chhokar family had limited English language skills and could not be expected to respond to letters sent to them in English only. It was not until 17 years later after double jeopardy legislation was promulgated that Ronnie Coulter was convicted of murder at a retrial. When the Lord Advocate accounted to the Scottish Parliament on 24 October 2001 following the publication of these reports, he set out a timescale and actions for the future. <https://www.theyworkforyou.com/sp/?id=2001-10-24.3230.0>

“Dr Jandoo notes the key role of our departmental race strategy group, which is chaired by the Solicitor General, in driving through our anti-racist agenda and in mainstreaming racial equality throughout the policies and practices of the Crown Office and Procurator Fiscal Service. Significant progress has been made in relation to victim liaison and anti-racism. Many of those initiatives are referred to with approval by Dr Jandoo. They include anti-racist training for all staff; the mainstreaming of racial equality in all training programmes; working with the police in the investigation and reporting of racist crime, on which I have issued guidelines to chief constables; the issuing of cultural awareness guidance and guidance highlighting translation requirements to all staff; and the monitoring of racist crime and our policies and practices.

Appendix 2:

The legal context of the Equality Act 2010 and Scottish Government Equality Policy

Our systems for instructing and engaging interpreters have been reviewed, providing a professional and structured approach. We must identify needs and not assume what is required. In all our initiatives, we are committed to consultation with the Commission for Racial Equality, racial equality councils and local community groups to ensure that, we are working towards the goal of having victim liaison offices in all regions by spring or summer 2002. I believe that is a significant step for the Crown Office and Procurator Fiscal Service, which will ensure that we approach victim liaison in a professional, systemic, and structured way throughout Scotland.

I have already accepted all of Dr Jandoo's recommendations; now I will ensure that they are implemented as soon as possible. Several will require collaborative approaches between agencies—particularly between the Crown Office and Procurator Fiscal Service and the police. I will ensure that that happens." We have changed and we are committed to further change. We fully recognise the need for increased accountability. Dr Jandoo's principal recommendation, that the Crown Office quality and practice review unit should be reinforced and reconstituted as a formal inspectorate, is accepted, and welcomed. That will be taken forward as a priority and resources will be found. We will ensure the necessary independence within it and that its reports are made public.

I also accept the recommendation that the inspectorate conduct a thematic review of the service's response on race matters within two to three years and thereafter a scrutiny of our response to victims' and witnesses' issues, including the operation of the victim liaison office, within four to five years. All reports from the inspectorate will be made public. All this is unprecedented. It will significantly increase the accountability of the prosecution service in Scotland and will, in time, greatly strengthen the confidence of our ethnic minority communities in the Crown Office and Procurator Fiscal Service."

Subsequent work at schools' fairs, organizing schools' debating competitions to attract wider talent has led to them employing of lawyers and staff from BAME communities some of whom have progressed to promoted posts.

Appendix 3: A brief study of official reports highlighting recommendations designed to promote BAME to positions of importance and influence in the community

Background and methodology

The Salmon Report on the Royal Commission on Tribunals of Inquiry published in 1966. Six Cardinal Principles set forth by Lord Salmon and approved in *Crampton & others v Secretary of State for Health* 1993 Lord Bingham 9th July 1993 as quoted at para 3.6 of the Macpherson Report:-

“the rationale of the six cardinal principles is undoubtedly sound and anyone conducting an inquiry of this kind is well advised to have regard to them, (although) the Royal Commission Report itself has not been embodied in legislation and numerous inquiries have been conducted, and satisfactorily conducted, since 1966 without observing the letter of those principles.”

The Salmon principles were:

- » **Establishing the facts**—providing a full and fair account of what happened, especially in circumstances where the facts are disputed, or the course and causation of events is not clear.
- » **Learning from events**—and so helping to prevent their recurrence by synthesising or distilling lessons which can be used to change practice.
- » **Catharsis or therapeutic exposure**—providing an opportunity for reconciliation and resolution, by bringing protagonists face to face with each other’s perspectives and problems.
- » **Reassurance**—rebuilding public confidence after a major failure by showing that the government is making sure it is fully investigated and dealt with;
- » **Accountability, blame, and retribution**—holding people and organisations to account, and sometimes indirectly contributing to the assignation of blame and to mechanisms for retribution.
- » **Political considerations**—serving a wider political agenda for government either in demonstrating that “something is being done” or in providing leverage for change.

