

## **Lammy Review of BAME representation in the Criminal Justice System: call for evidence**

### **Overview**

In January 2016 the Prime Minister invited David Lammy MP to find out why official figures show that Black, Asian and Minority Ethnic (BAME) groups appear to be over-represented at most stages of the criminal justice system, and what can be done about it.

This is an independent review. It aims to make sure that everyone is treated equally, whatever their ethnicity.

The review will look at the way the CJS deals with young people and adults from BAME backgrounds. It will address issues arising from the Crown Prosecution Service onwards, including the court system, prisons and young offender institutions and rehabilitation in the community. The findings should be published in spring 2017.

The review will be evidence-based. It will draw on the significant work already published in this area; it will produce new statistical analysis to shed light on the issue; and it will provide an opportunity for people to convey their personal experiences and insights.

David Lammy wants to hear from a diverse range of voices:

- victims and witnesses
- ex-offenders
- those working in the CJS
- academics and NGOs
- different BAME communities and
- different parts of both England and Wales.

### **How you can take part**

The Call for Evidence provides the main way for organisations and individuals to share views, evidence and insights. Everything submitted to the Call for Evidence will be read.

Alternatively, there is a Twitter hashtag – #lammyreview – which will allow people to make more informal contributions. This hashtag will be monitored throughout the review.

## About You

**What is your name?**

Dave Spurgeon, Research & Development Manager, Nacro

**What is your email address?**

This is optional, but if you enter your email address then you will be able to return to edit your consultation at any time until you submit it. You will also receive an acknowledgement email when you complete the consultation.

Dave.spurgeon@nacro.org.uk

**Are you answering this survey regarding England or Wales?**

- England

**Please choose one option from the list below which best describes you or your organisation:**

- Voluntary Community Sector

## Legal advice and pleas

Individuals from BAME backgrounds are more likely than average to draw on legal help<sup>[i]</sup>. In your view, what bearing does this have on outcomes for BAME groups in the CJS?<sup>[ii]</sup> (Whenever possible please provide the evidence that informs your opinion, including links to publicly available content).

Even with the adjustments for legal help for immigration controlled legal representation work, individuals from BAME backgrounds are still more likely to seek legal help. It is clearly right and proper that someone questioned about any offence or subject to legal process should seek help to deal with it. In complex immigration cases then this is essential. However, it is likely that this is also the result of lacking confidence and trust in the criminal justice system and with criminal justice agencies that they will receive an equitable service compared with other ethnic groups and that they need someone to advocate on their behalf. If this is the case then cuts to legal aid following the LASPO Act in April 2013 threaten the availability of help and further undermine confidence and trust.

There has been a steady but gradual downward trend in numbers of provider completing work, with an 11% fall between April to June 2012 and January to March 2015. This has been fairly similar across all criminal legal aid schemes. In its submission on proposal for reductions in legal aid the University of Kent noted a concern that many smaller firms doing criminal work were at risk and that many of these were solicitors from BAME backgrounds – many of whom worked with BAME clients – were most at risk.

Overall, BAME defendants are more likely than White defendants to plead ‘not guilty’ to criminal charges.<sup>[iii]</sup> In your view, why is this? (Whenever possible please provide any evidence that informs your opinion, including links to publicly available content).

Many BAME defendants are more likely to plead ‘not guilty’ because they wish to have their case heard at the Crown Court where they believe that they will receive a fairer hearing from a jury than they would from a magistrate. There remains the perception that magistrates are more likely to believe a police officer or other witness than they would the defendant whereas a jury is more objective in considering the evidence. Equally, many BAME defendants do not believe that they will fare any better when it comes to sentencing whether that be as a result of pleading guilty or being convicted.

Clearly it is the right of any defendant to enter the plea they feel most comfortable with. However, the result of such actions mean that, if found guilty, the tariff from the crown court is higher than it would be at magistrates’ court and any discount for an early plea will not be considered.

What action, if any, do you believe should be taken in response to the higher rates of BAME defendants pleading ‘not guilty’?

If the premise of this question is that many BAME defendants plead 'not guilty' and, by doing so, miss out on sentence discounts and potential disposals that would be available from a 'guilty' plea and, if this is because they lack confidence in the criminal justice process, then this is a real concern. For the BAME community to have more confidence requires the justice system to better reflect the communities it serves be that in: better engagement; greater diversity; or a more equitable outcome in sentencing. While many positive steps have been taken, concerns that people from BAME communities are over-represented at all stages of the justice process – be it stop and search or in prison – does maintain the very real perception that many communities are treated unfairly.

## Remand

Black defendants are more likely than White defendants to be remanded into custody at Crown Court. <sup>[iv]</sup> In your view, why is this? (Whenever possible please provide any evidence that informs your opinion, including links to publicly available content).

