

Children and young people's voices on youth diversion and disparity



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Summary

Youth diversion is 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 if they complete community-based interventions. It offers children and young people a crucial alternative, allowing them to avoid the damaging consequences of formal justice processing and the likelihood of becoming deeper entrenched into the youth justice system. However, at present, there are concerns that diversion is not equally available to all, potentially exacerbating the racial disparities that already mar the system. As the House of Commons Justice Select Committee reported, 'race disproportionality is significant and fundamental, visible in every part of the youth justice system'.¹ Given the significant and potentially life-long harms which come with unnecessary involvement in the justice system, ensuring equal access to diversion is essential.

This project explores the experiences of children and young people, some of whom had been diverted and some of whom had not, with a particular focus on how they perceived their ethnicity to have impacted the youth justice process and outcomes. Eleven children and young people currently in the youth justice system participated in face-to-face interviews about their experiences with the police, solicitors and youth justice services, and how they perceived these experiences to have been influenced by their ethnic background.

This research, funded by the Esmée Fairbairn Foundation, follows on from our previous project 'Equal diversion? Racial disproportionality in youth diversion' and is a crucial step towards expanding the limited evidence base on youth diversion in England and Wales.

Key findings

Children and young people had mixed experiences of professionals during the diversion process.

"I'm a Black young teenage boy, if I was a White boy it would be different...Probably better. Things would probably have been better."

They described experiences including what they understood to be racist and discriminatory practice by the police. They also told us that the legal process could feel complicated and unclear and was not always explained in a way that they could easily comprehend. However, there were many examples of good practice that were highlighted, including: culturally-informed practice by solicitors, supportive guidance given by youth justice practitioners and some police officers actively listening and using a calm, respectful approach.

Some children and young people did not understand the outcomes of their criminal justice engagement.

"I don't know what offence had what outcome, and what one I'm still working on because they've all come and it's very confusing and stuff."

While some children and young people were able to clearly outline what they were required to do and the potential consequences of non-engagement, others were unsure about the specific details of their outcome and what this entailed. In particular, there appeared to be some confusion about criminal record implications of diversion. Some children and young people were unaware that there was the possibility of a criminal record being flagged on a future enhanced police check. We also found that some solicitors had limited knowledge of diversion which is concerning due to their advocacy role.

Children and young people stressed the importance of positive communication and working relationships.

“They were treating me like an actual human. They were treating me like a normal person. ... They were treating me with respect and decency, you know what I’m saying?”

There were many positive examples given to build upon, including children and young people feeling cared for and supported through their interactions with youth justice service practitioners.

The appropriateness and quality of diversion interventions was variable.

“[I] went to a virtual reality session. It was about knife crime... it wasn’t really useful. I don’t business with knives”

There was some evidence of child-centred practice when setting interventions, for example sporting activities provided for children and young people who enjoyed exercise. However, many of the children and young people interviewed described issues with their interventions, for example difficulties with travel to appointments and the use of generic interventions that did not relate to their offence or circumstances.

Recommendations

Improving engagement with children and young people

Provide relevant and accessible information about legal processes and diversion

Having a clear understanding of legal processes is vital for children and young people’s trust in the justice system as well as their capacity to make informed decisions about crucial questions like whether to waive their right to legal representation, whether to give a no comment interview, whether to admit guilt and whether to accept a diversion or an out of court disposal. In the context of diversion practice, which varies between local authority areas, there is also a need for appropriate materials to be given to children and young people, advocates and appropriate adults which describes how diversion works in their local area.

Implement effective communication practices

Building effective relationships with practitioners and valuing clear means of communication were key themes in the experiences of children and young people. Evidence suggests that developing an effective relationship-based practice framework, which identifies the necessary practitioner values, skills and knowledge, can encourage and sustain engagement and give children and young people a stronger voice.²

Co-produce tailored intervention plans with children and young people

In keeping with the principles of a Child First approach which promotes diversion and collaboration, working with children and young people to co-produce intervention plans can be useful in increasing engagement in diversion. Collaboration may support the resolution locally of some of the challenges that children and young people highlighted to us, such as issues with travel to their appointments, a lack of interventions appropriate to their circumstances, and a sense that they had not learned anything in the process.

