



The
Young
Review

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**Submission to
the Lammy Review**

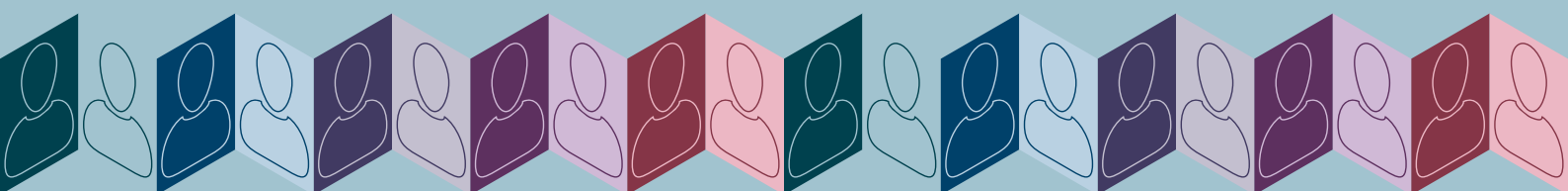
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June 2016

Recommendations

We have made a number of recommendations throughout this submission, some of which form the recommendations from the Young Review report:

1. Training for prison officers should be regularly reviewed so that perceived and actual problems associated with the cultural competence of staff are overcome.
2. The process for downgrading prisoners' status, particularly while an incident is under investigation, should be reviewed. Checks and balances are needed to ensure that status reviews are conducted fairly for all prisoners but specifically for BAME prisoners in the context of continued discrimination and unequal outcomes for black and/or Muslim men.
3. A commitment to the importance of service user involvement should be emphasised through communications with prison governors and new providers that ensure they correctly understand the policy enabling ex-service users to volunteer or work in prison and community settings.
4. HMIP should carry out reviews on the experience of BAME/Muslim offenders and the prison adjudication system and the negative impressions of BAME young offenders towards prison staff and how to improve those relationships.
5. Service user involvement involving BAME offenders through structures such as prison councils should be further developed.
6. We would recommend establishing a Ministerial group in the MOJ on BAME/Muslim offenders that would be based on the current arrangements for women offenders.
7. We believe that a review of charging decisions should be conducted (possibly by the HMCPSI or another independent body) into the fairness of prosecution decisions.
8. The autonomous prisons programme must place clear objectives and targets around improving outcomes for black and/or Muslim young men.
9. Building a greater understanding of Islam and Muslim communities through training and dialogue should be a priority for CJS organisations.
10. The CJS must improve the ethnic representation of its staff.
11. There must be a single consistent system for data collection across the CJS and NOMS/MOJ must work more collaboratively with external academics in utilising the data that is currently available to inform and drive change.



1 / Introduction

In 2012 BTEG and Clinks agreed to work together to propel the issue of the disproportionately high numbers of black, Asian and minority ethnic offenders in the prison system up the Ministry of Justice's (MOJ) agenda. An independent review was established chaired by Baroness Young of Hornsey and supported by a Task Group.

Following a meeting with the then Secretary of State for Justice the final shape of the review was formed with a focus on black and/or Muslim males (aged 18-24) offenders. The Young Review was funded by the Barrow Cadbury Trust, and successfully concluded in 2014 with the publication of **the Young Report**.¹

The report made a number of recommendations which were fully accepted by the National Offenders Management Service (NOMS) and the MOJ.

Phase II of the Young Review (YR2) is funded by the Barrow Cadbury Trust, the Lankelly Chase Foundation and the Esmée Fairbairn Foundation. The purpose of YR2 is to help those involved in the development and delivery of criminal justice policy and practice to implement the Report's recommendations and help to create a criminal justice system (CJS) that is free from unfair bias and disproportionate outcomes for offenders based on their ethnicity or religion.

