

Equal diversion?

Racial disproportionality in youth diversion



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Summary

Background

In his 2017 review of racial disparity in the criminal justice system, Rt Hon. David Lammy MP highlighted that disparity in the youth justice system was his ‘biggest concern’. Research strongly indicates that unequal treatment early in the system accumulates into larger disparities downstream. In England and Wales, the first step on the ladder of contact between children and young people and the criminal justice is often youth diversion— a set of informal, non-statutory practices in which children and young people are provided the opportunity to avoid a statutory out of court disposal or a court prosecution, and a criminal record, if they complete community-based interventions.

While the evidence strongly suggests that youth diversion is beneficial for the children who go through it, and has been shown to reduce re-offending, inequality in access to, and engagement with, youth diversion is likely to have material impact on disparities later on in the system. We interviewed Youth Offending Team staff, police, solicitors, young people and their families in an in-depth look at racial disparity in youth diversion in two local authorities in England and Wales.

Access to and engagement with youth diversion for BAME children and young people

While we appreciate that our conclusions have been drawn from a small sample which is not representative of all professionals, parents/ carers and young people within the youth justice system, we found that Black, Asian and Minority Ethnic (BAME) children and young people’s access to, and engagement with, youth diversion was likely to be negatively impacted by the following factors:

- **Youth diversion can operate in a climate of mistrust:** Practitioners recognised that there can be a climate of mistrust of the criminal justice system, and indeed other Government interventions, felt by BAME children and young people and their communities: “...if, in their view, they have not had a good experience with authority, the police, school, social workers that have been involved with the family, then they’re going to be far more wary of us coming in and working with them.”
- **Formal eligibility criteria:** We found evidence that there are specific eligibility criteria, such as the requirement for a formal admission of guilt and restrictions about the number of prior offences, which can result in unequal access to diversion for BAME children and young people: “Our service is a little bit funny about having repeat offences, but if you’re going to disproportionately stop a young Black male who we know smokes cannabis, you’re going to catch them twice. They’re going to come through our service twice...”
- **A lack of knowledge about the benefits of youth diversion:** A lack of information can result in BAME children and young people disproportionately failing to access diversion: “Actually I think it’s probably something that we should know a bit more about because a youth will say to us, “What does a [diversion intervention] entail?” and I can never answer that question.”
- **Practitioner perceptions of family engagement:** A number of professionals were open about their perception that children and young people from Gypsy / Roma / Traveller background would not be supported in engaging with diversion: “the reality is their loyalty to their values and their family traditions... will always prevent them from accepting the opportunities that are being offered to them.” There is a danger that these kinds of perceptions of community-wide factors could make it more difficult for children and young people from those communities to receive diversion.

Promising practices

In our interviews, there was a range of positive suggestions about how to change policy and practice within diversion:

- **Workforce cultural competence and inclusion:** Practitioners highlighted the importance of having a diverse workforce that understands the needs and cultures of the communities they worked with: *“I do think we need to be more culturally competent. We do need to have more practitioners who are not just white middle-class people, and they need to have a better understanding of their communities. So yes, I do think cultural competence does play a part in it, and we do need to be better at it.”*
- **Multi-agency decision making and oversight:** Including professionals from other agencies such as social workers in the decisions to divert children and young people is likely to better meet the needs of children and young people, particularly those with complex needs: *“I just think having more people with different experience, different backgrounds, bringing different perspectives is what helps us to try to keep that focus on that.”*
- **Enhancing engagement:** There were several strategies that the practitioners used to overcome the barriers to engagement with youth diversion, including more flexible and creative approaches to partnership work, as well as support children and young people to realise their potential: *“I see it more that, sometimes, it’s an opportunity just to kind of help with young people’s resilience in life, just generally.”*
- **Culturally specific programming;** Practitioners suggested it was important to engage in culturally specific programming that meets the young people where they were: *“We just have to know what we can and what we can’t do... It’s just being aware of cultural differences and getting advice sometimes.”*
- **Empowering YOT staff:** YOT workers in particular described how difficult it can be to challenge police decisions made regarding diversion. Training focused on empowering staff and increasing assertiveness was suggested to help manage this: *“We are like the trouble team, that are always arguing and giving them (the police) a hard time. So, it’s the training on being it’s okay to challenge, as well, and the understanding of what actually out-of-court disposals mean.”*
- **Diversion training for defence solicitors:** Training was recommended for defence solicitors so they would be better equipped to inform young people about diversion schemes: *‘I think we need more training at the police station level because we’ve got a lot of solicitors that don’t know what they are. We’re still having a lot of solicitors that are saying, “Go, ‘no comment” on things that are completely and utterly in (diversion) territory.”*
- **Evidence-based eligibility criteria:** Practitioners highlighted how formal eligibility criteria for diversion could contribute to disproportionality. This can be mitigated by a greater capacity for professional discretion in offence types which are eligible, allowing young people to be diverted without a formal admission of guilt and allowing young people to be diverted more than once.

Conclusions

Youth diversion remains our best-evidenced approach to working with children and young people who have entered the criminal justice system. Our research shows that youth diversion operates in a difficult environment, where over-policing, suspicion of government intervention and wider structural inequalities all lead to a climate of mistrust for BAME children and young people. Moreover, specific practices and policies, currently in operation in youth diversion schemes across England and Wales, are likely, based on our interviews and our analysis of the evidence base, to negatively impact on BAME children and young people’s access to, and engagement with, youth diversion.

However, this research also suggests that, through better training, more well-rounded decision making, and the deployment of effective engagement and intervention strategies, the benefits of youth diversion can be made more broadly felt. Our research gives us hope that, with a commitment to changing how youth diversion operates, all children and young people, regardless of background, can be offered a chance to change their behaviour and realise their future potential.