Supporting culture and practice change within criminal justice agencies

Ensure that eligibility criteria and referral routes for diversion do not exacerbate racial disparities

As a locally-designed, non-statutory intervention, the criteria for who is eligible for diversion is determined at the local level in negotiation with a range of local stakeholders. However, there is significant evidence that choosing inappropriate eligibility criteria can make it less likely for children and young people from some ethnic groups to access diversion and thus contribute to racial disparities. Our mapping of youth diversion practice suggested that in 2019, 57% of diversion schemes required children and young people to make a formal admission of guilt.³ However, this may contribute to disparities. Research shows that Black, Asian and Minority Ethnic citizens have

significantly lower trust in the justice system than their White counterparts, and that they are therefore less likely to admit an offence or plead guilty at court.⁴ We suggest that the more flexible criterion of ‘accepting responsibility’ could be preferable to requiring a mandatory admission.⁵

Our mapping also found that 40% of schemes limited the number of times a young person could access diversion.⁶ However, the apparently race-neutral eligibility criterion of ‘prior record’ can increase disproportionality due to inequalities in how different communities are policed.⁷ As such, we suggest that previous offending and diversion(s) should not be an automatic bar to diversion, but should rather be considered on a case-by-case basis.

Establish protocols to facilitate cases which have reached court inappropriately

Given the difficulties which children and young people reported to us in navigating the diversion process, it is likely that a number of cases appropriate for diversion still reach the point of formal prosecution. We therefore recommend that youth justice services develop protocols to ensure that these cases, which reach court despite diversion being a suitable alternative, still have the option to deescalate to diversion where appropriate.

Address the risk of ‘adultification’ of children and young people by embedding Child First principles in practice

Children and young people highlighted the power dynamics that were present during the diversion process and feelings of being fearful of professionals. As evidence has indicated how children and young people (particularly from Black and Black Mixed Heritage backgrounds) can be ‘adultified’ – inappropriately identified as having adult qualities and capabilities – practitioners should continuously assess their practice against the Child First approach.⁸ They should ensure that they see children as children by accurately assessing their particular needs, capacities, rights and potential.

Make effective use of data to monitor local disparities

Since April 2021 youth justice services are required to record the same information on children and young people receiving diversion as they do for children and young people on statutory disposals. This includes important data on ethnicity and offence details. Youth justice services should take advantage of this locally collected data to assess the nature and extent of racial disparity in accessing diversion in their area.

Implement anti-racist and anti-discriminatory practices

A number of children and young people reported to us experiences with police which they described as racist or discriminatory, something which aligns with other studies of policing.⁹ Despite progress in some areas, there remains a significant need to build trust between the police, marginalised children and young people and the wider community.

This is an entrenched and long-standing issue with no easy solutions. We would echo the recommendations of JUSTICE’s 2021 report *Tackling Racial Injustice: Children and the Youth Justice System* which highlight the need for cultural change through training and education, and improved safeguards such as mandatory use of body worn cameras during stop and search.¹⁰ In the context of youth diversion specifically, we are encouraged by the work of youth justice services like Hackney Youth Justice Service which has embedded anti-racist and anti-discriminatory practice in their approach to diversion.¹¹

Build the capacity of solicitors to support children and young people in accessing diversion

Solicitors play a key role in guiding children and young people through the criminal justice process and their advice can be crucial in helping children and young people to access diversion. We identified two particular areas where there may be a need to develop the capacity of some solicitors. Firstly, we recommend that youth justice services produce solicitor-oriented guidance materials or training explaining how diversion is practiced in their local area with a focus on eligibility criteria, referral processes, the requirements that may be made and potential criminal record outcomes.

The second area is around cultural competence. Cultural competence – the ability to understand and interact effectively with people from other cultures – is an emerging theme across a range of fields including healthcare and social work. In the absence of training and resources specifically for the legal profession, we recommend that solicitors review existing resources aimed at other professionals and that legal training bodies develop cultural competence training for solicitors.

Introduction

Overview

Youth diversion offers a crucial alternative to receiving an out of court disposal or formal prosecution. It allows children and young people to avoid the damaging consequences of formal justice processing and the likelihood of becoming deeper entrenched into the youth justice system. The use of youth diversion has spread extensively in England and Wales, and has bolstered by its inclusion in the Youth Justice Boards standards.¹² 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.¹³

However, while the spread of youth diversion across England and Wales is welcome, there are concerns that access to it is not evenly distributed, potentially exacerbating the racial disparities that already mar the system. As the House of Commons Justice Select Committee reported, ‘race disproportionality is significant and fundamental, visible in every part of the youth justice system’.¹⁴ As diversion may benefit children and young people by avoiding the potentially damaging impact of formal processing, equitable and data driven approaches are critical.