To help achieve its aims YR2 has established an Independent Advisory Group (IAG) chaired by Baroness Young, The IAG is made up of a body of subject experts from the voluntary and statutory sectors, academics, ex-offenders and service providers; and has three primary functions:

1. To act as a sounding board and critical friend to those tasked with developing and implementing policies and practices that have an impact on disproportionality in our CJS
2. To identify areas of concern and opportunities for change/improvement in current CJS policy and practice
3. To monitor the progress of NOMs and the MOJ against previously agreed actions to address ethnic and religious disproportionality for offenders in prison and upon their release.

We therefore welcome David Lammy's Review and hope it can accelerate the delivery of actions that can initiate sustained reductions in the numbers and proportion of people from BAME communities within the CJS.

In addressing the review questions we have concentrated on those questions that are most pertinent to the focus and experience of the Young Review. We have also, in our concluding comments, tried to address specific areas we feel the consultation questions have not covered.

2 / Prisons

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 (12). In your view, why is this? (Whenever possible please provide any evidence that informs your opinion, including links to publicly available content).

The Young Review report looked into this issue in its findings section (para 74-95). The feedback from our focus groups with black and/or Muslim inmates showed different aspects of a multi-faceted problem: stereotyping, lack of cultural/religious understanding/competence of staff, and a lack of any focused efforts at actions to correct patterns in decision making that continually produced poorer outcomes for black and/or Muslim young men.

HMIP inspection reports have consistently reported higher levels of dissatisfaction amongst black/minority-ethnic/Muslim offenders over a number of years. But there seems to have been a dearth of follow-up research to examine the reasons behind this and actions to build trust. Lack of diverse prison staff teams, in a context of high BAME prisoner populations, adds a sense of a growing dichotomy and division. This environment for BAME/Muslim offenders helps to fuel mistrust in the system, in greater numbers amongst these groups.

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

The Young Review made a number of pertinent recommendations (pages 13-14) that we believe would make a difference, namely:

- Training for prison officers should be regularly reviewed so that perceived and actual problems associated with the cultural competence of staff are overcome.
- The process for downgrading prisoners' status, particularly while an incident is under investigation, should be reviewed. Checks and balances are needed to ensure that status reviews are conducted fairly for all prisoners but specifically for BAME prisoners in the context of continued discrimination and unequal outcomes for black and/or Muslim men.
- Commitment to the importance of service user involvement should be emphasised through communications with prison governors and new providers that ensure they correctly understand the policy enabling ex-service users to volunteer or work in prison and community settings.

Adjudication for breaches of prison discipline is higher for Mixed and Black offenders than White and Asian offenders (13). In your view, why is this? (Whenever possible please provide any evidence that informs your opinion, including links to publicly available content).

According to NOMS own data black and mixed race service users are subject to higher rates of adjudication, spend more days than average in segregation and are more frequently subject to the use of force. The black and Muslim men who attended the focus groups carried out through the Young Review highlighted the greater numbers of BAME men on the basic Incentive and Earned Privileges (IEP) regime in comparison to their white peers. They inevitably viewed this as being linked to discrimination in the decision making processes.

NOMS have made addressing this issue a priority for its Equality Strategy but we need to see evidence of its impact. Clearly the development of the autonomous prisons programme could offer the potential opportunity to pilot different approaches to address this challenge. This will always be a highly emotive issue.

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

There is a need to build greater transparency, consistency and accountability into the adjudication process. A thematic review by HMIP could help by providing an independent assessment of the process and its outcomes. The structure of the adjudication system and its application could be a focus of such a review and pointers for innovation in the government's autonomous prison's programme.

The Young Review also recommended (page 13) the need to develop a constructive dialogue with BAME and/or Muslim inmates through models such as prison councils to address grievances.

3 / Rehabilitation

On average, Black offenders are more likely to reoffend than other ethnic groups (15). 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 publicly available content).

