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BLACK TRAINING & ENTERPRISE GROUP

How can the commissioning process improve outcomes for BAME offenders?



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The over-representation of Black, Asian and Minority Ethnic (BAME) individuals at every stage of the Criminal Justice System (CJS) is widely recognised by researchers, practitioners and service users. Despite notoriety over many years, this disparity in treatment still struggles to receive an effective response. This document is the result of a lively discussion that aimed to reignite the debate about how to ensure improved outcomes for young BAME men

There has been an absence of a coordinated strategy to address the experiences of BAME service users or to provide a comprehensive analysis of the causes that underpin disproportionality. Clinks and The Black Training and Enterprise Group (BTEG) make this call for an improvement in outcomes for BAME service in the context of dramatic changes in the way that services are commissioned across the whole of the CJS. The proposals – most recently articulated in the Ministry of Justice consultation, *Transforming Rehabilitation: A revolution in the way we manage offenders* – pose an opportunity to craft a more responsive approach and to make a significant change to the delivery landscape for BAME offenders.¹

With a view to facilitating early engagement and consultation with a broad range of providers, Clinks and BTEG convened a roundtable hosted by Baroness Young of Hornsey at the House of Lords on 5th March 2013. The focus of the discussion was improving

outcomes for young black men between the ages of 18 and 25. The roundtable brought together partners from across all sectors, including representatives from the Ministry of Justice (MoJ), National Offender Management Service (NOMS) and the Youth Justice Board as well as colleagues from HM Inspectorates of Prison and Probation, charitable funders, Voluntary and Community Sector (VCS) organisations of all sizes and private sector organisations.

This document reports the main topics of discussion and key issues explored during the roundtable. The first section presents a series of general recommendations and actions, which are the provisional outcome of a productive cross-sector dialogue. Section 2 outlines the context of the event and Section 3 summarises the key emerging themes from the discussion. There was a strong sense of consensus in favour of many of the arguments and solutions that were articulated, as well as a commitment to carry forward the proposed recommendations.

¹ Ministry of Justice. 2013. *Transforming Rehabilitation: A revolution in the way that we manage offenders*.

/1/ Recommendations for action

The roundtable identified a number of issues that need urgently to be addressed to ensure that the proposed reforms to the provision of offender services can engineer positive change for BAME service users.

1.1 On a practical level, we suggest that there are a number of immediate measures that could be taken. In those areas with large BAME communities, there is scope for commissioning specialist services. In other areas, it should be possible to employ the imaginative use of smaller grants to procure services for BAME offenders that will best support their desistance.

1.2 At a strategic level, action is needed to develop a more sophisticated analysis of how poverty, socioeconomic disadvantage and discrimination on the basis of ethnicity intertwine in the context of the CJS. The persistent pattern of direct and indirect racism in the CJS requires sustained attention informed by research into the distinctive pathways of BAME services users in and out of the CJS. Key to this would be a concept of ‘evidence’ which acknowledges the perspectives of service users from BAME groups.

1.3 Policy development and implementation should actively take into account the needs of young BAME offenders and should include consideration of the following questions:

- How to ensure that BAME service users get equal access and benefit from policy proposals?
- How to create opportunities for BAME community groups and those working for the benefit of BAME offenders in the newly configured services in Transforming Rehabilitation landscape?

- How to enable BAME organisations and service users to contribute to the debate and decisions regarding if and when it is appropriate to provide specialist provision for BAME offenders?

1.4 It was proposed that a Task-group be formed to explore and take forward these recommendations. The fixed period Task-group could provide expert advice on how the transformed commissioning structure might best support service users from the BAME community by:

- Contributing towards the commissioning design to ensure the needs of BAME service users are addressed;
- Providing examples of good practice in delivering services for BAME service users, from the VCS and from across other areas of commissioning;
- Helping to identify ways in which commissioners and providers might be better placed to understand the evidence-base relating to BAME service users and reducing offending;
- Assisting in the development of a shared collaborative approach to tackle disproportionality within the CJS.