Our previous research project, ‘Equal Diversion? Racial Disproportionality in Youth Diversion’, addressed the dearth of research on the interplay between diversion and racial disparity in England and Wales.¹⁵ This research, again funded by the Esmée Fairbairn Foundation, builds on our previous work and crucially centres the voices of children and young people. It explores the experiences of children and young people who have received diversionary interventions or out of court disposals, with a particular focus on how they perceived their ethnicity to have impacted the youth justice process and outcome. The focus on children and young people is important, their input and feedback is crucial in developing child-centred, anti-racist and inclusive practices in youth diversion. We hope the children and young people’s voices in this report will offer practitioners and policy makers the opportunity to reflect on and improve youth diversion practice, driving forward equitable access.

A note on terminology

We acknowledge that the language around ethnicity and ethnic groups can be sensitive and particularly tricky to get right. In this report, where possible, we have referred to specific ethnic groups rather than using umbrella terms such as ‘BAME’ or ‘ethnic minority’. In some instances we have not been able to do so because of limitations in the evidence we are referring to. For the purposes of this report we have used the terms ‘BAME’ or ‘ethnic minority’ to reflect only from a statistical point of view the smaller numbers of particular ethnic groups in England. Further, we recognise that ethnic groups are not homogeneous in nature and respect the unique differences between and within different groups.

Defining diversion

Diversion is 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. In order to access diversion, children and young people usually receive a short assessment before being referred into light touch supportive programmes. The Youth Justice Board defines diversion as:

“where children with a linked offence receive an alternative outcome that does not result in a criminal record, avoids escalation into the formal youth justice system and associated stigmatisation. This may involve the YJS delivering support / intervention that may or may not be voluntary and/or signposting children (and parent/carers) into relevant services. All support should be proportionate, aimed at addressing unmet needs and supporting prosocial life choices.”¹⁶

This research sought to capture children and young people's overall experiences of diversionary interventions and those receiving formal out of court disposals. It is important to note that our work in diversion centres around promoting informal interventions rather than formal out of court disposals. However, as our sample was relatively small compared to the general population, we used broader inclusion criteria to capture as many children and young people's views as possible.

Policy context

Our research relates to current policy developments in youth justice, most notably the increased drive to tackle racial disproportionality and a greater focus on diversion (and the intersection of these two goals). There is a growing awareness of the scale of racial disparities in the youth justice system. The Justice Select Committee noted that 'race disproportionality is significant and fundamental, visible in every part of the youth justice system',¹⁷ while the 2017 Lammy Review highlighted disproportionality in the youth justice system as its 'biggest concern'.¹⁸ Concerns about differential supervision and disproportionality drove HM Inspectorate of Probation's thematic review, published in October 2021, on the experiences of black and mixed heritage boys in the youth justice system.¹⁹ Indeed, it is striking that the welcome advancements in the youth justice system have been less likely to benefit children from ethnic minority backgrounds. For example, while the number of first time entrants (FTEs) to the youth justice system has fallen by 81% in the decade to March 2021, the proportion of Black FTEs in this category has increased from 10% to 18%.²⁰ Following the release of the latest youth justice annual statistics, the Chair of the Youth Justice Board declared that the system is 'failing Black children'.²¹

Although youth diversion is not a statutory requirement of any public body, it is increasingly well-embedded in England and Wales: our 2019 survey found that 88% of youth justice services offer some form of diversion,²² and the average caseload of youth justice service workers for prevention and diversion work has been reported as 52%.²³ An increased policy focus on diversion was marked by its inclusion in the Youth Justice Board's national standards for the youth justice system,²⁴ and its prominent place within the Board's articulation of the Child First principle.²⁵ Practitioners are awaiting new case management guidance due in 2023 that will detail practical guidance for diversion, making practice more consistent.