Eventually the Inquiries Act 2005 was promulgated to put matters on to a legislative footing but these underlying principles remain.

Appendix 3: A brief study of official reports highlighting recommendations designed to promote BAME to positions of importance and influence in the community

Lord Scarman reported into the Brixton Riots of 1981

The Scarman report was commissioned by the UK government to inquire into the Brixton riots in April 1981. It identified “complex political, social and economic factors” that created a “disposition towards violent protest,” but did not explicitly condemn police racism and denied that “institutional racism” even existed. The report also identified failures in police community liaison, confidence and trust in the police, police training, and in the representation of ethnic minorities in the police force. The report was symbolically “accepted” by the Home Secretary, William Whitelaw, but it was largely ignored by the Thatcher government, which failed to adjust government policies to systematically address racial disadvantage as Scarman had proposed.

Lord Scarman was however quoted with approval in the Macpherson Report at para 2.20 At page 135 of Lord Scarman’s Report relating to the Brixton disorders of 1981 he said this: -

“The evidence which I have received, the effect of which I have outlined, leaves no doubt in my mind that racial disadvantage is a fact of current British life. Urgent action is needed if it is not to become an endemic, ineradicable disease threatening the very survival of our society racial disadvantage and its nasty associate racial discrimination, have not yet been eliminated. They poison minds and attitudes; they are, as long as they remain, and will continue to be a potent factor of unrest”.

Lord Macpherson went on to say:

“It is a sad reflection upon the intervening years that in 1998-99 those extracted words have remained relevant throughout both parts of our Inquiry.”

The Stephen Lawrence Inquiry by Sir William MacPherson of Cluny advised by Tom Cook, The Right Reverend Dr John Sentamu, and Dr Richard Stone Cm 4262-I was published in February 1999

On the last day of public hearings on 13/11/98 Neville Lawrence, father of the murdered Stephen Lawrence magnanimously said at para 4.12 -

“This is a very small place, this world of ours. We have to live together, and we now have to say; let us put the past behind us, join hands and go forward.”

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Macpherson Report

Recommendations: Chapter 72

2. The overall aim being the elimination of racist prejudice and disadvantage and the demonstration of fairness in all aspects of policing.

49. That all police officers, including CID and civilian staff, should be trained in racism awareness, and valuing cultural diversity.

65. That the Home Office and Police Services should facilitate the development of initiatives to increase the number of qualified minority ethnic recruits.

66. That HMIC include any regular inspection or in a thematic inspection a report on the progress made by Police Services in recruitment, progression, and retention of minority ethnic staff.

67. That consideration be given to amendment of the National Curriculum aimed at valuing cultural diversity and preventing racism, in order to better reflect the needs of a diverse society.

The Chhokar Report prepared by Dr Raj Jandoo October 2001

This report had a narrower focus than the Stephen Lawrence Inquiry and it is not clear to what extent Scottish Police forces embraced the Macpherson recommendations.

Although Stephen Lawrence Committee was formed by the government in Scotland for HM Inspector of Constabulary to conduct, Dr Jandoo made a number of recommendations following the failure to convict anyone for the murder of Surjit Sigh Chhokar at the time and the lack of proper family liaison between the police and the Crown Office and Procurator Fiscal Service and the Chhokar family

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who had limited English language skills and could not understand the meagre correspondence sent to them:

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General

Para 32.6 In developing my recommendations I have taken two principles as cardinal -

“ - Public confidence in the police and prosecution authorities is an essential feature of a criminal justice system that values justice and liberty in a democratic society.

- The processes of the criminal justice system should treat all victims and witnesses with courtesy, compassion, and respect for their personal dignity; and should be responsive to their needs.”

The Police

“32.8 Relations between Strathclyde Police and the black and ethnic minority communities remain fragile. There remain serious questions of trust and confidence in the police which will not readily go away. Strathclyde Police has adopted the ACPOS Racial Diversity Strategy; and that outlines the steps necessary for the Police Service to achieve racial equality within its organisation and in the service it provides. It is however a purely advisory document that does not have the force of law behind it. The police need to translate fine words and strategies into operational practice and procedure and need to be held to public account for it. Nothing less will do.”