We are concerned that the *call for evidence* is taking a piecemeal approach to the justice system with the implication being that bias, inequality and/or disproportionality can be tackled at each stage in a different way. Rather, we see these issues resulting from a cumulative aggregation along the pathway. Thus, people from Black and/or BAME communities may be more likely to be subject to stop and search which brings them into contact with the CJS which is likely to lead to more arrests. At police custody they are more likely to be 'held overnight' to appear in court rather than bailed. People 'held overnight' are more likely to be remanded in custody at the magistrates' and remanded into custody and if remanded in custody by the magistrate are more likely to be remanded by the crown. Individual bias at each stage becomes compounded the more an individual progresses through the CJS.

Other aggregating factors may be that black defendants may not be able to provide sufficient surety for the court – in terms of residence, employment, links to the area - or the sureties they can provide are not recognised by the court.

Additionally, as the Bradley Review noted, many people from BAME communities with mental health problems only access services via aversive pathways including inappropriately via the CJS. There is some anecdotal evidence that magistrates and the judiciary may see people with mental health problems as presenting a greater risk of further offending or not complying with their bail conditions and, therefore, remand in custody. This is something that the national Liaison and Diversion (L & D) programme looks to address by provide reassurance to the court that appropriate measures are in place in the community.

Research by Nacro in 2009 (unpublished) prior to the Bradley Review found that few L & D schemes understood the needs of BAME defendants at that time. That led to the publication of a good practice guide, *Liaison and diversion for BME service users: A good practice guide for court diversion and criminal justice mental health liaison schemes*, learning from which was incorporated in the national L & D model to help address those concerns and engage effectively with BAME individuals in contact with the CJS.

Equally, research by the Centre for Mental Health (Briefing 39: Mental health care and the criminal justice system 2011) found that despite people from BAME communities being over-represented in prisons they were significantly under-represented on mental health caseloads. The inference being both that mental health teams were poor at engaging with BAME prisoners and that they [BAME prisoners] were reluctant to engage with such services.

What action, if any, do you believe should be taken in response to the greater likelihood of Black defendants remanded into custody at Crown Court?

There needs to be proactive and assertive engagement with Black defendants to develop packages of support in the community as an alternative to custodial remand especially in light of the next question. Such a package of support would need to satisfy the court that risk of re-offending and/or not complying with bail conditions is identified and mitigated. It is likely that this will be better delivered by a VCSE organisation than by statutory services.

For those Black defendants who have a mental health problem, learning disability or other vulnerability a referral should be made to L & D to enhance that package of treatment, care and support which will include assertive engagement to ensure that the person engages with and complies with any requirements placed on them.

A conference organised by Nacro with the Race Equality Foundation and the Mental Health Providers Forum looking to address disproportionality of people from BAME communities with mental health problems in contact with the CJS concluded that one key solution was the use of peer support. However, peer support on its own is not enough. It must sit alongside other packages of support and help people engage positively and effectively with them.

Having been remanded into custody, BAME defendants are more likely to then be acquitted or not tried later.<sup>[v]</sup> In your view, why is this? (Whenever possible please provide any evidence that informs your opinion, including links to publically available content).

This is a crucial observation and reinforces the need to remand BAME defendants on bail, where appropriate, and not remand into custody. It also reinforces the perception that the justice system is biased against BAME defendants and that they receive a fairer hearing from juries than they do at earlier stages including by the police, CPS, and at the magistrates' court. It is a further explanation why many BAME defendants pleaded 'not guilty' and opt to trial at the crown court.

## Prosecution

Prosecution rates per head of the population are higher for Black adults than for White and Asian adults.<sup>[vi]</sup> In your view, why is this? (Whenever possible please provide any evidence that informs your opinion, including links to publicly available content).

While a number of simplistic explanations have been put forward, these can easily be dismissed. Sharp and Budd (Minority Ethnic Groups and Crime: Findings from the Offending, Crime and Justice Survey 2003) have argued clearly that the notion that Black people are more likely to offend than other groups is false and Reaza and Magill (Race and the Criminal Justice System 2005) have shown that the lifetime offending rate for Black males is in fact significantly lower than white males.

Rather, this is likely to be both complex and multi-faceted. Reasons include:

- Stop and search is disproportionately used against Black people bringing them into initial contact with the people who, in turn, see them as more likely to offend causing a cycle that leads to subsequent arrest, charge and prosecution;
- Bias in the CJS process;
- Inadequate resettlement from previous custodial sentences (see later answer) which does not address and prevent re-offending.

Fitzgerald has found (ref 2007) that the BAME prison population not only has a large number of foreign national women serving sentences for drug related offences but over half of all Black British women have also been imprisoned for drug offences. These are offences that it might be argued always lead to prosecution.

JENGBA (Joint Enterprise – Not Guilty by Association) has argued that ‘joint enterprise’ has been used disproportionately against BAME communities arguing that of 500 prisoners they have worked with about 80% are BAME individuals (Criminal justice statistics: Institute of Race Relations).

What action, if any, do you believe should be taken in response to these higher prosecution rates?