Recognising that unequal outcomes at the front-end of the system accumulate into larger disparities downstream, diversion has been a key focus in tackling disproportionality. Indeed, one of the YJB's three strategic priorities to tackle disproportionality is 'developing effective prevention and diversion measures'.²⁶ In its report, *Tackling Racial Injustice: Children and the Youth Justice System*, the third sector organisation JUSTICE states that they 'consider the use of diversion to be essential in mitigating disparate outcomes for BAME children'.²⁷

However, for diversion to address disparities in criminal justice outcomes further into the system, access to it must be evenly distributed. Historically, youth justice services have not been required to record diversionary outcomes, making the national picture on the demographic profiles of children accessing diversion unclear. With the Youth Justice Board now requiring local authorities to highlight diversion data in their annual youth justice plans, the specific trends relating to access should become more apparent.²⁸

That said, statistics have shown that children and young people from ethnic minority backgrounds are more likely to escalate through the system, suggesting that diversion is not offered on an equal footing.²⁹ Indeed, the Chief Inspector of Probation noted, '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'.³⁰ Similarly, at a roundtable in January 2021, the Centre convened prominent professionals in the youth justice system who highlighted ethnic disparity as a key area of concern in diversion practice.³¹ A core concern was eligibility criteria, with some schemes insisting on an admission of guilt which can act as a barrier, particularly for children from marginalised communities that lack trust in the police.³²

By highlighting the voices of children and young people from ethnic minority backgrounds and their experiences accessing and engaging with diversion, we hope to help ensure youth diversion's potential as a tool to mitigate disparities, rather than exacerbate them, can be fully realised.

Evidence review

A full literature review on ethnic disproportionality in diversion is available separately, published as part of our previous research in this area.³³ It is important to note that the evidence base on ethnicity and youth diversion is still in its infancy in England and Wales, with the majority of the research coming from the United States. Key points from the findings of this literature review are highlighted below:

- **Equal access to diversion is an important part of tackling racial disparity in the youth justice system:** Children and young people who are diverted avoid the harmful consequences of formal court processing, such as disrupted education and the impact of a criminal record on employment opportunities. This is particularly important in managing ethnic disproportionality, as evidence suggests that these disparities can widen further as children and young people become more involved in the criminal justice system.³⁴
- **Risk assessments may bias outcomes:** Children and young people from particular ethnicities, especially Black backgrounds, may be more likely to be assessed as higher risk, compared to their White counterparts.³⁵ Some evidence has highlighted that offenders from a Black background have been more likely to be categorised as high risk or low risk, compared to White offenders classed often as moderate risk.³⁶
- **Rigid eligibility criteria can prevent access to diversion:** Some diversion approaches have historically required children and young people to formally admit guilt in order to access diversion.³⁷ However, children and young people from some ethnic minority groups may be less likely to admit an offence due to a range of factors, such as lack of trust in the criminal justice system stemming from unfair and discriminatory treatment. This can effectively bar these marginalised children and young people from accessing diversion.

The findings from our previous project highlighted that the ways in which professionals engage with children and young people can either enhance or hinder access to and engagement with diversion. To supplement the existing literature review, we have included further evidence relating to inclusive engagement below.

'Adult-centric practitioner biases' and 'adultification'

The justice system often places a responsibility on children and young people to engage with practitioners in a way which elicits approval and makes their capacity to do so into a significant driver of outcomes. There is a question as to whether this is a fair approach, especially as there is a clear power differential between children, young people and practitioners. Case et al (2021) term this an '*adult-centric practitioner bias*' which can often unhelpfully frame children and young people's communication difficulties or attitudes as the main factors driving disengagement.³⁸

These biases can also be explored within the context of 'adultification' which suggests that Black and Black Mixed Heritage children and young people are often not seen by practitioners as vulnerable children³⁹, but rather as culpable and sometimes threatening adults, with serious implications for equity in accessing diversion and engagement practices within interventions.

Enhancing communication and engagement in youth justice processes

Evidence has suggested that building relationships with children and young people during youth justice assessments (such as the AssetPlus) is a key feature in developing effective communication and engagement.⁴⁰ Case et al (2021) propose three key features of relationship building:

- i) **Building a rapport:** for example, using humour and language children and young people can relate to.
- ii) **Using open questions:** this gives the child or young person an increased sense of control in the interview process.
- iii) **Understanding and comprehension:** Checking the child or young person's understanding of the assessment process, with practitioners also checking their own understanding of the respondent's replies.

Although this research specifically focuses on the AssetPlus assessment used by youth justice service practitioners, the main focus on relationship building may be useful in wider practice with children and young people. Stephenson and Dix (2017) have developed a relationship-based practice framework that is specific to youth justice practitioners.⁴¹ These core features may also help increase the trust between marginalised children and young people and youth justice agencies.