The Prosecution Service and Race Relations

Jandoo Report

Recommendation (12)

“The Race Strategy Group should continue to develop equal opportunity strategies, building on the commendable initiatives already taken by the Group.”

Recommendation (13)

“The Race Strategy Group should instruct internal audit and inspections to be carried out by the Crown Office Inspectorate at regular intervals in all regional and district offices in order to ensure uniform compliance with its race relations

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policies and strategies.”

Creating a Fairer Scotland: A New Future for Employability Support in Scotland

Published: 29 Mar 2016

This followed on from the Smith Review of Department for Work and Pensions but did not mention BAME people seeking employment. It is based at a very low skills level towards modern apprenticeships. (Like Skills Development Scotland) It majors in other aspects of inequality like disability, unemployment and persons who lack of any employable skills.

Report of the Independent Review of Deaths & Serious Incidents in Police Custody by Rt. Hon. Dame Elish Angiolini DBE QC. Published on 30 October 2019

She said re previous reports:

“1.14 Much of the frustration felt by families can be attributed to the occurrence of the same failings time after time. This feature is evident from the many reviews, enquiries and reports looking at these very issues over the years. Despite clear, pragmatic recommendations and agreement for action from successive governments, the police, and other agencies, some of the worst types of failings have persisted. As a consequence there may quite understandably be a degree of ‘review fatigue’. (Our emphasis)

Angiolini Report

Recommendation No 86 re Training

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“Police recruitment and training should incorporate the different personal skills and experiences needed to fulfil duties relating to the needs of highly vulnerable groups, including empathy, communication skills and the ability to employ de-escalation techniques.

This should be embedded in the police appraisal process with assessment made on the correct use of force and, in particular where officers have been able to avoid the use of force. (Our emphasis)

Recommendation No 96 re Learning

“Commitment and responsibility at leadership level is needed across police forces to ensure prioritisation of the issue of mental health and to bring about sustained cultural, organisational and practical changes.”

Independent Government-backed Review by Baroness McGregor-Smith was published on 3 March 2017 entitled “Race in the Workplace” on issues faced by businesses in developing Black and Minority Ethnic (BME) talent in the workplace.

She set out a “roadmap to success” which outlined her key recommendations. Baroness McGregor-Smith’s recommendations included:

- » Publish five-year aspirational targets and report against these annually – for listed companies and all businesses and public bodies with more than 50 employees.
- » Publish a breakdown of employees by race and pay band – for listed companies and all businesses and public bodies with more than 50 employees.
- » For all employers, take positive action to improve reporting rates amongst the workforce, explaining why supplying data will improve diversity and the business as a whole – for those impacted by the first two recommendations, this would be expected to improve the quality of data published.
- » Introducing a board-level sponsor for all diversity issues, including race, to be held to account for the overall delivery of aspirational targets. In order to ensure this happens, Chairs, CEOs and CFOs should reference what steps they are taking to improve diversity in their statements in the annual report.
- » Including a diversity objective in all leaders’ annual appraisals to ensure they take positive action seriously.

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Lammy Review September 2017

In a covering letter to the Prime Minister on 7th September 2017 David Lammy said:

“My report makes 35 recommendations in total. These include a drive to increase transparency across the CJS, with more data published on everything from sentencing outcomes to the treatment and outcomes for BAME prisoners. I recommend targets to diversify the workforce of CJS institutions, so that the prison service, the judiciary, and the magistracy are representative of the wider population by 2025. I propose reforms to the youth justice system, so that it becomes more accessible to, and embedded in, local communities. And I identify ways to avoid criminal records serving as a “second sentence” for offenders, including a deferred prosecution scheme for first time offenders and new infrastructure for sealing records where ex-offenders can demonstrate that they have changed.”

On 11 December 2017 the Scottish Government launched an action plan A Fairer Scotland for all: race equality action plan and highlight report 2017 to 2030

“The Scottish Government acknowledges that inequalities remain in many areas of life for minority ethnic people in Scotland. Within our minority ethnic communities many people continue to face poorer outcomes than the majority of Scots, including higher risk of poverty and in-work poverty, lower employment rates, and under-representation in political and public life as a whole.