Action is needed to unpick the complex reasons why there are higher prosecutions rates and look to address these. As we pointed out earlier, decisions and actions at one part of the justice process have a direct and indirect impact on other and subsequent parts. Therefore, actions that solely target to reduce disproportionality in prosecutions rates will fail to achieve success unless action is also taken across the system. Whatever the explanation for such disproportionality - be it criminological explanations that include bias and discrimination or socio-demographic factors or, as Ben Bowling, professor of criminology at Kings College, London, has argued is the result of criminalising communities over a number of years – key actions including early intervention with families and looking at school exclusions.

Compared with other ethnic groups, Black people have the lowest rate of cautions as a percentage of arrests.<sup>[vii]</sup> In your view, why is this? (Whenever possible please provide any evidence that informs your opinions, including links to publicly available content).

There may be 3 key reasons:

- Cautions are not offered by the police – this is related to the first answer in this section
- Black people lack trust in the police to feel able to admit the charge and accept the caution
- Conditions placed on any caution may not be acceptable.

Additionally, the earlier section that shows that if black people do not accept guilt at this and subsequent stages of the CJ process they may be acquitted later may also be a factor in people being unwilling to accept any caution.

What action, if any, do you believe should be taken in response to these lower caution rates?

This requires a change both in the way that black people and the police view each other so that out of court disposals are seen as – and are accepted as - a viable outcome rather than pursuing a prosecution. Or, where a non criminal sanction may be possible that the black community are aware of their rights. It may require the police working with BAME led and specialist VCSE organisations and culturally sensitive organisations to act as an intermediary between the police and the black person and as an advocate for the latter to facilitate the offer of and take up of a caution.

## Jury verdicts

Juries are more likely to find Black defendants guilty than White and Asian defendants. In your view, why is this?<sup>[viii]</sup> (Whenever possible please provide any evidence that informs your opinion, including links to publicly available content).

The statistics quoted by the MoJ (Are Juries fair? Ministry of Justice 2010) show that black defendants were convicted in 67% of jury trials compared with 63% conviction rates for both white and asian defendants. These figures are not adjusted for offence. We think that the differential rate is so small that this may be a meaningless comparison unless further work uncovers disproportionate differences for offence, social status or areas where courts sit.

What action, if any, do you believe should be taken in response to the increased likelihood of Black defendants being found guilty in comparison to White and Asian?

Unless further investigation uncovers disproportionate differences for offence or areas where courts sit we think that this may be a meaningless comparison (see above) and, therefore, on its own does not warrant special or separate attention.

## Sentencing

When a pre-sentencing report is commissioned, BAME defendants are less likely to have community service recommended than White defendants.<sup>[ix]</sup> In your opinion, why is this? (Whenever possible please provide the evidence that informs your opinion, including links to publicly available content).

We believe that a number of reasons contribute to this including BAME may lack the trust and confidence in the PSR process that they do not engage with it, may be perceived as not willing to be engaged and not perceived as likely to engage subsequently that a community service option is not recommended. Where it is recommended, those same perceptions may mean that it is not used as a sentencing option. Some commentators question whether the same criteria is used with BAME defendants when recommending a community service option and/or whether this is another area where bias and discrimination is prevalent.

Further, in 2000 HM Inspector of Probation found that PSRs written on Black defendants were of poorer quality than those written on white and Asian prisoners. They did not offer an explanation for this.

What action, if any, do you believe should be taken in response to this difference in recommendations for community service?

Action to redress the difference in recommendations for community service flow from the reason why this occurs. If it is lack of trust by BAME defendants then CRCs need to look at commissioning specific community service options run by BAME-specific VCSE organisations and services that are culturally sensitive to deliver this element.

If bias and/or discrimination then recommendations and outcomes need to be monitored and analysed against area, courts and even individual members of the National Probation Service so that this can be challenged and addressed.

When a pre-sentencing report is commissioned, BAME defendants are more likely to receive a recommendation for a suspended sentence than White defendants.<sup>[ix]</sup> In your opinion, why is this? (Whenever possible please provide the evidence that informs your opinion, including links to publicly available content).

We are not clear on the reasons for this. If it is to ensure that a sanction or 'deterrent' is in place then we would be considered this to be inappropriate if it was imposed on its own without any structure in place to support the individual and prevent further offending. Without such measures then it may be setting the person up to fail and lead to the probability of imprisonment if that happens. If it is for this reason and if it is disproportionately used against BAME defendants then we would see this as discriminatory and be extremely concerned.

What action, if any, do you believe should be taken in response to this difference in recommendations for suspended sentences?

We think that the reasons for the difference in suspended sentences needs to be better understood. Only then can actions be put in place to rectify any inequality or bias in the system.

BAME offenders are more likely to face prison sentences than White offenders.<sup>[x]</sup> In your view, why is this? (Whenever possible please provide any evidence that informs your opinions, including links to publicly available content).