“The persistent pattern of direct and indirect racism in the Criminal Justice System requires sustained attention informed by research into the distinctive pathways of BAME service users”



/2/ Context and current trends

2.1 **Transforming Rehabilitation:**

The opportunities and challenges of the current justice reform programme are likely to have distinct implications for both BAME service users and VCS organisations that work with them. Transforming Rehabilitation proposes to extend competition to the Probation Service, contracting out the supervision of low to medium risk offenders, as well as extending resettlement support to short sentenced prisoners and transitioning to a system driven by outcomes rather than process. The document contains an emphasis on through-the-gate mentoring support and tackling the root causes of offending behaviour, joining up relevant services such as accommodation, mental health and substance misuse services. Also relevant are the proposals outlined in the current consultation on the children and young people's custodial estate, *Transforming Youth Custody: Putting education at the heart of detention*.²

Ideally, delivery of these proposals will include a plethora of different service providers and draw upon the experience and knowledge that has developed organically in the work of VCS organisations operating at a very local level to provide culturally sensitive provision. However, the Transforming Rehabilitation document is largely silent on over-representation and the differing experiences of BAME service users within the CJS.

The most recent version of the *NOMS Commissioning Intentions*, published in October 2012, emphasised the importance of a holistic approach to meeting the specific needs of the individual service user.³ The negotiation document acknowledges that 'one size does not fit all' in delivering interventions and explicitly recognises the persistent differences between a number of key groups, including those from minority ethnic and/or historically disadvantaged backgrounds. The roundtable welcomed the document's focus upon the strengths and resources of service users and setting goals collaboratively. It is hoped that that, in practice, these proposals could precipitate a more culturally-responsive approach that strikes a fairer balance between practical barriers, social problems and attitudinal change.

2.2 **Disparities in contact with the CJS, treatment and outcomes:**

It is no exaggeration to say that the empirical data that is available on race disparity in the CJS is startling. While there has been an overall fall in the number of young people coming into contact with the youth justice system in the last five years, the proportion of young BAME people has remained fairly stable and in fact increased from 28% in 2008-09 to 32% in 2011-12.⁴ Young black people are more likely to be stopped and searched by the police, less likely to be given unconditional bail and more likely to be remanded in custody than young white offenders.⁵

² Ministry of Justice. 2013. *Transforming Youth Custody: Putting education at the heart of detention*.

³ National Offender Management Service. 2012. *NOMS Commissioning Intentions for 2013/14 Negotiation Document*, p.52.

⁴ Ministry of Justice. February 2013. Briefing for the roundtable on BAME reoffending. Unpublished presentation. It should be noted that population estimates are based on the ONS 2009 estimates and included those aged 10-18 years old. These may be subject to revision once age specific ethnicity data is available from the 2011 census. The small growth in BAME representation within the CJS could also be reflective of a small growth in the general population at large.

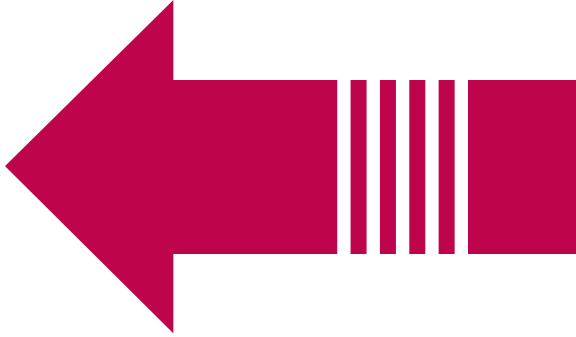
⁵ Home Office. 2005. *Statistics on race and the criminal justice system – 2005*. pp.21,68.