Introduction

Youth diversion offers children and young people the opportunity to avoid formal criminal justice processing (either a statutory out of court disposal or a prosecution) and a criminal record if they complete community-based interventions. The use of youth diversion has spread extensively in England and Wales: research by the Centre for Justice Innovation in 2019 found that almost nine out of ten youth offending teams offer some form of diversion.¹ Evidence suggests that youth diversion can reduce reoffending, lower costs for criminal justice agencies and the avoidance of more formal justice processing may lead to more positive outcomes for children and young people.²

However, while the spread of youth diversion across England and Wales is welcome, if access to it is not evenly distributed, there is a substantial risk that it can exacerbate racial disparities for young people in the criminal justice system.³ Research shows that unequal treatment early in the system accumulates into larger disparities downstream. While practitioners have flagged concerns about the interplay between diversion and racial disparity in England and Wales, there remains a dearth of research on this subject in England and Wales, in part because youth diversion is a non-statutory tool which sits outside of the formal justice systems processes.

This report seeks to play a part in filling this gap with an in-depth look at racial disparity in access to, and engagement with youth diversion in two local authorities in England and Wales. Drawing on the testimony of young people, their families and the practitioners who support them to paint a picture of a system, we hope that this report will shine a light on some of the factors driving racial disparity in access to, and engagement with, youth diversion. We hope that practitioners, leaders and policy makers can learn from our findings to develop and advance new strategies to address those disparities and move us closer to a justice system which treats all children and young people equally.

NOTE ON TERMINOLOGY

Although we have used the acronym 'BAME' for Black, Asian and Minority Ethnic children and young people in our report, we recognise the term can be considered problematic, as it arguably flattens different experiences of the justice system and other racialised social systems between individuals of different racial and ethnic backgrounds. We understand that this term does not refer to a homogenous group of people, and where possible we have attempted to disaggregate our findings in regards to specific ethnic backgrounds.

Context

Racial disparities in the changing youth justice system

There is a growing awareness of the scale of racial disparities in the youth justice system of England and Wales. The 2017 *Lammy Review* highlighted disproportionality in the youth justice system as its ‘biggest concern’.⁴ The Lammy Review found that although children and young people from BAME backgrounds were disproportionately represented in the criminal justice system, clear evidence based reasons for this disparity was lacking. Last year, the House of Commons Justice Select Committee reported that “race disproportionality is significant and fundamental, visible in every part of the youth justice system”.⁵

It is striking that the welcome advancements in the youth justice system have been less likely to benefit Black, Asian and Minority Ethnic (BAME) children and young people. For example, while the number of first time entrants (FTEs) from a Black background has decreased in the decade to March 2019, the proportion they comprise of all child FTEs has doubled, from 8% to 16%, while the proportion of Asian children and young people went from 5% to 7%.⁶ Furthermore, BAME children and young people are more likely to escalate through the system: in 2018 they made up 31% of arrests, 35% of prosecutions, 53% of custodial remands, and 51% of the custodial population.⁷ Across the whole system, the proportion of BAME children in the youth justice system is now almost double what it was 10 years previously (27% in the latest year compared with 14% 10 years ago)⁸.

Youth diversion in England and Wales

In England and Wales, “youth diversion” is generally used as a short hand for point-of-arrest youth diversion, an approach which provides children and young people suspected of committing an offence with a voluntary community-based intervention as an alternative to formal criminal justice processing (either a statutory out of court disposal or a prosecution) which could lead them to have a life-long criminal record as well as other sanctions. Though practice is variable, diverted young people tend to receive a brief assessment followed by a quick referral into light-touch, voluntary programming. While diversion is often a more appropriate and less harmful alternative to formal processing, it’s worth recognising that in some cases diversion itself can be a form of “uptariffing” if provided in relation to a matter where the police could reasonably take no further action.

Youth diversion, while not a statutory function of police or Youth Offending Teams / Services (YOTs), has increased in importance in policy circles. This is in no small part due to it now explicitly featuring as part of the Youth Justice Board (YJB) National Standards for Children in the Youth Justice System⁹ which requires that YOTs should ensure that ‘point-of-arrest diversion is evident as a distinct and substantially different response to formal out-of-court disposals’. The expansion in diversion has also been facilitated by the Home Office’s addition of “Outcome Type 22” to their Crime Recording Standards which allows police to record when a crime has been resolved by “diversionary, educational or intervention activity.”¹⁰

Our 2019 survey of YOTs found wide coverage of youth diversion across England and Wales. 88% reported having at least some form of youth diversion scheme¹¹. However, we also found that practice varied widely across different models, with striking differences in eligibility criteria, referral pathways and programming.

Racial disparity and youth diversion

Importantly for our discussion of racial disparity, our YOT survey also found that data collection practice was particularly inconsistent. Only 54% of YOTs confirmed that they collected basic demographic data on the children and young people receiving diversion and our follow-up interviews with those who did not report doing so suggested that their data collection practice was very variable.

Moreover, in our work to support YOTs and police to build and spread effective evidence-led youth diversion, we detected a concern amongst practitioners, policymakers and service users, that there may be aspects of current practice which may unintentionally be contributing to the extensive racial disparities which have documented in the Lammy Review and other inquiries. The role that unequal access to diversion may play in exacerbating racial disproportionality was flagged as an underexplored issue in the Justice Select Committee's 2020 report *Children and Young People in Custody (Part 1): Entry into the youth justice system*. In their report, the committee noted that disproportionality is visible in every part of the system¹² and expressed concern what demographic data from diversion schemes was not being routinely collected¹³. Justin Russell, Her Majesty's Chief Inspector of Probation, told the Committee that: "somehow the system seems to be better at diverting white children away from the formal criminal justice system than it is for BAME children and young people."¹⁴

Findings from our rapid literature review

In recognition of the concerns raised, we embarked on a two stage project, examining racial disparity in the provision of youth diversion. The first stage was to conduct a rapid literature review, to identify and understand the existing evidence base. The full literature review has been published in separate paper, but we will summarise our findings here¹⁵.

It was notable that the vast majority of research literature that we found on this topic was from the United States and there was a notable shortage of research on the intersection of youth diversion and racial disparity in England and Wales. The research from other jurisdictions highlighted a number of ways in which diversion practice, while broadly beneficial for the children who go through, may exacerbate racial disparities. We cross-analysed these findings with our own knowledge of existing youth diversion practice, in particular, but not exclusively, our findings from our survey of youth diversion practice from 2019.