As we have previously argued in this *call for evidence*, one part of the CJS cannot and should not be separated out from any other. We see the disproportionate use of prison for BAME offenders the result of a cumulative aggregate of factors that emanate for earlier and subsequent actions that cannot be accounted for in terms of offence type or previous convictions. So, even in this section, the differences in the use of community options – for whatever reason – is likely to lead to an increase in the use of imprisonment. Similarly, if BAME offenders are more likely to be given a suspended sentence then, if they reoffend, this is likely to be triggered leading to a custodial sentence. Even small differences can make a considerable difference when magnified and aggregated together.

We are also conscious of the work of Roger Hood which demonstrated considerable regional and local variations in sentencing for BAME groups that was concluded as resulting from bias and discrimination. We are concerned that such direct or indirect factors may still occur and think that further work needs to be done to look at whether there are regional and local variations and look to address this.

## Prison

BAME prisoners report a worse experience of prison than White prisoners. For example, BAME prisoners are less likely to report feeling safe in prison and more likely to report victimisation by staff.<sup>[xii]</sup> In your view, why is this? (Whenever possible please provide any evidence that informs your opinion, including links to publicly available content).

The HMIP annual report of 2008/09 reflected that such experiences for BAME prisoners resulted from poor process and management by staff and a lack of cultural awareness – including awareness of faith. The report highlighted that such issues were worse in dispersal prisons than the general estate. Prisoners also complained of racist abuse from other prisoners and of ‘subtle racism’ and in some cases overt racism from staff.

What action, if any, do you believe should be taken in response to these differences in experience of prison across ethnic groups?

There are a number of steps that need to be taken to address these issues. Training in cultural competencies and cultural awareness should be undertaken within the dispersal estate and those prisons where BAME prisoners complain of feeling unsafe. Where racism is found from either staff or prisoners then sanctions should be taken against the perpetrator. Prisoners who experience racism should be encouraged to report such incidents and supported to do so by prisoner-to-prisoner support.

We are aware of positive examples of good practice to tackle negative stereotyping and racism in Glen Parva, Huntercombe and Styal. Lessons from these and other prisons should be shared and cascaded across the prison estate.

Adjudication<sup>[xiii]</sup> for breaches of prison discipline is higher for Mixed and Black offenders than White and Asian offenders.<sup>[xiv]</sup> In your view, why is this? (Whenever possible please provide any evidence that informs your opinion, including links to publicly available content).

Not sure why this is unless it's a response and the reaction to the frustration and angst they feel as result of the negative impact of prison. Also the lack of family visits, loss of community links etc

Also need to accept that there is likely to be bias in the way that Black prisoners are charged

What action do you believe should be taken in response to these differences in adjudication rates across ethnic groups?

There is a need to monitor if this happens in particular prisons and/or types of prisons and look to understand and learn about them.

Alongside wider issues to be addressed in prisons, we would encourage the use of prisoner-to-prisoner support programmes that have been shown to reduce tensions and build support structures that may lead to a reduction in all adjudications not just

for BAME prisoners.

## Rehabilitation

On average, Black offenders are more likely to reoffend than other ethnic groups.<sup>[xv]</sup> White offenders are the group second-most likely to reoffend. In your view, what explains this? (Whenever possible please provide any evidence informing your opinion, including links to publically available content).

Re-offending by any group is likely to occur a) from a custodial sentence and b) if effective resettlement has not been put in place including *Through the Gate* provision including continuity of care to address any needs an individual may have. Key elements are identified by the reducing re-offending pathways. There is some evidence that black offenders receive longer prison sentences and the Social Exclusion Unit report *Reducing re-offending by ex-prisoners (2002)* found that they received less family visits during their sentence. Both these factors are likely to lead to a loss of family and community ties which are key element of resettlement.

A 2005 Nacro study (*Integrated Resettlement: Putting the pieces together*) found that black prisoners were less likely to seek out resettlement services based in prisons. The report also found that where black prisoners experienced problems such as drug or alcohol dependency, family breakdown or poverty, their impact is further compounded by racism in its various forms which will intensify the difficulties they face in being resettled upon release. For example, while homelessness is a problem for many groups, a disproportionate number of black households figure in the homelessness registers of local authorities and historically discrimination against black people has played a part in the allocation of housing stock. The result is that black offenders can end up being excluded and marginalised from mainstream society at a vulnerable time in their lives.

Black prisoners should help in the design and delivery of prison-based resettlement services that meet their needs. Where they express a choice they should be referred to VCSE organisations with clear recognition of BAME needs on release.

Where a prisoner experiences a mental health problem then continuity of care between prison and community is crucial. Although data for ethnicity, mental health and contact with criminal justice is not triangulated, given the disproportionate contact with the CJS, higher levels of psychiatric morbidity and the CJS frequently being the route into mental health services it is reasonable to suppose that Black prisoners would be represented on the caseloads of prison mental health teams. However the Centre for Mental Health has concluded that “there is some limited evidence to suggest that black and other BME prisoners are underrepresented” on such caseloads (*Briefing 39: Mental health care and the criminal justice system 2011*). It is also reasonable to suppose that, if black prisoners with mental health needs are not identified in the first place then effective resettlement that addresses continuity of care will not be put in place.