This is a complicated issue and a range of factors and variables have an effect. The findings section of the Young Review (para 112-159) explored the issues of desistance, maturation and resettlement in relation to black and Muslim young men. It also set their experience in the system in the context of wider barriers and greater inequality experienced in areas such as employment, education, housing, mental health and the care system.

For all offenders the stigma of having gone to jail and the practical hindrance that a criminal record can bring in, for example, seeking employment, access to housing and family reconciliation impacts negatively on successful rehabilitation outcomes. But for black offenders the barriers can be even greater. So, for example, unemployment rates for young black men are more than double those for their white peers. In London the unemployment rate for young black men 16-24 is 30% compared to 14% for white young men. Only 10.6% of apprentices in England are from BAME backgrounds.

The intersection between the CJS and the mental health system has been recognised as a pathway into the CJS and one that could be avoided with better earlier interventions and diversionary approaches. Black people are also more likely to be diagnosed with a severe mental health condition, to access mental health services via the CJS and less likely to be supported through primary care and early interventions, according to the **Bradley Report on Black and Minority Ethnic communities, mental health and criminal justice**.²

Black young people are over-represented in the care system and **the Laming Review 2016**³ has a chapter on this, including feedback from two focus groups (including one held in Feltham YOI) facilitated by BTEG which highlighted high levels of hostility from young BAME care leavers towards the CJS and care professionals. One of the points raised in these focus groups was that of role models. The young people spoke of role models in their communities however such individuals would seldom be utilised by the authorities who they viewed as having a lack of positive role models working for statutory bodies with the young people.

Family breakdown is often cited as an issue amongst black communities. Lack of male role models and struggling single parent families are often depicted as part of the problem. Clearly this is a factor but institutions should be careful not to pathologise

black family life as inherently dysfunctional. There is, however, a desperate need to have evidence from family interventions on their delivery to BAME groups. The Government's troubled families programme has not explicitly targeted BAME groups and there has been little feedback on performance in relation to different ethnic groups.

The impact of gang interventions on reoffending rates needs to be assessed. Have we got the balance right between enforcement, rehabilitation and prevention? Are multi-agency gang interventions having discussions about ethnic disproportionality and opening themselves up to independent scrutiny and review to ensure such interventions are breaking cycles of offending and not reinforcing them? Is the governance of gang nominal lists operating in a manner that is transparent, accountable and fair? In the light of the Supreme Court decision on joint enterprise (R v Jogee) and recent research from the CCJS and Manchester Metropolitan University, **Dangerous Associations: gangs, joint enterprise and racism**,⁴ a greater scrutiny of the impact of gang policy and its interpretation in courts on ethnic disproportionality and potential stereotyping is in our view necessary to ensure we are not hardwiring in ethnic disproportionality into the system and trawling young people through it who should be being diverted.

Faith generally and the growing numbers of practicing Muslims in prisons and conversion to the faith in prisons by black inmates in particular, needs further, more nuanced examination and understanding. The Young Review report (para 92-96) highlighted the strong perception from the Muslim men who participated in focus groups that their religion was viewed with suspicion and the positives in terms of supporting desistance from crime that they felt their faith supported was not being recognised by the prison system.

A recent **report from T2A**⁵ produced by Maslaha explored the experience of young Muslim men through the justice system and the potential for stereotypes to impact on decision making. It makes a small number of focused recommendations including better training for CJS staff on Islam and Muslim cultures and crucially demands a recognition and dialogue from our justice system of the impact of the negative stereotyping of Islam.

Black churches and mosques could have a greater role in working with the prison chaplaincy and supporting resettlement into faith communities on the outside for offenders who have found a faith in prison. The evidence highlights that faith can be a strong buttress in supporting desistance, particularly with the communal support faith communities can provide.

We would stress the need for more sustained community engagement with black and Muslim communities from public bodies. Clearly public bodies have legal duties to ensure they are striving to achieve equal outcomes and access to services but the Young Review found little evidence of any targeted activity towards addressing ethnic disproportionality. This is in contrast to the situation for women offenders. We would recommend establishing a Ministerial group in the MOJ on BAME/Muslim offenders that would be based on the current arrangements for women offenders.