A further framework which may be useful in understanding and enhancing engagement is the concept of procedural fairness. Procedural fairness places emphasis on people's experience of the fairness of the justice system as a factor in determining whether they accept the legitimacy of, and therefore comply with, the justice system.⁴² The model identifies four drivers of perceptions of fairness: i) understanding justice process; ii) having a voice in the process; iii) being treated with respect and dignity; and iv) being able to trust that decisions have been made in an unbiased way.

Intersectional identities - meeting the different needs of children and young people in the youth justice system

The concept of intersectionality, coined by Kimberlé Crenshaw, suggests that our unique and multidimensional identities result in some individuals experiencing differing and compounding forms of discrimination.⁴³ This framework of understanding discrimination is key in a youth justice context to appropriately address disproportionality and the different needs of children and young people. A recent thematic inspection by the probation inspectorate focused on the intersection of ethnicity, gender and other characteristics by exploring the needs of Black and Mixed Heritage boys (who are specifically overrepresented) in the youth justice system.⁴⁴ The report identified other aspects of a child or young person's identity which may result in discrimination, such as mental health needs and speech and language difficulties. The children and young people in the report raised three key points which have implications for practice:

- **Lack of clarity:** The role of the youth justice service. The children and young people were sometimes unsure about the role of the service and the types of support they could access.
- **Intensive and challenging interventions:** This type of support was thought to be more beneficial and engaging and avoided a 'tick box' type approach.
- **Positive working relationships:** The majority of the children and young people interviewed reported that they experienced positive relationships with their workers, describing feeling understood and listened to.

Methodology

Our research sought to explore three main research questions:

- How do children and young people understand their experiences accessing diversion in relation to their ethnicity?
- How do children and young people who engage with diversion interventions understand their experiences in relation to their ethnicity?
- What recommendations would children and young people suggest to improve practice?

Participants

We were interested in hearing children and young people's experiences of the processes which can lead to diversionary interventions, particularly those from Black, Asian, and Minority Ethnic backgrounds, who are over represented in the youth justice system.

A total of eleven children and young people currently in the youth justice system participated in the project. Children and young people were recruited via their youth justice service caseworker. Four participants were based in London and seven were located in the Midlands. Their ages ranged between 12 and 16. Four participants identified as Mixed Heritage, three as Black British, three as Asian and one as White (other). Four of the participants were female and seven were male.

Fieldwork processes

We worked with two youth justice services, located in London and the Midlands. Allocated youth justice service professionals within both teams were responsible for recruiting all the participants to the study in accordance with the inclusion criteria.

Children and young people participated in face-to-face interviews at their respective youth justice service offices between February and April 2022. The interview themes included children and young people's experiences with the police, solicitors and youth justice services and how they perceived these to have been influenced by their ethnic background.

Findings: children and young people's voices

Our analysis identified a number of key themes that children and young people highlighted as important when going through the diversion process. The findings are split into two main sections following the journey of children and young people through the process: i) accessing diversion; and ii) engaging with diversion interventions.

Accessing diversion

What are children and young people's experiences of the professionals initially involved in the diversion process?

Children and young people's interactions with the police

The police are the first criminal justice professionals that children and young people come into contact with after being suspected of committing an offence, and play a crucial role in determining whether they can access diversion. Children and young people had mixed views about police contact. There were strong themes around racism, discrimination and stereotyping. For example, one young person said, *"I always just had that, kind of, point of view in my head that police didn't like certain people of colour."* Another said, *"I feel like people with Black skin colour get targeted quite a bit more by police."* Some children and young people were mistrustful of the police, with one simply saying, *"I don't like them."*

Children and young people highlighted feeling over policed, targeted and treated unfairly in their interactions with the police: *"If a police car drives by with my friends they will pull over. If I was with White boys, they probably wouldn't."* Another young person described police officers being difficult in facilitating a conversation with their parents after arrest and felt that this was due to their race: *"Was a little bit racist to me".* One young person described several negative experiences with police shaping their outlook: *"There have been so many occasions where police have used aggression towards my friends, put their handcuffs on too tight. They would stop and search on all of us for no reason."*

There was an explicit awareness amongst the children and young people of the implications of being a Black male when interacting with the police: *"I'm a Black young teenage boy, if I was a White boy it would be different...Probably better. Things would probably have been better."*

One young person identified that the ambiguity of his ethnicity could potentially be an advantage in the presence of police: *"I don't think I have been targeted because of my ethnicity... it's hard to tell because some people think I am one thing, some people think I am another thing. So I don't think that's an issue for me personally but I feel like I have seen police target people based on their ethnicity."*