White offenders have the highest number of re-offences per re-offender, followed by Black

offenders. In your view, what explains this?<sup>[xvi]</sup> (Whenever possible please provide any evidence informing your opinion, including links to publicly available content).

We believe this needs detailed research.

What action do you believe should be taken in response to these different reoffending rates?

Exploration of what is and isn't working in resettlement services is required.

## Youth Justice

According to official figures, young people from BAME backgrounds are more likely than average to be prosecuted.<sup>[xvii]</sup> In your view, why is this? (Whenever possible please provide the evidence that informs your opinion, including links to publicly available content).

Nacro feels that Baroness Lola Young's Review (ref) has adequately addressed and detailed findings, conclusions, recommendations and next steps for the majority of this section. We do not feel that we can add anything extra to the first 4 questions in this section. However, through our work on Beyond Youth Custody (BYC) we will consider key issues relating to resettlement to reduce re-offending.

What action, if any, do you believe should be taken in response to these higher prosecution rates?

Many of the same issues that arise for adults are also applicable to young people. again these are likely to be both complex and multi-faceted and include:

- Stop and search is disproportionately used against Black people bringing them into initial contact with the people who, in turn, see them as more likely to offend causing a cycle that leads to subsequent arrest, charge and prosecution;
- Access to legal advice;
- Systemic levels of access;
- Support and interactions with the police
- Bias in the CJS process;
- Inadequate resettlement from previous custodial sentences (see later answer) which does not address and prevent re-offending.

What is different is that any approach to deal with these issues must be delivered in a way that works for young people and be age appropriate.

BAME and Muslim male young offenders report more negative perceptions of their relationships with prison staff than White male young offenders. This includes a higher proportion reporting having been victimised by staff or restrained.<sup>[xviii]</sup> In your view, what explains this? (Whenever possible please provide the evidence that informs your opinion, including links to publicly available content).

Again we would have concerns about poor process and management by staff and a lack of cultural awareness – including awareness of faith – as well ‘subtle racism’ and in some cases overt racism from staff.

What action, if any, do you believe should be taken in response to these reports from BAME and Muslim young offenders?

There are a number of steps that need to be taken to address these issues. Training in cultural competencies and cultural awareness should be undertaken within the dispersal estate and those prisons where BAME prisoners complain of feeling unsafe. Where racism is found from either staff or prisoners then sanctions should be taken against the perpetrator. Prisoners who experience racism should be encouraged to report such incidents and supported to do so by prisoner-to-prisoner support.

We are aware of positive examples of good practice to tackle negative stereotyping and racism in Glen Parva, Huntercombe and Styal. Lessons from these and other prisons should be shared and cascaded across the prison estate.

Figures show that Black young offenders are more likely to reoffend than White young offenders.<sup>[xix]</sup> In your view, why is this case? (Whenever possible please provide the evidence that informs your opinion, including links to publicly available content).

Nacro’s Beyond Youth Custody (BYC) programme<sup>1</sup> has produced extensive research into the effective resettlement of young people leaving custody. Building upon the Young Review<sup>2</sup>, BYC’s recently released practitioner’s guide - ‘Ethnicity, Faith and Culture in Resettlement’ - took a slightly broader focus to include Black, Asian and Minority Ethnic (BAME) young people and the role of faith in resettlement. Disparities in criminal justice pathways (particularly experiences within custody and access to rehabilitative opportunities) result in poor outcomes for BAME young people.

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<sup>1</sup> Beyond Youth Custody (BYC) is one of three England-wide learning and awareness projects funded under the Big Lottery Fund’s Youth in Focus (YIF) programme, which aims to support vulnerable young people through changes in their lives. BYC has been designed to challenge, advance, and promote better thinking in policy and practice for the effective resettlement of young people. BYC brings together Nacro, with three research and evaluation partners, ARCS (UK), and Salford and Bedfordshire universities. Please see <http://www.beyondyouthcustody.net/>

<sup>2</sup> Young, L. (2014) Improving outcomes for young black and/or Muslim men in the criminal justice system, London: Barrow Cadbury Trust.

Acknowledging this, BYC's research identifies what can be done to improve outcomes for BAME young people leaving custody by adopting more culturally responsive resettlement practices.

Differential levels of social disadvantage mean that BAME young people frequently need greater resettlement support, especially around education, training and employment. Yet poor experiences of social institutions (such as school, the care system, the police and prison) mean that BAME young people are unlikely to trust in, or engage with, statutory services. They may need advocacy to help them access effective support, and are also likely to need help to develop positive coping skills to manage the prejudice and discrimination that some individuals, policies and structures may inflict upon them.