Risk assessment

Risk assessments of BAME children and young people may lack nuance. Steen et al. highlighted that double the number of white offenders were classed as moderate risk than Black offenders, suggesting a tendency to assess 'Black offenders as either low risk (i.e., victims) or high risk (i.e., hardened offenders), with little middle ground.'¹⁶ Inappropriate tools that have not been 'normed or validated' for different groups of children and young people may lead to unduly conservative assessments of risk.¹⁷ This up-rising is evident in the Metropolitan Police's Gangs Matrix, in which Black people are starkly over-represented. Although the matrix purports to be a risk management tool, Amnesty International highlight that its 'conflation of elements of urban youth culture with violent offending is heavily racialised' and results in 'over-broad and arbitrary identification of people as gang members.'¹⁸ As Bishop notes, 'racial and ethnic disparities derive in part from laws that differentially target the behaviors, statuses, and life conditions associated with youths of color'.¹⁹

Unconscious bias

Our literature review also suggests that racial disparities can be driven by unconscious bias. Practitioners' perceptions of BAME children and young people may result in them being assessed as higher risk and deemed unsuitable for diversion. Tittle and Curran note that 'non-whites and youth symbolize to white adults resentment-provoking or fear-provoking qualities like aggressiveness, sexuality, and absence of personal discipline.'²⁰ Interpretations of behavioural and attitudinal indicators of risk may therefore operate to the detriment of BAME children and young people especially. Steen at al., in the context of juvenile court, note that 'in every legal category, a larger percentage of Black offenders are categorized as "high risk" than white offenders.'²¹

Formal admissions of guilt

In our 2019 survey, 59% of YOTs indicated that they required children and young people to formally admit guilt before being diverted.²² However, the Lammy Review found that the lack of trust some BAME groups have in the criminal justice system renders BAME people less likely to admit an offence or plead guilty at court,²³ in effect barring people from being diverted.

Prior records

We also found that 40% of schemes limit access to diversion to only those young people with two or fewer previous offences,²⁴ potentially excluding individuals from communities that are historically over-policed. Research has consistently suggested that some BAME communities in England and Wales are more tightly surveilled, increasing the chance of detection and arrest, and are more likely to be arrested in situations and for behaviour white people would not.²⁵ As the Magistrates Association note, 'an increased use of stop and search on one particular group may result in that group having a much higher rate of out of court disposals or arrests against them.'²⁶ In this way, racial disparities attach to the apparently race-neutral measure of 'prior record', which itself can be an important determinant of a person's trajectory through the criminal justice system. Records of previous criminal justice system contact are taken as indicators of character and capacity for reform, and their 'validity as proxies for actual behaviour is seldom questioned'.²⁷

Research design

Our research explored three questions, which were informed by the findings of our literature review:

- What is the impact of race and ethnicity on children and young people's **access** to youth diversion?
- What is the impact of race and ethnicity on children and young people's **engagement** with youth diversion?
- What **adjustments to practice** (e.g. the requirement of an early admission of guilt) could or should be made in response?

Although race and ethnicity are defined as separate concepts, we included both terms in the research questions to capture the diverse experiences and cultural differences between groups.

Qualitative research

Qualitative research was then undertaken within two youth offending teams: 20 semi-structured interviews were conducted online via Zoom, with police, youth offending team (YOT) staff, defence lawyers, young people and parents/guardians. Practitioners were asked questions about their perceptions of the objectives of diversion, their roles in the process of diversion, their perceptions of young people's attitudes and behaviours and the relationship to access to diversion, and their perceptions about the role of race and ethnicity in the diversion process. Young people and their families were asked about their experiences with the police, solicitors and the YOT staff, and in particular how that experience may have been shaped by their race and ethnicity. The participant breakdown is detailed below:

- 3 police officers
- 10 YOT professionals
- 3 young people
- 3 parents/carers
- 1 defence solicitor

Due to national restrictions implemented as a result of the COVID-19 pandemic, amendments to our original research plan had to be made and a lower number of participants were interviewed. In particular, we had been planning to focus our fieldwork on interviews with children and young people to ensure that their experiences were centred in the findings. However, this proved difficult due to the lockdown restrictions and the limitations involved in using videoconferencing technology to engage with children and young people about sensitive subjects.

Site selection

We recruited two sites that offer youth diversion schemes in England. Initially, five sites were to be selected based on youth diversion schemes who declared an interest in the project, through our youth diversion bulletin. However, as a result of restrictions due to the COVID-19 pandemic and subsequent UK lockdowns, two sites were selected based on established relationships from our previous practice work.

Our site selection was guided by a need for geographic spread, inclusion of both metropolitan and non-metropolitan locations, willingness to address racial disproportionality in their diversion practice and a commitment to assist the research by providing data and participating in interviews. Additionally, both sites have a distinct demographic profile, with contrasting ethnic majority and minority populations.

This project has been a collaboration between researchers and local practitioners who not only contributed to the research as interview respondents but also provided access to their YOT staff, local police, defence lawyers and young people and parents/guardians.

THE RESEARCH SITES

SITE 1

- A non-metropolitan county
- Provides a voluntary youth restorative intervention to young people who have committed a low offence, aged 10 -17
- Requires an admission of guilt for diversion
- Completion of diversion is recorded as community resolution

SITE 2

- A metropolitan local authority
- Provides a voluntary youth offending service community resolution to young people who have committed a low level offence, aged 11-17
- Requires an admission of guilt for diversion
- Completion of diversion is recorded as a community resolution

Advisory board

We sought feedback about the research process from our advisory board and presented interim findings to board members during the research project.

Use of our findings

We appreciate that as is often the case in qualitative research, conclusions have been drawn from a small sample which is not intended to represent all professionals, parents/ carers and young people working in and coming into contact with the justice system. However, the findings provide important insights in relation to ethnicity and diversion which we hope will be a useful starting point to spark positive changes.