Research and data by no means presents a homogenous picture of the experiences of BAME offenders. For example, while young black offenders have been found to have a higher reoffending rate than young white people, those from an Asian background consistently have the lowest reoffending rates.⁶

Recent data indicates that BAME service users continue to identify differential experiences across a range of indices in prisons and the community. HM Chief Inspector of Prisons has stated that prisoners from BAME backgrounds, prisoners reported generally poorer perceptions of their treatment and conditions than the prison population as a whole. The Annual Report of HM Inspectorate of Prisons also found that:

- BAME prisoners reported more negatively on feelings of safety and victimisation by staff.
- The cultural awareness of staff was questioned, particularly where numbers of BAME prisoners were low in an establishment.
- Proportionately more BAME than other prisoners were subject to segregation, the use of force and adjudications and found on a basic regime.⁷

Despite a welcome shift from NOMS towards monitoring equality of outcome in tackling diversity and equality issues; there was a lack of consistent monitoring and ‘where disparities were found, there was insufficient accountability or effective action to address them’.⁸



The Riots Communities and Victims Panel went some way towards situating the events of August 2011 within the context of community disempowerment. The report also recognised that volunteers and peer supporters have a unique contribution to make to those who experience marginalisation in the community, alongside ‘official’ interventions.

2.3 **Perspectives from research:**

Research on the relationship between desistance and ethnicity has so far been limited.¹⁰ However, in one of the few academic studies on the subject, Adam Calverley has suggested the existence of distinct ‘cultures of desistance’. Calverley found differences to be particularly pronounced with regard to the influence of family and community:

“For the Indian participants, desistance is influenced by their families’ ‘aspirational values’ and greater access to economic, employment and educational resources... In contrast, Black and Dual Heritage participants experienced a much more individualised and isolated process of change. For them the process of desistance seemed to necessitate their disengagement from previous social relationships, developing a structured lifestyle and independently initiating steps towards ‘self improvement’.”¹¹

⁶ Ministry of Justice. 2011. Re-offending of juveniles: results from the 2009 cohort. p.16.

⁷ HM Chief Inspector of Prisons for England and Wales. 2012. Annual Report 2011 – 12. pp.7, 41-42.

⁸ Ibid. p.7.

⁹ Riots Communities and Victims Panel. 2012. After the riots: The final report of the Riots Communities and Victims Panel.

¹⁰ F. McNeill and B. Weaver. 2010. Changing Lives? Desistance Research and Offender Management. p.67.

¹¹ Ibid. p.67.

Double Trouble, a study commissioned by Clinks in 2010, demonstrated the need to ensure the relevance and accessibility of services to BAME service users through the prison gate.¹² The researchers found that, in addition to practical solutions, many prisoners from minority ethnic backgrounds need to negotiate an 'ethnic dimension' to their engagement with services. *Double Trouble* recommended that resettlement services must:

*"...redress the existing racial inequalities in criminal justice practices... recognise and address the impact of perceptions of discrimination and stereotyping within the criminal justice system and wider system – particularly the impact on BAME offenders' willingness and motivation to engage with services... [and] must display an understanding of, and sensitivity towards, cultural differences in expectations and experiences of resettlement."*¹³

Voluntary and Community Sector providers may have a critical 'bridging' role to play, by helping to engage offenders who might be mistrustful of statutory services, including probation. *Double Trouble* concluded that small VCS organisations are well-placed to:

- Engage BAME offenders whose experience may lead them to be mistrustful of statutory services;
- Deliver culturally sensitive provision;
- Deliver personalised services that are tailored to the needs and circumstances of offenders as individuals and as members of minority ethnic groups.¹⁴

Any client group of offenders reflects ever-changing ethnic and cultural diversity. Individual prisons and probation trusts are unlikely to have established links with the full range of Voluntary and Community Sector agencies they require. There is a crucial role for VCS partners who have contacts throughout the Sector to build the links between the CJS and the specialist support on which resettlement depends.