To be effective and have a better chance of reducing reoffending, all resettlement interventions must be holistic and responsive to each young person's individual needs. For BAME young people, this includes considering the ways in which individual, cultural, procedural and structural factors mesh to impact upon engagement and outcomes. It is important to acknowledge the below:

- BAME young people face particularly high levels of victimisation and exposure to crime, making them feel extremely vulnerable in their own communities. It is crucial to listen to their experiences and support them in developing positive coping strategies.
- Prejudice and discrimination harm BAME young people's self-identity and impede resettlement because desistance is dependent upon an individual's perception of their future role in society.
- Desistance is a long-term process requiring support to develop positive identity and self-belief (rather than focusing solely on offending behaviour). It is important to be realistic about the real challenges in resettlement: encouraging young people to see any 'backsliding' as a temporary setback rather than as evidence of their intractable 'offending nature'.
- Even among people who share specific 'protected characteristics', there is a great deal of diversity. For example, as the Young Review describes: "Young Black and/or Muslim men are far from a homogenous group and the intersection of ethnicity, faith, culture and age makes these social identities multi-faceted and shifting." Intersectionality refers to how characteristics combine in a way that may lead to discrimination because of that specific identity<sup>3</sup>.
- Different aspects of identity interact and result in a huge diversity of support needs. Staff must feel confident to ask questions sensitively and work with each individual to explore their backgrounds and how they impact on what package of support is needed. Young people's communication and learning styles; social support; levels of confidence also need to be considered, meaning listening to young people and involving them in their own support planning.
- It is important that service users feel confident their ethnicity, faith and cultural experiences are understood and accepted. Those who share similar backgrounds to

<sup>3</sup> Wright, S. McAteer, L and Francis, V (2015) Recognising diversity in resettlement. Beyond Youth Custody/ Nacro. London. <http://www.beyondyouthcustody.net/wp-content/uploads/Recognising-diversity-in-resettlement-a-practitioners-guide.pdf>

custody leavers can provide helpful insight for young people. The role of ex-service users should not be limited to volunteering as mentors, their participation in service design and decision making is invaluable.

In summary, for interventions to be effective, they need to be responsive to each individual young persons needs, acknowledging that ethnicity is intersected by many other characteristics.

For further information about Beyond Youth Custody and to access publications, please visit <http://www.beyondyouthcustody.net/>

## Staff Diversity

To what extent do you believe the ethnic diversity of staff working in the CJS, including lawyers, judges, and professionals working in prisons and offender management services, has a bearing on outcomes for BAME defendants/offenders? (Whenever possible please provide any evidence that informs your opinion, including links to publicly available content).

Services should reflect the communities they serve. This is no different for CJS services and agencies as it is for any other. For many BAME people the fact that many CJS agencies lack ethnic diversity further reinforces the perception that such agencies do not 'serve' them and the communities they come from leading to lack of confidence and trust that they will be dealt with fairly.

It is also an aspect that many agencies also identify and have taken steps to address although in many cases this has not been successful. Lack of diversity is also apparent not only across the workforce but in senior positions.

If you regard the ethnic diversity of staff working in the CJS as important to outcomes for BAME defendants/offenders, what more could be done on this issue?

This is an issue that needs to be addressed by all agencies to recruit and promote people from minority ethnic communities to reflect the general population and local communities. This includes taking steps to make them attractive to and a career opportunity for people from BAME communities by tackling any last vestiges of institutional racism that was identified in the police by the McPherson Report and in the prison service by the Director General, Martin Narey.

## Data

In your view, is the collection of data on BAME outcomes in the CJS sufficient and consistent? If not, what are the principle gaps? What might be done differently?

It should be recognised that the criminal justice system is better than many other areas of public life in collecting and collating data. For example, the CJS provides better and more consistent demographic data – including on ethnicity – than the health. However, there is a difference in collecting data and ensuring that the data is 'fit for purpose' and meets the needs of policy makers and commissioners of services. There have been consistent calls from regulatory bodies such as HMIP to collect data that would help understand the nature and extent of inequalities more fully. Despite these calls there is still a lack of data and breadth of high-quality studies that address the combination of, for example, ethnicity, experiencing mental health problems, and contact with the CJS. The failure to triangulate such data fields (and there are others we could have picked) means that assumptions need to be made for an area that has been highlighted as potentially complex and requiring attention in a number of reports. One key and crucial consequence of this failure to triangulate data is that the same gaps apply when looking at measures to deal with possible inequalities.

Nacro believes that data collection should be structured in such a way in all parts of the CJS that allows the relationship between different variables – in the case we quote above, between ethnicity, mental health need and criminal justice contact – to be accurately assessed both on a day-to-day basis but also to understand trends over time. Given the disproportionate contact with the CJS, higher levels of psychiatric morbidity and the CJS frequently being the route into mental health services, the development and collection of a relevant minimum data set should be a clear priority. Unless this is achieved, the current position, which at best means the real level of inequality is unknown and at worst means that many vulnerable individuals are suffering a level of discrimination that would not be acceptable in any other field of public service, will continue.

## General

What examples are there of good practice – in the UK or abroad – that different parts of the CJS could learn from, to address the over-representation of BAME individuals? (Whenever possible please provide any evidence that informs your opinion, including links to publicly available content).