Findings: Factors impacting on access to and engagement with youth diversion

Our work explored two key domains where disproportionality could arise. Access to diversion – that is which children and young people actually receive diversion - which is driven by both formal eligibility criteria and professional discretion. Engagement with diversion - how young people who have been diverted engage with both the YOT and any intervention which is offered – can be impacted by professional’s capacity to effectively form relationships with children and young people, underpinned by factors such as cultural competence, as well as the levels of trust which those children and young people have in both the intervention and the wider system.

1. A climate of mistrust of “the system”

Practitioners reported that the climate of mistrust of the criminal justice system, and indeed other Government interventions in the lives of BAME individuals and their communities, is a barrier to engagement with diversion. For example, a YOT practitioner, as many others, recognised that a number of the young people they worked with, particularly young Black, Asian and Minority Ethnic young people, distrusted authority:

...if, in their view, they have not had a good experience with authority, the police, school, social workers that have been involved with the family, then they're going to be far more wary of us coming in and working with them (YOT worker).

Some practitioners explicitly recognized that mistrust was directly linked to histories of racial disproportionality in policing:

I think that, like we said, there are obviously different histories, different histories with the police, different histories with the justice system, things are disproportionate... There is a mistrust, isn't there? So, I think those are my most likely to be the people that do not engage with them, because they do not trust the process. That is where we are saying, actually, that consequential thinking and those experiences are acting as a barrier to them engaging with something that, essentially, is in their best interests at that point, that is kind of the best outcome that they could hope to have. It is escalating when it should not, really, and it based on experiences and mistrust. I think that is definitely a factor (YOT worker).

We're not magicians, we can't force young people to respond positively to what we're trying to offer them. Hopefully, mostly we do, but there will be some young people whose level of suspicion is so great that, within the two to three months that we've worked with the on a CR, we wouldn't have got that far. And some young people, let's be frank, in eight weeks, if they miss three or four appointments, we might only see them two or three times. It's quite... To get that level of professional relationship is quite a skilled art in itself, particularly with a suspicious young person in the first place. (YOT worker)

It is well established in the research literature that systemic distrust intersects with race and ethnicity, and these YOT practitioners recognized the barriers they faced to engaging young people whose pervasive distrust of multiple system actors that extended to the YOT itself.²⁸ Some of the practitioners identified that the young people they worked with, who were often enmeshed in other social welfare systems, were oversaturated with interventions, and thus the conditions for distrust were ripe:

Also, I don't know sometimes if letting that young person know that we're all communicating... It sometimes works, actually, but sometimes it doesn't. Because I feel, with that particular young person, although she tries to play off everybody, she also gets her back up, knowing that- We're kind of reinforcing what they think, that we're all just in it together, we're all part of the same thing. And if she doesn't like Social Services, that means she's definitely not going to like you then, because you're part of them. (YOT worker)

This worker points to the unintended consequences of partnership working: that it may signal to the young person a level of collusion and ultimately reinforce their feelings of being alienated from the system, and thus enhance their distrust.

The practitioners largely reported the presence of barriers to building a therapeutic alliance with the young people who were referred to interventions with them, and these barriers are arguably shaped by broader systemic forces which shape the levels of trust that young people and their families have of multiple system actors.

2. Formal eligibility criteria

A number of professionals suggested that young people from Black or Gypsy, Roma, Traveller backgrounds were less likely to admit an offence or more likely to give 'no comment' interviews, citing reasons such as poor legal advice from solicitors and a mistrust of the criminal justice system. However, in the two teams selected for this study, admitting the offence was an essential criteria to access diversion. As a result, young people from these backgrounds may be more likely to miss out on access to diversion and escalate further into the criminal justice system than their White counterparts.

'... I'm very aware of all the evidence to do with Black and other ethnic minorities not necessarily trusting the criminal justice system or police, and not making admissions and therefore entering the criminal justice sooner than white people might do because they might be more trusting, more open to making admissions, and therefore the escalation is much quicker for them and the disproportionality and all the rest of it. ...So I would obviously love to be able to offer the same opportunities... we have a lot of Gypsy and travellers that don't necessarily make admissions, it's just the standard "No comment," and to give them the opportunities as well of having an out of court disposal and that support before, and hopefully not then escalating it to a court because obviously once they go to court people are much more likely to get stuck into the criminal justice system.' (Police Officer)

A number of practitioners interviewed cited distrust as a key driver shaping young people's decisions not to make admissions of guilt or to remain silent. However, young people's silence is arguably shaped by broader systemic dynamics as well; in a recent piece of research on children and young people's decisions to remain silent, they cite their ignorance of and inexperience with the criminal justice system and their feelings of powerlessness in that system. The researchers argue that for many children and young people, silence "offers protection against the racialised misinterpretation of talk and the potential legal harm that it exposes."²⁹

Perceptions of responsibility-taking and remorse are also arguably shaped by broader racialized assumptions about culpability. Some scholars have suggested that there may be forms of 'remorse bias' at play in the criminal justice system, which shape official assessments of children and young people's admissions of guilt. Scholars have found that the expectations of what denotes remorse is highly subjective, and that cultural understandings of remorse inform assessments of the of voice, speech, and demeanour.³⁰ These assumptions may also intersect with age, as young people's expressions of remorse or resistance are often shaped by their developmentally normal resistance to authority. A solicitor interviewed for the study recognized this challenge in the context of a discussion about remorse:

...generally youths, unfortunately, don't come across the way that they necessarily need to come across, whether it's a problem with attitude or whether it's a communication problem.

Thus, it is important to understand the ways that practitioner assumptions about whether a young person is sufficiently remorseful—and thus get access to diversion--may be shaped by broader assumptions shaped by age, race/ethnicity, gender, and class.

Acceptance of responsibility and engagement

It is relatively well established in the research literature that engagement with interventions helps to facilitate behavioural change.³¹ It has also long been assumed that a young person's admission of their responsibility for offending is an important indication of the likelihood of engagement in treatment; this assumption was reflected in the comments of some of the frontline practitioners who were interviewed:

The idea is that you're choosing to offer that provision, really, for young people who have committed minor offending and are also motivated to change because, in order for us to do the work with them, they need to consent to the programme that we're offering. So by virtue of... Also, there's some level of... If you're admitting, there's some level of acknowledgement of responsibility or culpability. So, in a way, you might be picking those people who are more likely to take advantage of the programme and less... They're probably more likely to benefit from it and not to get involved with crime again... I don't really want to go into doing work with people who don't want to do it because half of it will mean... Most of the time, or some of the time, they won't take advantage of what we've got to offer. It just doesn't make any sense to me to do that (YOT worker).