In developing this Action Plan, we have drawn heavily on the report which Kaliani Lyle, the Independent Race Equality Adviser, has produced, in particular her recommendations for actions.

We share her belief that the actions can begin to make progress in tackling racial inequality in Scotland, while recognizing, as she does, that they do not tackle every aspect of inequality, but are a platform from which further actions can be progressed.

This Action Plan covers the lifetime of this Parliament i.e. until 2021. We will produce a new Action Plan to cover the next Parliamentary term, to ensure that our focus on tackling racism and working towards race equality continues at the same level, across all relevant areas of Government activity.

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In addition to the actions in this Plan, work is continuing, on a range of further actions which were included in the Race Equality Framework. A Highlight Report is included in this Plan which provides an update on actions from the Framework.

We will provide a progress report on this Action Plan to Parliament in early 2021, setting out our early thinking about the focus for the next Race Equality Action Plan, which will cover the period 2021-2026.

Our vision for a fairer Scotland is that by 2030, Scotland is a place where people are healthier, happier, and treated with respect, and where opportunities, wealth and power are spread more equally.

We will work with partners across the public sector, with race equality stakeholders and communities, so together we can create this vision of a fairer and purposeful Scotland for minority ethnic communities.

This Action Plan will help us to realize that vision and to ensure that it is achieved equally for people from all ethnicities, helping to build a Scotland where we all share a common sense of belonging.”

In the document it said the following:

“In 2015-16, 85.6% of school leavers in Scotland achieved 1 or more award at SCQF level 5 or better. Asian pupils are high achievers with the highest achievers were pupils of Chinese origin at 96.4%, followed by African/Black/Caribbean at 95.4%; the lowest were ‘Other’ at 82.9% and white Scottish pupils at 85.4%.”

Police Scotland Equality & Diversity Mainstreaming & Outcomes Progress Report 2017-2019:

- » 1% of police officers- were BAME (mainly Pakistani) 245 out of 17,427.
- » 75 BAME staff out of 5,012 and 10 BAME Special Constables out of 639 (1% and 2% respectively)

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There are 9 Diversity Staff Associations among Police Scotland staff.

These include:

- » The Scottish Police Muslim Association (SPMA) and
- » Supporting Ethnic Minority Police staff for Equality in Race Scotland (SEMPER) Scotland

Recruitment is dealt with at page 10 of the Report:

- » *“A substantial recruitment programme has been delivered by Police Scotland that incorporates Police Officers and Police Staff.*
- » *There have been fewer opportunities in relation to the recruitment of police staff due to the restructuring programme that has involved a significant reduction in police staff numbers*

There is nothing in the Report re proactive recruitment or seeking candidates from BAME communities for ACPOS jobs from other forces-There has only been one Black Chief Constable in the UK

**Addressing Race Inequality in Scotland: The Way Forward by Kaliani Lyle
Independent Race Equality Adviser December 2017**

Ms Lyle's Recommendations

B. Employment

9. *This section sets out my recommendations for actions to be included in the 4year delivery plan with the aim of working towards achieving the goal of parity in employment for minority ethnic communities. These have been drawn from conversations with a range of stakeholders and build on the actions in the Fair Work Framework.*

10. *The aim is that at the end of 4 years, access to employment by individuals from minority ethnic communities will be increased; career pathways will be enhanced and expanded; and the employment disparity gap between White and BME communities will be significantly narrowed from 16.4%.*

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Action 9: As a key immediate action, the Scottish Government should work with stakeholders to agree challenging targets with associated monitoring and evaluation measures, to track progress towards the achievement of parity in employment for minority ethnic communities.”

In relation to the Public sector the report notes that it employs over 20% of the Scottish workforce but a CRER report of March 2014 said only 0.8% of staff were from a BAME background despite making up 4% of the population. Scottish civil servants fair better at 1.6%

The following actions were recommended:

Action 13: The Scottish Government should look to use the Workplace Equality Fund to increase employment opportunities for people from minority ethnic backgrounds using the positive action powers permitted under the Equality Act 2010.