We think that there are a number of good practice examples that can be identified at different stages of the criminal justice and youth justice systems. These include:

- Early intervention to address and highlight vulnerabilities at an early point as evidenced by the L & D programme
- Peer support models promoted by Nilaari, Plias, Nacro, Anawin
- Engaging and supporting people into services as promoted by the L & D programme
- Positive examples to tackle negative stereotyping and racism in Glen Parva, Huntercombe and Styal.
- Prisoner to prisoner support developed and supported by the Irish Red Cross <https://www.redcross.ie/CBHFA>
- effective resettlement developed by Nacro including a bespoke Resettlement Advice Service

What more can be done to stimulate innovation and high performance from within the CJS where the treatment of BAME individuals is concerned?

Nacro acknowledges that this is an area of very real concern in the justice system. As such we welcome this review and *call for evidence* and would be very willing to work on any aspect to find solutions and take forward positive recommendations. We believe that there is a willingness and desire to address these concerns. We worked with the Race Equality Foundation and Mental Health Providers Forum looking at concerns of over-representation of people from BAME communities with mental health problems in contact with the criminal justice system. a conference we organised was over-subscribed within a week of advertising it with people wanting to debate positive solutions rather than reflecting on issues.

Is there anything else that you regard as important to the over-representation of BAME groups in the CJS that has not been covered in your answers so far? (Whenever possible please provide evidence, including links to publicly available content).

We would again make the point that the justice system and issues affecting people from BAME communities disproportionately needs to be seen as a whole and not broken into separate parts. Actions and decisions taken in one part are compounded at subsequent stages and, as such, solutions need to be developed at this macro level.



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[i] Legal help is a form of legal aid.

[ii] 'The proportion of legal help clients who are from a BAME background is larger than in the general population.'

– *Legal Aid Statistics in England and Wales, January to March 2015, Ministry of Justice Statistics bulletin*, available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/438013/legal-aid-statistics-bulletin-jan-to-mar-2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/438013/legal-aid-statistics-bulletin-jan-to-mar-2015.pdf)

[Note: this figure includes immigration controlled legal representation work].

[iii] 'BME defendants are consistently more likely than White defendants to plead not guilty to charges'

- 'Are Juries Fair?', Ministry of Justice (2010), available at

<https://www.justice.gov.uk/downloads/publications/research-and-analysis/moj-research/are-juries-fair-research.pdf>

[Note: this figure controls for offence types].

[iv] 'Defendants from BAME groups were more frequently remanded in custody compared with White defendants relative to their distribution in the population, and for the Black and Mixed groups to a greater extent than they were proportionally more likely to be prosecuted. For example, Black individuals accounted for 3% of the total population of England and Wales, 10% of defendants tried at the Crown Court and 13% of defendants remanded in custody at the Crown Court.'

– *Statistics on Race and the Criminal Justice System 2014*, Ministry of Justice, (2015), available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/480250/bulletin.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480250/bulletin.pdf)

[Note: this figure does not control for differences between ethnic groups in the type or seriousness of the offences committed, or previous criminal history].

[v] 'Among those remanded in custody, all ethnic groups were most likely to have later received a custodial sentence. However, White and C&O defendants remanded in custody at the Crown Court were more likely (72%-75%) to have later received a custodial sentence than Black, Asian and Mixed defendants (66%-69%). Defendants from BAME groups remanded in custody were more likely to be acquitted or not tried later (14%-17%) than White defendants (11%).'

– *Statistics on Race and the Criminal Justice System 2014*, Ministry of Justice, (2015), available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/480250/bulletin.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480250/bulletin.pdf)

[Note: this figure does not control for differences between ethnic groups in the type or seriousness of the offences committed, or previous criminal history].

[vi] Relative to the population, the Black adults have the highest rate of prosecutions. The rate of prosecutions for Black adults is 3 times higher than for the White and Asian adults.

– *Statistics on Race and the Criminal Justice System 2014*, Ministry of Justice, (2015), available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/480250/bulletin.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480250/bulletin.pdf)

[Note: this figure does not control for differences between ethnic groups in the type or seriousness of the offences committed, or previous criminal history].

[vii] 'Black people have the lowest rate of cautions as a percentage of arrests at 16%. This compares to White people at 24%, Asian people at 20% and people categorised as 'Other' at 26%.'

– [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/217353/out-of-court-disposals-june2011.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217353/out-of-court-disposals-june2011.pdf)

[Note: This figure does not control for the type and seriousness of the offence, the preparedness of the individual to admit guilt or whether the police regard the offender as showing remorse].

[viii] 'Jury verdicts showed only small differences based on defendant ethnicity. White and Asian defendants both had a 63% jury conviction rate; Black defendants had a 67% jury conviction rate'

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- 'Are Juries Fair?', Ministry of Justice (2010), available at <https://www.justice.gov.uk/downloads/publications/research-and-analysis/moj-research/are-juries-fair-research.pdf>

[Note: unlike government figures, which show that White defendants are more likely to be found guilty, this study focuses on defendants who plead 'not guilty' and therefore faced a jury.