If the young person is remorseful for the victim, the community, then they're more likely to want to actually make changes (YOT Worker)

However, this assumption is not supported in the research literature; in a recent mixed methods study of young people's readiness to engage in treatment, researchers found that while to some extent the acceptance of responsibility relates to a young person's readiness for change, young people may be ready to change even if they have not accepted responsibility for their behaviour.³²

Eligibility for diversion and prior records

As previously highlighted, there is evidence to suggest that some minority groups can be subject to tighter surveillance³³. Professionals suggested that young Black males were often specifically targeted by the police leading to repeat offences being recorded: *'Mostly, ours is... The disproportionality is probably about Black young men. I heard a phrase yesterday, and I think that kind of sums it up, "Black people, males, are more heavily policed and less protected."* This additional surveillance can create barriers to Black boys and young men (and potentially other targeted groups) accessing diversion as some schemes restrict access if multiple offences are recorded: *'Our service is a little bit funny about having repeat offences, but if you're going to disproportionately stop a young Black male who we know smokes cannabis you're going to catch them twice. They're going to come through our service twice. It's a really unfair, and it's a really difficult one to balance.'* (YOT Worker)

3. Lack of knowledge about diversion

There also appeared to be a lack of clarity and understanding amongst some practitioners around diversion processes and the impact of non-admissions on a young person's pathway beyond the police station. One defence solicitor commented that they did not have a clear understanding of how diversion schemes worked. This has negative implications for advocating for young people and increasing access, particularly for young people from ethnic minority backgrounds: *'Generally, and statistically speaking, a Black young person will not admit an offence, and generally go onto court. And I think that, again, is due to being given bad advice by solicitors at the police station.'* (YOT Worker)

Professionals also questioned whether young people had enough knowledge or a clear understanding of diversion and how non-admission of guilt could negatively impact their future:

'When I was saying that in interview they probably do not even know what diversion is. They will not know that if they say 'guilty' or 'not guilty', or accept accountability or not, that that is going to determine, because they would not know what diversion was and what that meant' (YOT Worker).

4. Decision-making processes

Joint decision making panels are intended to play a key part in the decision making process regarding whether a child or young person should be diverted. As these panels are comprised of professionals from a range of agencies, they can guard against one agency gatekeeping access to diversion schemes.

However, a number of professionals reported that they believed that access to youth diversion schemes was still largely controlled by the police, who they felt had more power to make these decisions rather than the process being one of joint decision making between agencies. One YOT worker reported - *'We usually just get told from the police what it is. So, the police will- We will get our allocations, and then they will say, "Right, they're going to get a community resolution." But it will be based on their gravity scoring, or something, in regard to their offences.'* (YOT Worker).

This control was a concern for some professionals who suggested that this could drive disproportionality in access due to discriminatory attitudes within the police: 'I think that the police are institutionally racist, full stop really' (YOT Worker).

5. Vulnerabilities, risk and circumstances

Practitioners reported that a large proportion of children and young people that came into contact with Youth Offending Teams had significant mental health and additional needs. Staff highlighted these needs could affect whether diversion schemes were considered appropriate:

'We have had a young person shoplifting for diet pills in the past. When we knew something about her history we realised actually, she was self-harming and she had lots of mental health issues. Actually, she needed more support than she did consequential intervention, for want of a better term. Actually, we closed that with a different outcome because it wasn't appropriate that we did a [diversion intervention] with her when actually, she needed help and support around her mental health and the way that she self-harms.' (Police Officer).

It was highlighted that in some cases young people's vulnerabilities could increase their access to diversion, and in other cases it might allow for a young person to receive No Further Action (NFA) or a caution. One police officer suggested that certain groups of vulnerable children (e.g. looked after children) may be given more opportunities to access diversion because of their history and circumstances. This illustrated how discretion could be implemented in relation to different groups of young people, which has an implication for fairness:

We are much more open to trying something else and to give more than one chance to looked after children because of the trauma that they've had or the adverse childhood experiences that they've had. Obviously, they will already usually be working with lots of other agencies already and we are able to know a lot about their diagnosis and some of that trauma behind it. We try where we can to give extra chances to looked after children.' (Police Officer)

However, it may have also been the case that a young person was recommended for diversion because of their perceived vulnerabilities, when they should have instead been offered a condition caution or No Further Action (NFA).

'If we decided that a CR (community resolution) is more appropriate because of vulnerabilities, what we don't want to do is make the plan too lightweight. So what we might do is recognise a young person is really vulnerable, they've done... You know, maybe involved with an assault, there's some harm to other people, to a victim. What is really important is to make sure that the plan that we deliver is sufficiently intensive. That's what we need to balance out. So the balancing out of... the factors that are important, I think age is actually quite important, the vulnerabilities around the young person, and the victim issues because there've been times when the victim worker might contact the victim and they're saying very clearly that they don't want them to be prosecuted or they don't... You know, they would like just a letter. Those sorts of things can persuade the police that, actually, YCC (Youth Conditional Caution) isn't appropriate, that actually we can get away with a CR, especially if the young person is willing to do all that work, but there are lots of different factors' (YOT worker).

What remains unclear, however, is how this information is actually used: is it a reason for escalation, de-escalation, or to inform future interventions? Without clear guidance on how this information should be deployed, there's a risk that this information is used in different ways for different young people, benefitting some and hindering others.

6. Engagement of family members

After being diverted, young people are offered a set of community-based interventions which they engage in with the support of case workers in the Youth Offending Teams. These interventions are wide-ranging and focus on behavioural change, drug misuse and anger management. A core component of diversion interventions, which some of the young people interviewed for this project were engaged in, was an element of community reparation, consistent with the principles of restorative justice.