VCS organisations that provide specialised support to BAME communities and other groups report very limited resources for debating solutions or articulating a concerted strategy. In a recent compilation of articles produced by the Runnymede Trust, it was argued that policy has been dominated by arguments about 'cultural deficit' or institutional racism; to the detriment of an approach focusing upon social exclusion and deprivation. Kjartan Sviensson argued that the work of many VCS organisations working with BAME groups has been reduced to 'fire-fighting and crisis management'.¹⁵

It is hoped that the discussions from this roundtable can provide a starting point for a more balanced and productive dialogue about services and interventions for BAME offenders.

“ VCS organisations that provide specialised support to BAME communities and other groups report very limited resources ”

/3/ Thematic discussion

3.1 **The strategic deficit** at policy-level and across many establishments and local regions was identified as a critical problem by roundtable delegates. It was noted that the language used to describe over-representation has changed. While in earlier reports, the term 'disproportionality' was used, more recent reports refer to a disparity – which indicates anomalies that merit investigation of policies, procedures and practices. The silence of Transforming Rehabilitation on race and ethnicity was registered with concern. Without a comprehensive national strategy, there is a real risk of the neglect thus far being reproduced; marked by a lack of understanding or in-depth analysis of the socioeconomic causes perpetuating the disproportionate BAME presence in the CJS.

3.2 **Escalation at every point in the system:** Delegates from across sectors stressed that the journeys of young black men need to be viewed from a wide angle. Not only are young BAME service users over-represented at every point of contact with the CJS – but there is also increasingly attention being given to the question of whether they are being escalated in the system too quickly. As the research evidence suggests, the pathways of young BAME people, and the complex web of motivations and intervening factors that influence offending patterns, are distinct from those coming into play for their white counterparts.

The system needs to address the fact that many young black people do not have confidence that the criminal justice system and broader policing is there to safeguard them. This absence of trust means BAME service users may feel less engaged by available interventions, for example because they may not perceive them as having their interests at heart.


3.3 **What types of services are needed to improve outcomes for BAME young men?**

Discussants challenged the implications of evidence-based commissioning for delivering equal outcomes for BAME service users. The way in which 'evidence' is conceptualised in the Commissioning Intentions is largely limited to quantitative methods. This risks undermining provision for groups for whom the evidence base may be weak, simply because so little work has been done in the area or because they represent numerical minorities. Delegates discussed the view that - without a structure to incorporate the experience of BAME offenders – the commissioning framework risks being institutionally racist, reflecting the predominance of the white, male, average IQ, heterosexual majority.

3.4 **Commissioning services that are sensitive to cultural context and engage distinctive groups:** The roundtable included lively discussions about mechanisms that could be mobilised to draw upon the rich human resources within the CJS.

Service user involvement is an under-utilised resource for developing policies and practices that are responsive to - and resonate with - BAME young men. The roundtable included many conversations about the complex experiences of BAME service users in negotiating the ethnic dimension of their engagement with services in the CJS, and in Schools, neighbourhoods and local services. Too often these narratives are hidden from mainstream view. It was forwarded that service user involvement should be seen as the necessary corrective to the partial knowledge that can be gained from providers and their monitoring data.

¹⁶ HM Chief Inspector of Prisons. 2011. Report of an unannounced full follow-up inspection of HMP The Mount, 4 – 14 October 2011. pp.5,13,44.



On the level of an individual institution, HMP The Mount was identified as a prison that had scored well in relation to race and ethnicity in its last HMIP inspection and demonstrated the value of service user involvement. Since its last inspection, the prison had developed mechanisms for ‘meaningful prisoner representation and consultation’ and there was dedicated resettlement and mentoring provision for BAME prisoners. Over half of the prisoners at The Mount were from black or ethnic minority backgrounds and they reported more positively than white prisoners across a number of areas.¹⁶ Notwithstanding this progress, BAME prisoners continued to report more negatively on staff-prisoner relationships.

Quality peer support is one of the practices that we anticipate would be rolled out more widely if service user involvement was utilised more effectively at the planning stages of service specification. It was emphasised that small, specialist VCS organisations have particular expertise in providing peer support schemes but also widely report a hostile reception from statutory organisations they seek to engage with.