Anecdotally, black communities feel greater levels of antipathy and estrangement towards public institutions that often should be improving their lives (such as the BAME care leavers referred to earlier). This needs to be addressed and policy needs to be informed by their voice. In addition, the Young Review highlighted the very real need for greater involvement from former/reformed offenders in interventions such as mentoring and developing role models.

Finally there needs to be a greater acknowledgement that variations in reoffending rates can be affected by policing, prosecuting and sentencing decisions. Reoffending statistics highlight rates of reconvictions which suggest that people from Black ethnic groups are more likely to re-offend than other groups. The Section 95 report, **Statistics on Race and the Criminal Justice System**⁶ explains that:

"A proven re-offence is defined as any offence committed in a one year follow-up period that leads to a court conviction, caution, reprimand or warning in a one year follow-up or within a further six month waiting period (to allow the offence to be proven in court.)"

The published reoffending rates presume that the impact of policing, prosecution and court decisions are impartial and bias-free, a position the courts, prosecutors and police would vigorously defend. Yet official data, published under Section 95, questions the system's impartiality:

- The police are 4.5 times more likely to use stop and search procedures on people from black ethnic groups than on white groups.
- The police are nearly three times more likely to arrest people from black ethnic groups than white groups.
- Courts are three times more likely to prosecute someone from a black ethnic group than from a white group.

(Section 95: Race and the Criminal Justice System, 2015)

It could be argued, therefore, that the reoffending rates could be higher with the statistics highlighted above. Clearly policing has a huge role (we understand this is outside the review's remit but it cannot be ignored) but prosecuting and sentencing decisions also have a major impact.

Black people appear to present a higher rate of reoffending, but this partly reflects the fact that they are more likely to be arrested and more likely to be prosecuted. Unfortunately there hasn't been enough emphasis on addressing these disproportionately poorer outcomes for black offenders and there is a growing suspicion these disparities in treatment are being repeated with Muslim communities. Reoffending statistics by ethnicity are influenced by the disproportionate treatment of black people and this must be acknowledged if we are to address ethnic disproportionality in the justice system.

White offenders have the highest number of re-offenses per reoffender, followed by Black offenders (16). In your view, what explains this? (Whenever possible please provide any evidence informing your opinion, including links to publicly available content).

We need more evidence but clearly the context we set out in the previous question adds to the poorer outcomes for black offenders.

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

We would reiterate the need for leadership from our institutions. A Ministerial group in the MOJ on BAME/Muslim offenders would be a useful start and signal that the system is now taking the issue seriously. It would provide a formal high level point of contact that would help to galvanise action.

4 / Youth Justice

According to official figures, young people from BAME backgrounds are more likely than average to be prosecuted (17). In your view, why is this? (Whenever possible please provide the evidence that informs your opinion, including links to publicly available content).

The main pathways and risk factors for young people into the youth justice system all record high levels of ethnic disproportionality: from school exclusions, the care system, CAMHS and first contact with the police. There is a long history and a plethora of evidence around the black community's poor relationships with the police and the corrosive effect of stop and search policies.

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

Although there have been reports into the fairness of charging decisions by the Crown Prosecution Service (CPS) in the past, there have been a number of changes in recent years to CPS charging practice and policy. We believe that a review of charging decisions should be conducted (possibly by the HMCPSI or another independent body) into the fairness of prosecution decisions.

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. (18) In your view, what explains this? (Whenever possible please provide the evidence that informs your opinion, including links to publicly available content).