A number of professionals felt that if a young person's family members did not encourage their child to participate in or engage in interventions, they would not be successful in interventions. Practitioners and frontline workers generally had a tendency to make more overt claims about these barriers with respect to Gypsy, Roma and Traveller children and engage in a more 'colourblind' approach when it came to other children, particularly Black and Asian children, not naming their race or ethnicity. For example:

I think for Gypsy and travelling communities, I think that their family values and the way in which they're brought up and the way in which they are supposed to behave towards police officers and anything to do with police officers, I think that will be very, very hard to change. I think that they acknowledge when they are getting a good deal. I think that they will see it as, "If I do this, this is my get out of jail free card, this is my easy option..." I think that they're smart enough to understand that side of things but I think the reality is their loyalty to their values and their family traditions. I think we'll always prevent them from accepting the opportunities that are being offered to them (Solicitor).

...he didn't engage more because his parent didn't engage. If your parent doesn't see the need to and he's not taking you along to appointments, you're not going to see the need to as well (YOT worker, ethnicity of child not named).

I think, actually, parents have quite a role to play in that because what I do see is parents that, for whatever reason, may not want to engage with the system, as it were, and will actually create the barrier more than the child. Sometimes we don't even get access to the child to see where they're coming from, or we do and actually they're more open and willing to work with us. (YOT worker, ethnicity of child not named)

These practitioners see that parental engagement with the YOT is an important driver of youth engagement. However, these claims often reflected assumptions about family engagement which may not have been possible for all children involved in the YOT, particularly those with working parents, those whose parents may be incarcerated or system involved, or children in care.

Assumptions about the role of family in a young person's behaviour and their engagement with interventions also intersected with ideas about neighbourhood:

...usually the ones that are probably involved more with antisocial behaviour prior to getting a diversion intervention, ones who come from areas that have probably got a high offending rate, or offending family. They'll be very suspicious. Some young people that that when we're asking questions, we want information so that we can hand it onto the police. For some of them that's a big hurdle. They don't want to engage for a while because they think that's what we're doing. Yes, I think it all depends on geography really sometimes and their family experiences (YOT worker).

In the interviews with Youth Offending Practitioners, overt references to Black and Asian family member engagement was rare, but what was more common were references to place and family, with assumptions about how family and place may play a role in hampering engagement.

Findings: Promising practices

Whilst our findings highlighted the ways in which racial disproportionality can be exacerbated by existing practices within youth diversion, it also shone a light on the ways in which that disproportionality can be addressed. Many of the practitioners that we encountered were very conscious of this issue and actively seeking ways to address it. We have drawn on their responses and the wider evidence base to identify a number of promising strategies. It is worth noting however, that these promising practices are limited to the sphere of diversion itself. As we've set out above, we found that disproportionality in diversion is driven by factors upstream. To fully address this issue, we would also need to address unequal policing practices that erode trust in the whole criminal justice system and put some groups at greater risk of coming to the attention of police. Changes to policing are outside the scope of the report, but they are nonetheless vital.

1. Cultural competence and inclusion

Practitioners highlighted the importance of having a diverse workforce that understands the needs and cultures of the communities they work with: *'I do think we need to be more culturally competent. We do need to have more practitioners who are not just white middle-class people, and they need to have a better understanding of their communities. So yes, I do think cultural competence does play a part in it, and we do need to be better at it.'* (YOT Worker).

In addition to this, employing specialist workers who could bridge and engage communities was seen as helpful, for example using Gypsy and Traveller liaison workers for outreach work: *'It's just been aware of cultural differences and getting advice sometimes. We have access to Gypsy and Traveller liaison officers and people from the community so we can ask. Certainly when we set it up we did a lot of work with them. We try to work with them together so sometimes we will have one or two and we try and work with them together because that works.'* (Police Officer).

This theme also spoke to the issues of developing services that were not only culturally competent, but considered a broader range of inclusivity: *'So, what we need to do is make sure our service is culturally appropriate or culturally relevant to young people, whatever their background and whatever their gender.'* (YOT Worker)

Professionals also highlighted that the cultures in their workplaces needed to change. Anti-racist and anti-oppressive practices needed to be extended to their own working environments, as they did not always feel supported by their colleagues: *'Whereas what we find is, because maybe it's been systematic- ... We find, for example, in those court meetings, those panel meetings, if I am arguing, or another Black member of staff is arguing, we get shut down, just like that'* (YOT Worker)

2. Multi-agency decision making and oversight

Shared decision making was noted to be of particular importance for professionals. As some professionals believed the police had too much control in determining whether young people had access to diversion and they viewed improving multi-agency decision making as a way to help reduce bias.

'Also, I think that... I don't think it should be a police decision. I think it should be a shared decision. I think, very much, it shouldn't be- I think that, in all of the stuff that I've read about, it is ultimately the police decide. I don't really agree with that because even if the... Sometimes we've got cases that are sent back from court. The CPS say, "Yes, that's absolutely fine to give an out of court disposal." The police will say, "No."' (YOT Worker)

This also extended to regularly including professionals from other agencies such as social workers, in decision making panels to best meet the needs of the young person, particularly for individuals with complex needs: *'Having those different people on the panel, that's really important to me because I think... Originally, it just used to be police and us. Now we've got a couple of extra people. We also,*

sometimes, can include the social worker or the allocated practitioner for that child if we feel like it's going to be relevant. I just think having more people with different experience, different backgrounds, bringing different perspectives is what helps us to try to keep that focus on that.' (YOS Worker).
Introducing independent oversight was also suggested, to monitor decisions made at disproportionality panels.