“ Action is needed to enable and support BAME-led organisations and service users to contribute to policy and commissioning frameworks. ”

3.5 **How to overcome the obstacles to VCS organisations delivering specialist work with BAME service users?**

Multiple barriers were identified on behalf of VCS organisations delivering to BAME service users, which call for pro-active and concerted measures to ensure their active participation in the market. The roundtable raised a key challenge for policy-makers, namely how to ensure that delivery effectively taps into the existing network of local expertise.

The discussion explored the precarious situation of many VCS organisations that provide specialist support to BAME service users. Many of the generic issues rehearsed in other documents are particularly acute for BAME organisations, which are often very small in size and providing a specialised service to a particular cultural or faith group.¹⁷ BAME organisations report ‘disproportionat[e] disengagement and disadvantage’ in commissioning processes.¹⁸

There were lots of proposals in the roundtable for more robust and comprehensive contractual requirements to ensure ethnically-responsive services, monitoring and intelligent commissioning. These ranged from proposals for reducing the barriers to accessing prisons for VCS groups to requirements on primes to subcontract with specialist providers. This was only the beginning of the conversation and more needs to be done to unpick the position of BAME groups within the wider market and to enable and support BAME-led organisations and BAME service users to contribute to policy and commissioning frameworks.

¹⁷ See Clinks and BTEG responses to Transforming Rehabilitation: A revolution in the way we manage offenders. BTEG’s response is available upon request.

¹⁸ N. Samota. 2012. Achieving Better Outcomes in the Criminal Justice Sector for BAME Communities in Croyden.

As a first step, we would recommend that Commissioners consider earmarking a proportion of payments to be devolved to fund small-scale, locally commissioned pieces of work.

3.6 **Payment by results:**

The shifting commissioning landscape raises new challenges for providers of BAME services. Payment by results was discussed as an example of where perverse consequences could arise if race and ethnicity are not given adequate focus. The risk of creaming and parking and also difficulties of creating a level playing field have specific implications in this context, which is illustrated by the following example.

The relative reoffending rates of BAME offenders may be distorted by police practices in relation to BAME young men. The reported reoffending rate of Black offenders from March 2011 was 27.5%, compared with 26.1% for white offenders.¹⁹ However, statistics published in the same year show that black persons were more likely to be stopped and searched, and that this group were arrested at a rate of 3.3 times (and people of dual heritage 2.3 times) higher than white people.²⁰

Providers who work with BAME groups could face a hidden disadvantage and actual reductions in reoffending could be skewed if commissioners do not take into account policing practices. The possibility that a BAME young man faces a higher chance of being convicted also raises a real risk of cherry-picking by prime providers in payment by results arrangements.

3.7 **Funding:**

A number of charitable trusts have a keen interest in BAME work and currently have relevant work streams. For example Barrow Cadbury through their Transition to Adulthood (T2A) project with Young People and the Pilgrim Trust's funding focused at women within the CJS system. Others would be interested in generic initiatives that support BAME work more generally. Additionally many of these funders already have networks in other parts of the BAME VCS sector through other funding initiatives and would therefore potentially be able to encourage a different range of VCS organisations to enter the debate. Nevertheless, the roundtable began to demonstrate the need for a visible strand of MOJ work that this could be contextualised by and some strategic direction, however early its stage of development might be.

“BAME organisations report ‘disproportionate disengagement and disadvantage’ in commissioning processes... Commissioners should consider earmarking a proportion of payments to be devolved to fund small-scale, locally commissioned pieces of work ”

¹⁹ Ministry of Justice. 2011. Proven re-offending tables – Apr 10 – March 11, Table 4a.

²⁰ Ministry of Justice. 2011. Statistics on Race and the Criminal Justice System 2010.

“Too often the ethnic dimension is hidden from mainstream view... service user involvement should be seen as the necessary corrective.”

This report is intended to provide a brief overview of the roundtable proceedings and recommendations and as such does not necessarily reflect the opinions of everyone who attended.

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