As highlighted earlier this is a huge, emotive issue and once again one that would benefit from an independent review, possibly from HMIP. We have known these statistics for years but little has been done to address the problem. The Young Review reported that negative stereotyping and a perception of racism on the part of black and/or Muslim inmates plays a significant role in their prison experience. At a macro level proactive violence reduction approaches seem to be scarcely represented across the service. The role of staff training is important and possibly interventions that can build relationships and understanding even more so. The Young Review report highlighted one shining example of this through the work of the prison chaplaincy. The business case for prison staff must be won, in that addressing the underlying causes behind these figures will benefit them by reducing incidences of violence and building understanding which can contribute to a better prison environment.

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

Detailed HMIP reviews with clear recommendations and action plans with targets. Reform processes need to build in actions. There is a need to ensure an analysis of the needs of BAME/Muslim offenders, and actions to address them are built into the government's reform programmes to ensure equitable outcomes. MOJ and NOMS must ensure this opportunity for innovation and new approaches to address these negative perceptions that hinder rehabilitation and desistance among BAME offenders are fully utilised.

5 / 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).

Across the entirety of the CJS, professionals/senior staff from BAME communities is poorly represented (only 6% for the Police, NOMS and the Judiciary according to the MOJ report **Race and the Criminal Justice System 2014**.⁷ We believe that this can have a substantial impact on perceptions of, and outcomes for, offenders from these communities. So, for example, we now have several prisons with BAME majority populations based in rural areas with no BAME staff. This undoubtedly further polarises strained situations with many of the inmates far away from families and friends. However, it should not be assumed that the recruitment of BAME staff will in itself address the challenge of ethnic disproportionality. The low profile of BAME individuals at senior levels within the CJS must also be addressed. The Young Review report (para 96-102) highlighted the need for greater representation from BAME groups in the justice system.

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?

We need to look again at recruitment targets and any positive action that can be taken within the law. But beyond this our institutions have to critically question whether they are open to all of the diverse communities in our country? The lack of diversity would suggest that many of these institutions are not perceived to be welcoming to BAME communities. Why this situation persists and what can be done to address it needs further examination. Any remedies need to be developed by working closely alongside those communities.

An example of good practice is the Met Police Commissioner's Strategic Inclusion, Diversity and Equality (STRIDE) Board, which he chairs and includes the senior management team and some external experts, including BTEG. The Board looks at diversity data in relation to its work force and service delivery and takes action to improve performance.

6 / 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?

In our opinion the collection of data on BAME outcomes in the CJS is neither sufficient nor consistent. The Young Review recommended a single consistent system for data collection across the CJS (rec 1 page 13). We hope the Lammy Review will make a similar recommendation. There is a need for NOMS/MOJ to work more collaboratively with external academics in utilising the data that is currently available to inform and drive change.

7 / 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).

At a macro level the DBS system came in for heavy criticism in the Young Review. Examples from abroad that provide more incentives to support rehabilitation and rewards desistance must be a priority for the UK to consider. Norway's system of reintegration for offenders is worth investigating.

BTEG Guide for Commissioners and Providers⁸ is a guide intended for commissioners and providers within the Criminal Justice System. It presents key actions that commissioners and providers should take to help achieve the overall goal of reducing offending and reoffending among this key population.

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

The role of civil society, building community resilience and social capital is crucial. Part of the reason that our public bodies have failed to make significant progress is the lack of sustained engagement with communities and civil society. Hence a key recommendation from the Young Review was the establishment of an Independent Advisory Group to invigorate engagement between government and civic society to find solutions together.

We have hinted through our responses of the challenge for the CJS in the rise of Muslim offenders. This needs a far deeper exploration and we must ensure the response is not dominated by a focus on addressing extremism. As we have previously highlighted it is essential that a greater understanding of Islam and Muslim cultures amongst staff and offenders is developed through training and constructive dialogues. The young Muslim men who spoke to the Young Review felt the practice of their religion was viewed primarily through the lens of potential extremism.

The announcements regarding prison reform in the Queen's speech and particularly the programme to grant greater autonomy to a select number of prisons must ensure improving outcomes for black and/or Muslim young men is a priority, and include specific targets as part of its outcome measures.

References

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