One YOT worker suggested that previously having YOT staff based at police stations had been helpful in improving shared decision making. A move back to this way of working could be considered to help improve access to diversion and outcomes for young people:

'I think also, back in the day, we had YOT offices at the police station and we did... That was for the Final Warning programme. I think, actually, what that did was created a really good relationship between us and the police. It also made the police really aware of what we do. Kind of had a lot of trust and faith in us, as opposed to thinking that we're that fluffy service that always defends children. I think there was that... Having that kind of relationship there was really helpful because it's... It's not really helping anyone if the police charge the kids. The kids then go to court; the court then send it back. It's in nobody's interests for that to go on. Even to try to stop that type of stuff- So I think we should have a better presence in our local police stations. I think we should go back to that type of fairly close working.' (YOT Worker)

3. Efforts to enhance engagement

There were several strategies that the practitioners used to overcome the barriers to engagement with youth diversion by children and young people. They included more flexible and creative approaches to partnership work, often recognising that if other agencies were involved with young people, it might be too much to duplicate efforts or flood them with interventions; acknowledging the unfairness of the system; the development of cultural competency and knowledge within the practitioners and agency, and building a therapeutic alliance before conducting interventions by meeting a young person where they are at.

A number of practitioners highlighted the importance of flexibility and discretion when it came to their approach to engagement, in particular with respect to issues of systemic mistrust. They noted that if a young person, for example, clearly demonstrated that they didn't want to engage with the system, this should not necessarily be an opportunity to escalate the intervention:

Because we're in a world where we know about adverse childhood experiences, we're aware of the police being quite intrusive. So I think, sometimes, that might be interpreted that we have a light touch with certain ethnicities to not bother them so much with the oppressive statutory intrusion in their lives. I see it more that, sometimes, it's an opportunity just to kind of help with young people's resilience in life, just generally. That's how I would see it. I know that some of the staff, much more, see it more as that the YOS is, like the police, intrusive. Therefore, ironically, they sometimes protect young people from YOS resources (YOT worker).

Some staff also recognized that it would be important to work in partnership with other agencies, sometimes limiting their involvement, if those other agencies are doing work that is already in place, rather than piling on more interventions:

I think there's an acknowledgement you have to try to find something that the young person is interested in and persuade them. I think it's about the relationship that they have with the case manager. It's also about their own experience of the YOS as well because if they've had previous experience with the YOS or even social care or there're a lot of things going on in terms of... They might be undergoing child protection or CIN work already. With those sorts of cases, you have to, kind of, make sure that you're supporting the work that's done elsewhere.... Also, you've got to recognise that sometimes it could be too full on for the families, too many agencies involved at the same time. Maybe, sometimes, we're maybe a little contradictory or we may be duplicating. All those things are, kind of, taken into consideration.'(YOT worker)

The practitioners also recognized that diving right into an intervention with a young person who was naturally suspicious of criminal justice system authorities may enhance that distrust, so some spoke about the importance of relationship building:

'...it's just sometimes that maybe you need to build up a relationship a bit before. Sometimes it takes building up a relationship a bit longer than just a few sessions before it starts' (YOT worker)

This relationship building also involved an acknowledgement of systemic harms and unfairness:

'You've got to do a lot more work around getting trust and helping that young person to see- To contextualise themselves far more perhaps. Why they're with us, to work through trauma that they've been through, or unfair experiences that they've had to work through. I think- And they are probably the ones who may or may not benefit from being with us on a community resolution' (YOT worker).

These practitioners identified the ways that the systemic mistrust that young people possessed would influence their ability to engage, and suggested that the openness with which they discussed systemic harms contributed to their ability to engage with those young people. This approach recognizes that trauma can be interpersonal, but it can also be *systemic*.

The recognition of young people's perceptions of unfairness was paralleled by work on one Youth Offending team to recognize the particular needs of Gypsy, Roma and Traveller children in particular. The team observed that the children were not comfortable with the way that reparations were set up, and thus it was important to engage in culturally specific programming that met the young people where they were:

'Yes, so a lot of, especially boys, their culture is that they won't do work for nothing. For example, if we wanted to do some reparation in the community, they won't do that. We just have to know what we can and what we can't do. It may be for the young girls that we always try and put a female in to work with them rather than a male. It's just been aware of cultural differences and getting advice sometimes. We have access to gypsy and traveller liaison officers and people from the community so we can ask. Certainly when we set it up we did a lot of work with them. We try to work with them together so sometimes we will have one or two and we try and work with them together because that works.' (Police officer).

This officer, who worked in conjunction with a local Youth Offending Team, recognised the importance of culturally competent programming when it came to engagement.

These efforts to enhance the engagement of young people reflected a flexible approach in which practitioners recognised that traditional approaches to interventions may play a role in alienating young people from the system.

4. Flexibility with non-engagement

YOT staff also commented on how procedural changes could be made to manage cases escalating, particularly in circumstances where non-compliance was an issue. This included practitioners engaging in reflective practice in order to find different ways of working if a young person or family was not engaging with particular interventions. This would move towards more collaborative practice with families, instead of the blame of non-engagement being placed solely on the child or family:

'I had a young person...and his parent didn't engage in it [diversion intervention]. That meant then for him he couldn't get to sessions, so that meant...he got a referral order because he didn't engage in it originally. I think that that's where sometimes it needs to be looked at to see why there's the non-engagement rather than, necessarily, getting the next out-of-court order. It might be better to have a look to see just why is that young person not engaging. Is there anything we can do to help him engage before you get the next step up?' (YOT Worker)

5. Unconscious bias and anti-discriminatory practice

Regular unconscious bias training was highlighted to be helpful in challenging professionals' discriminatory beliefs and attitudes. One YOT worker noted they thought this kind of training would be particularly beneficial for police officers – *'And I know we've had our unconscious bias training; I think that needs to run again with the police. Even in our own teams, even if we have to speak about- Keep repeating it, for them to be aware.'* (YOT Worker)

7. Empowering staff

YOT workers in particular described how difficult it could be to challenge decisions made regarding diversion interventions with children and young people. Training focused on empowering staff and increasing assertiveness was suggested to help manage this, alongside embracing a culture that encouraged open discussion. This can also arguably contribute to building a strong sense of fairness and perceived procedural justice, and thus internal legitimacy, within the Youth Offending Teams themselves:

'Training, for a start. Training. And even just empowering- Alright, if I start from us, I think the YOT officers, we are empowered. Well, I can't speak for all of them, but I know definitely my team, we all think the same. We are like the trouble team, that are always arguing and giving them a hard time. So, it's the training on being it's okay to challenge, as well, and the understanding of what actually out-of-court disposals mean.' (YOT Worker)