One young person touched upon how the intersection of mental health and ethnicity could affect interactions: *"To be honest the police don't really understand. They just think "Oh she is a Black girl and she is getting angry. We need to detain her or arrest. They don't understand there is a back story, like she has got anxiety and stuff. There is just me calming her down."*

Children and young people also discussed the use of power and force by the police. One young person described how he had initially looked at the police force as a potential career until he experienced being arrested at gunpoint: *"I used to want to be a police officer innit...then it just put me off a bit. You get me, because why would I want to be in something that grown men point guns like that at little 13 year old kids? Yeah, I don't want to be a part of that."*

However, children and young people also reported positive experiences of engagement with the police which centred around feeling listened to, the use of a calm approach and being treated with respect. These more positive interactions often took place during police interviews rather than at the point of arrest. One young person discussed how the way the police approach a situation with children and young people can set the tone for further interactions: *"I think listening and communicating, and just the way you speak to people as well. The manner you speak to people can affect them, so if someone's speaking to me with respect, I'm going to respect them back. Even a police officer, if they speak to me with respect*

I have no reason not to speak to them with respect as well, because at the end of the day they are a person.” The theme of feeling humanised was echoed by another young person: *“They were treating me like an actual human. They were treating me like a normal person ... They weren’t treating me badly or anything. They were treating me with respect and decency, you know what I’m saying?”*

Children and young people’s interactions with solicitors

Many of the children and young people reported that they did not understand the role of the solicitor: *“I didn’t know his purpose.”; “And this is just me, I don’t know what a solicitor does...what does he do?”* This was concerning due to the important advocacy role a solicitor plays in the legal process. However, some children and young people did describe instances of positive working relationships and were able to specify how a solicitor had helped them: *“She was polite. She was helpful. She got me what I wanted which is just work with my worker.”* Another young person noted that having a solicitor was helpful and beneficial at the police station; *“He managed me to get out of there and go home, so very helpful.”* Children and young people specified that solicitors giving them clear guidance in police interviews was helpful; *“It’s useful when solicitors tell you what to say.”* One young person suggested that solicitors should work in a person informed way, by tailoring their advice to each young person’s background and personal circumstances rather than giving more generalised support; *“...so say that I’ve got a form about the person here. I find out everything about him...And I’d give him some, like advice based on him...I’m not gonna give him [advice] just for everyone innit.”*

There were also references around the importance of a solicitor’s ethnic background and working in a culturally informed way. Some children and young people felt that having a solicitor from an ethnic minority background was important to them, with one young person citing the reason that this would make them more comfortable: *“Because personally, for me, it would make me feel a bit more comfortable, because it is just, I don’t know, nice to see someone who’s an ethnic minority helping you out against... well, not against the police, but like helping you.”*

Another reason key reason for this was being able to access more culturally informed support; a young person from an Eastern European background spoke about the benefits of having a solicitor from a similar ethnic background as them; *“[They] told me what to say and was in my language as well.”*

The topic of racism was also present in solicitor interactions. A young person described how his view of discriminatory treatment by the police was reinforced by his solicitor’s beliefs. He was advised: *“not to get in trouble. She was saying you’re a young Black boy so they [the police] will think certain things about you.”*

It appeared that at least one young person’s solicitor was not well acquainted with the option of diversion, advising their client to give a ‘no comment’ interview without weighing up this potentially barring access to diversion which usually requires, at the least, an acceptance of responsibility.

Engaging in the criminal justice process

How well do children and young people understand the processes which can lead to diversion?

The criminal justice process can be difficult to understand, especially for children and young people. Some children and young people had a very limited understanding of their criminal justice outcome and were unable to articulate what type of disposal they had received or how long they were required to work with their youth justice service worker for. For example, one young person said, *“Not sure what I got.”* while another noted *“I don’t know how long I have left.”*

The way in which children and young people received the information about the diversion process appeared to play a key role in aiding their understanding. One young person experienced the process as overwhelming at times, especially when multiple professionals involved in their case delivered information verbally: *“Over the phone, whenever they tell you this, and when I’m in the station they are verbally telling me, I don’t know...”* This could lead to children and young people just ‘going along with it’ in a passive, disempowered way, as a young person described:

“ I don't know what offence had what outcome, and what one I'm still working on because they've all come and it's very confusing and stuff. So one day I was being told “You're coming for a case closure” and the next day it's like “The case reopened, this and that...” I just listen to what they tell me I've got to do on the phone and that. “You've got to go see these people. You've got to talk to these people” and I was just like “Yes, I'll go to that now.”