Note: this figure does not control for differences between ethnic groups in the type or seriousness of the offences committed, although other figures in the study do this].

[ix] 'In 2014 offenders from the White ethnic group had ... a higher proportion of PSRs recommending community sentences (73%) compared with offenders from BAME groups (67%-69%)'.

– Statistics on Race and the Criminal Justice System 2014, Ministry of Justice, (2015), available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/480250/bulletin.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480250/bulletin.pdf)

[Note: this figure does not control for differences between ethnic groups in the type or seriousness of the offences committed, or previous criminal history].

[x] 'In 2014 offenders from the White ethnic group had a lower proportion of PSRs recommending a suspended sentence (18%) compared with offenders from BAME groups (21%-22%)'.

– Statistics on Race and the Criminal Justice System 2014, Ministry of Justice, (2015), available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/480250/bulletin.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480250/bulletin.pdf)

[Note: this figure does not control for differences between ethnic groups in the type or seriousness of the offences committed, or previous criminal history].

[xi] 'Being recorded by a police officer as coming from a Black, Asian, or Minority Ethnic (BAME) background was independently associated with approximately 39% higher odds of being sentenced to prison, than offenders who were recorded by police officers as coming from a White ethnic background'

- *Associations between police-recorded ethnic background and being sentenced to prison in England and Wales*, Ministry of Justice (2015)

[Note: this study controlled for factors such as the offence committed and the existence of previous cautions or convictions, but not for other factors such as whether a guilty plea was entered or the existence of aggravating or mitigating factors].

[xii] 'Over a quarter (27%) of adult male prisoners in our survey were black or minority ethnic and they were more negative than white prisoners about many areas of prison life. Fewer said they felt safe on their first night at the prison or at the time they completed the survey, or had a member of staff they could turn to for help, and more said they had been victimized by staff.'

– HM Chief Inspector of Prisons for England and Wales Annual Report 2014-15, available at [http://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2015/07/HMIP-AR\\_2014-15\\_TSO\\_Final1.pdf](http://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2015/07/HMIP-AR_2014-15_TSO_Final1.pdf)

[Note: this figure does not control for differences between ethnic groups in the type or seriousness of the offences committed].

[xiii] When prisoners are charged with an offence against prison discipline a hearing then takes place, known as 'adjudication'.

[xiv] Mixed ethnicity offenders have consistently had the highest rates of adjudication (169 per hundred prisoners in 2014), followed by Black (126 per hundred prisoners), White (105 per hundred prisoners) and Asian offenders (70 per hundred prisoners).

– *Statistics on Race and the Criminal Justice System 2014*, Ministry of Justice, (2015), available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/480250/bulletin.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480250/bulletin.pdf)

[xv] 'Black offenders have the highest re-offending rates at 29.8%, followed by White, Asian and Other offenders.'

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– *Statistics on Race and the Criminal Justice System 2014*, Ministry of Justice, (2015), available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/480250/bulletin.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480250/bulletin.pdf)

[Note: this figure does not control for differences between ethnic groups in the type or seriousness of the offences committed, or previous criminal history].

[<sup>xvi</sup>] ‘White offenders have the highest number of re-offences per re-offender (3.16) but have the second highest re-offending rates. Black offenders have the second highest number of re-offences per re-offender (2.84) but have the highest re-offending rates.’

– *Statistics on Race and the Criminal Justice System 2014*, Ministry of Justice, (2015), available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/480250/bulletin.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480250/bulletin.pdf)

[Note: this figure does not control for differences between ethnic groups in the type or seriousness of the offences committed, or previous criminal history].

[<sup>xvii</sup>] ‘Relative to the population, the rates of prosecution and sentencing for Black, Asian and minority ethnic (BAME) youths are higher than for the population as a whole’

– *Statistics on Race and the Criminal Justice System 2014*, Ministry of Justice, (2015), available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/480250/bulletin.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480250/bulletin.pdf)

[Note: this figure does not control for differences between ethnic groups in the type or seriousness of the offences committed, or previous criminal history].

[<sup>xviii</sup>] ‘Across all the inspected establishments, black and minority ethnic boys were far more negative than white boys about relationships with staff, and more said they had been victimised by staff or restrained.’

– HM Chief Inspector of Prisons for England and Wales Annual Report 2014-15, available at [http://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2015/07/HMIP-AR\\_2014-15\\_TSO\\_Final1.pdf](http://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2015/07/HMIP-AR_2014-15_TSO_Final1.pdf)

[Note: this figure does not control for differences between ethnic groups in the type or seriousness of the offences committed].

[<sup>xix</sup>] ‘The percentage of offenders who went on to reoffend between January and December 2011 was 42.6% for black young people compared to 35.9% for white young people.’

- A Sarkis, *Reducing the numbers of BAME young people in the youth justice system* (2014) available at <http://www.bteg.co.uk/sites/default/files/Angela.pdf>