8. Diversion training for solicitors

Training was recommended for defence solicitors to improve their knowledge on diversion. It was hoped that this would equip solicitors with up-to-date knowledge of diversion practices, in order to accurately advise children and young people:

I think we need more training at the police station level because we've got a lot of solicitors that don't know what they are. We're still having a lot of solicitors that are saying, "Go, 'no comment'." on things that are completely and utterly in CR territory. So I think there is a need there.' (YOT Worker)

'Actually I think it's probably something that we should know a bit more about because a youth will say to us, "What does a [diversion intervention] entail?" and I can never answer that question.' (Defence Solicitor)

9. Evidence-based eligibility criteria

As set out above, practitioners noted how formal eligibility criteria for diversion could contribute to disproportionality. They suggested that children and young people coming from communities with lower levels of trust in the criminal justice system might be less willing to make a formal admission of guilt, and that, what they described as disproportionate policing of young Black men could make them more likely to be excluded from diversion due to the number of previous offences.

In our previous work, the Centre has explored how eligibility criteria shape who has access to diversion³⁴. This earlier work pointed to the following evidence-based principles for designing eligibility criteria:

- Enabling practitioners to use professional discretion – rather than a blanket policy based on gravity score, offence type or offending history – to determine whether a child or young person is suitable for diversion;
- Enabling children and young people to be diverted if they have accepted responsibility rather than requiring them to make a mandatory admission; and
- Allowing children and young people to be diverted more than once, where appropriate, rather than operating a strict 'one and done' policy

Conclusion

Evidence strongly suggests that youth diversion is beneficial for the children and young people who access and engage with these schemes. Diverting children and young people away from formal justice system responses, and into proportionate, voluntary interventions can reduce the likelihood that they reoffend and avoid the long-term harmful consequences of a criminal record. However, if the benefits of diversion are disproportionately available to some ethnic minority groups then it can actually exacerbate the racial and ethnic disparities which are endemic in the criminal justice system in England and Wales.

Our research with practitioners and young people provides a picture of factors which may negatively impact access to and engagement with diversion for children and young people from Black, Asian and Minority Ethnic backgrounds. Where findings have indicated, we have been specific in relation to ethnicity, to increase awareness of particular issues that pertain to children from Black or Gypsy, Roma, Traveller backgrounds in relation to access and engagement with diversion.

Some of the factors we have found are familiar – the same ones which underpin disparity across many parts of the justice system. However, others are distinctive to this arena: the lack of awareness of benefits of diversion amongst practitioners, and the still developing debate around who should be eligible for this approach, seem associated with the relative newness of this approach.

However, although we found clear issues with diversion practices in relation to different ethnic groups, our research was able to shed light on positive steps being taken by practitioners to manage access and engagement. We have identified promising practices in relation to increasing fair access to diversion for children and young people. This includes a move towards providing culturally competent services, increased multi agency decision making and flexible efforts to enhance engagement. Practitioners were able to offer ideas how to continue improving practices such as the provision of diversion specific training for defence solicitors.

We hope that by identifying both the factors driving disparity and potential approaches to mitigating it, we can make a real difference to outcomes for children and young people from ethnic minorities who are disproportionately impacted by the criminal justice system. The practitioners that we spoke to were enthusiastic about the potential for our research to make a difference. But they were clear that to happen, it must be translated into anti-discriminatory policy and practice. The Centre for Justice Innovation will continue our work with policy-makers, practitioners to meet that challenge.

Summary of promising practice

Workforce cultural competence and inclusion	Practitioners highlighted the importance of having a diverse workforce that understood the needs and cultures of the communities they worked with: <i>'I do think we need to be more culturally competent. We do need to have more practitioners who are not just white middle-class people, and they need to have a better understanding of their communities. So yes, I do think cultural competence does play a part in it, and we do need to be better at it.'</i> (YOT Worker).
Multi-agency decision making and oversight	Sharing decision making of the decision to divert by including professionals from other agencies such as social workers is seen as a way to best meet the needs of the young person, particularly for individuals with complex needs: <i>"I just think having more people with different experience, different backgrounds, bringing different perspectives is what helps us to try to keep that focus on that."</i>
Enhancing engagement	There were several strategies that the practitioners used to overcome the barriers to engagement with youth diversion by children and young people, including more flexible and creative approaches to partnership work, as well as support children and young people to realise their potential: <i>I see it more that, sometimes, it's an opportunity just to kind of help with young people's resilience in life, just generally."</i>
Culturally specific programming	Practitioners suggested it was important to engage in culturally specific programming that met the young people where they were: <i>"We just have to know what we can and what we can't do... It's just been aware of cultural differences and getting advice sometimes."</i>
Empowering YOT staff	YOT workers in particular described how difficult it could be to challenge police decisions made regarding diversion. Training focused on empowering staff and increasing assertiveness was suggested to help manage this: <i>"We are like the trouble team, that are always arguing and giving them (the police) a hard time. So, it's the training on being it's okay to challenge, as well, and the understanding of what actually out-of-court disposals mean."</i>
Diversion training for defence solicitors	Training was recommended for defence solicitors to improve their knowledge on diversion, so solicitors would be well equipped to inform young people about diversion schemes: <i>'I think we need more training at the police station level because we've got a lot of solicitors that don't know what they are. We're still having a lot of solicitors that are saying, "Go, 'no comment'" on things that are completely and utterly in (diversion) territory.'</i>
Evidence-based eligibility criteria	Practitioners highlighted how formal eligibility criteria for diversion could contribute to disproportionality. This can be mitigated by a greater capacity for professional discretion in offence types which are eligible, allowing young people to be diverted without a formal admission of guilt and allowing young people to be diverted more than once.

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About the Centre for Justice Innovation

The Centre for Justice Innovation seek to build a justice system which all of its citizens believe is fair and effective. We champion practice innovation and evidence-led policy reform in the UK's justice systems. We are a registered UK charity.



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