Action 14: The Scottish Government should undertake an evaluation of the current minority ethnic employment landscape in the light of the new data from the public bodies equality reporting round on the pay and occupational segregation of minority ethnic individuals in the public sector.

Crucially Actions 17 & 18 are of more interest:

20. With respect to BME, those who are employed, broadly speaking, are mostly in professions or in the SME sector. What needs to be unpicked is the recruitment challenge, career progression and jobs in the missing middle. Skills Development Scotland and the Scottish Government’s Employability Services both have a key role to play in this. To date, the Modern Apprenticeship Programme stands at a national BME participation rate of 1.7%. This falls far short of the target of at least 4%. To address this:

Action 17: The Scottish Government should require SDS to increase the number of people from BME backgrounds who (a) start and complete modern apprenticeships and (b) who having completed

Modern apprenticeships, achieve career progression including improved levels of pay over a sustained period. There should also be a requirement for regular reporting on the progress made towards this.

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Action 18: To achieve these objectives the Scottish Government should support SDS:

By facilitating a joined up approach between addressing employability skills issues and the recruitment and progression opportunities that procurement in public investment program could offer people from minority ethnic communities (see Public Investment Program and [Action 48](#))

Extend the reach of the proposed regional strategies in the Modern Apprenticeships Action Plan into:

BME businesses: to ensure that BME business owners have an equal opportunity to make the most of the Apprenticeship system - to grow their businesses by filling any skill gaps required to develop their business models and objectives.

Unemployed BME women: to provide opportunity for entry to jobs in growth sectors, leading to good quality employment.

New migrants and refugees: by providing a skills acquisition program with placements tailored to their particular needs.

BME graduates: by establishing positive action training / apprenticeship schemes as routes into employment in sectors where they are under-represented.” (Our emphasis)

See also in the section: Employer Engagement

“23. The proportion of the working age population in the UK that comes from BME population is increasing and the potential benefit from full representation of BME individuals across the labor market through improved participation and progression is estimated in Baroness Smiths Review ‘Race in the Workplace’ to be in the region of £24 billion a year in the UK. This represents 1.3% of GDP. Every employer, she suggests, should be seeking to obtain their share by making the changes which tackle organizational culture and behaviors that hold BME back from making a full contribution.

Action 21: The Scottish Government should fund studies to identify those sectors in which people from minority ethnic backgrounds are underrepresented and the reasons for the underrepresentation.

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The Report recognizes that if the BAME population is to make an impact this must be instilled at school level:

60. Currently there are few or no minority ethnic individuals working as head teachers or in a leadership role in any educational institution such as the inspectorate team and local authority education department in Scotland.

61. A recent Runnymede Trust poll of more than 1000 BME teachers across Britain found that BME teachers were most likely to be told to organize school events such as Black History Month or tasked with behavior responsibilities, rather than tasked with more challenging teaching and leadership roles. Additionally, institutional racism was often manifested in subtle and covert 'micro-aggressions' by senior staff, and that played a key part in the barriers to career progression for BME teachers in many British primary and secondary schools.

62. In addition to the convening of a working party to examine the experience of minority ethnic teachers in Scotland (action 63), I recommend the following action to kick start the process of tackling the under-employment and under-promotion of BME teachers in Scotland.”

Action 64: “The Scottish Government should require Education Scotland to convene a panel of educators with equality expertise including on race equality, to equality proof the existing/future professional learning and leadership opportunities program. The Panel would ensure that the program are designed to prepare individuals/teachers from underrepresented groups targeting in particular BME teachers, for leadership roles in all pedagogical institutions including headship of schools, inspectorate teams and local authority education departments.”

Supporting Workplace Equality:

On 8 February 2018, the Scottish Government published details of a Workplace Equality Fund worth £500,000 to offer grants to reduce employment inequalities, discrimination and barriers for minority ethnic people, women, disabled people and older workers.

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Race Disparity Audit- House of Commons Women & Equalities Committee- Third Report of Session 2017-2019 published 23 May 2018

This was an initiative to gather more statistics about matters they knew already were full of inequalities, they did confirm:

“Occupations and industries

5.7 Around 1 in 4 White people who were in work were in the three lowest-skilled occupations, a lower rate than most other ethnic groups. Pakistani and

Bangladeshi workers were more likely than workers in other ethnic groups to be concentrated in the three lowest-skilled occupation groups, with more than 2 in 5 Pakistani and Bangladeshi workers in these lower-skilled occupations. Pakistani and Bangladeshi workers were also concentrated in certain industries with more than 1 in 4 employed in distribution, hotels and restaurants, and 1 in 5 in the transport and communications industries.

5.8 Conversely, Indian people in work were the most likely of any ethnic group to work in the highest-skilled occupational groups: over 1 in 10 were in Manager, Director and Senior Official roles and over 3 in 10 were in Professional occupations. People in work from all ethnic groups, except Pakistani and Bangladeshi people, were most likely to work in Public Service industries (such as Education, Health and Public Administration) than in any other industry. In particular 43% of Black people in work were in Public Service industries compared with 30% of White people.”

They suggested:

“50. Evidence submitted to us, and the data in the Audit itself, highlight several areas of disparities that need to be addressed by the Government as priorities. The work that has begun as a response to the Lammy Review in the area of criminal justice is welcome and should be continued. In addition, race disparities in educational attainment, employment outcomes and housing status need to be prioritised. We expect the relevant departments to develop effective action plans for dealing with these priority areas.”

Boris Johnson recently announced a new “cross-governmental commission” which will look at “all aspects” of racial inequality in the UK.

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Racial Inequality Review

On or about 14 June 2020 the Prime Minister Boris Johnson launched a new review. He said there remained “much more that we need to do” to tackle racism — but criticized attempts to “rewrite the past” by removing statues of historical figures.

The new commission will, the PM said, look at “all aspects of inequality — in employment, in health outcomes, in academic and all other walks of life”.

Launching the review, Johnson told broadcasters: “What I really want to do as prime minister is change the narrative, so we stop the sense of victimization and discrimination.

“We stamp out racism and we start to have a real expectation of success.

“That’s where I want to get to, but it won’t be easy.”

The Review will be headed by Munira Mirza who is currently an adviser to the prime minister as the head of the No.10 policy unit, and served as one of Johnson’s deputy mayors while he ran London.

She has reportedly been instrumental in the establishment of the Commission on Race and Ethnic Disparities. No terms of reference for the new review have been published yet.

Scottish Government Equality Evidence Finder June 2020

Equalities analysis has also been formalised via the production of EQIA’s for flagship employability programmes such as Fair Start Scotland and No One Left Behind.

An example of a policy guided by analysis and which includes labour market and employability focussed components is the City & Regional Growth Deals (CRDs). This 15year programme delivers an additional £5bn to the Scottish economy. As a condition of grant aid CRD recipients (predominantly LA’s and FE’s) are required to pay due regard to Section 1 and 147 of the Equality Act 2010

(the Fairer Scotland and Equality Duty) and are specifically asked to “advance equality of opportunity” for people sharing protected characteristics. A diverse society needs a diverse management to progress successfully.

The Task Force for Justice Sector Reforms in Scotland

Task Force Conveners

Professor Geoff Palmer OBE DSc – Chair, FJSS Group

Dr Ima Jackson – Senior Lecturer, Glasgow Caledonian University

Task Force Members

Jonathan Squire MBE, Chair Ethnic Minority Law Centre, Glasgow

Sheriff Frank Crowe – Secretary, FJSS Group

Khalid Javid – KA Javid & Co

Dr Muhammad Rafiq Habib – Convener, Muslim Council of Scotland

Francis Alao – Mectis Scotland

Rev Dr Nelu Balaj – Livingston Old Parish Church, Church of Scotland

Dr Osikwemhe Damisah – Lecturer University of the West of Scotland

Lorraine Jarvie – Mood Project, West Lothian

Chief Suleiman Chebe – Artist, African Celtic Music Connections

Justice Kwawu – Justice Kwawu Ministries

Alison Chiwara – Equality and Diversity Lead, FJSS Group

Zara Mohammed – Muslim Council of Scotland

Silence Chihuri, CEO – FJSS Group