One young person felt it would be helpful to have access to emails and documents that referred to their disposal in order to understand what is expected of them; *“If it was written, if I had a form saying, ‘For this offence you had this outcome,’ and I can collect them and that, and I could say I know what's connected to what.”*

However, a number of children and young people were able to clearly explain their understanding of the process and the potential consequences for non-engagement. One young person told us: *“Basically I had to do [diversion intervention] because I've been in the youth justice twice. The first time they were like, ‘You have to see [caseworker] once a week, every two weeks or a week.’” They were like, “If you don't go, we can take this to court. You have to go and visit her from certain times to time,” and then she- that is it. I would have to do work about what happened and stuff.”* Another young person told us that his youth justice worker provided clarity on the process by letting them know what was going to happen *“This was helpful...they explained it clearly”.*

Understanding the potential implications of criminal records

A number of children and young people, particularly those with an out of court disposal, incorrectly believed that they would not receive a criminal record or that working with the youth justice service excluded any possibility of having a criminal record. This raises concerns that the possibility of a criminal record coming up on an enhanced police check was not clearly explained to the children and young people. One young person on a formal out of court disposal noted that their worker implied they should comply with the condition in order to avoid a criminal record despite this not always being the case: *“Just so I don't get a criminal record and not to, like, long things out, just to do it and get it over with.”* Another young person spoke about a worker informing them that a criminal record can be removed once they have completed their intervention: *“if I do the 12 weeks it will come off, so now it's off.”*

How do children and young people feel about the diversion process?

Trust

Children and young people highlighted how a lack of trust in the police sometimes played a key factor in giving no comment interviews: *“shouldn't talk to the police...just how it is”.* One young person highlighted how this mistrust was intergenerational and as a result of police powers that could be used in a discriminatory way: *“My dad, he used to say that oh, when he was younger, they used to be called bobbies and stuff. That's when they were friendly and everything innit. But then he said that now they've gone a bit corrupt because they can just see a group of boys standing on street corners and they can like, get them assumptions, stop 'em for like a little search and everything. Like that's not fair.”*

However, children and young people did give examples of trusting other professionals, highlighted especially with youth justice service professionals. One young person told us about their worker: *“They are doing what's best for me. Yeah I trusted what they had to say. No one would get a job here working with children if they didn't know what they were doing.”*

Another young person spoke about appreciating the option of diversion, and seeing youth justice professionals as well-meaning. When asked to explain why they found their outcome fair, they said: *“Because if they didn't want to, they would have just shut me off and sent me to court. But then they've given me all these several chances, they started saying, ‘Oh, come do these activities’.”*

Fear and power dynamics

Children and young people told us about feeling afraid during the diversion process, which was particularly prevalent at the start of the process. One young person highlighted the power dynamic present during a police interview: *“... you're only 14 in a room with a police officer. I just didn't want to say anything wrong. You get that feeling in your belly. You just want to escape and they are hammering you with questions.”*

Another young person indicated that a practitioner's considered approach could help manage these feelings and told us about the reassurance her youth justice service worker provided: *"He goes that I am going to have a programme with another person that he works with, for twelve weeks. Then we're going to talk about what happened, how we can move forward from it and not go back to it. He said there's nothing to be afraid of or nothing, because I was quite scared. And then, yes, he was nice about it all."*

Relationship building by youth justice service professionals

Many of the children and young people spoke about having good working relationships with their youth justice service worker. Although some children and young people appeared cautious about their worker at the start, there was evidence that over time these relationships became easier to navigate: *"I think, at the beginning, I thought he was taking... not taking a side, but I thought he was more like, 'you've just done this,' do you know what I mean? Then we had a few more meetings, he came to my house, we had a one-to-one session, and after that I think we both opened up to each other a bit more."*

One young person spoke about the importance of enabling children to move past the incident that brought them into contact with the youth justice service and instead focus on their future: *"They know that they did the crime. You don't need to keep mentioning it. Just tell them that, 'We are just going to help you,' but not in a way that sounds cocky and stuff, in a nice way."*

There were good examples of how youth justice service professionals had engaged in positive relationship building with children and young people. Some children and young people spoke about how supportive they had found their worker in helping them understand the process, by providing clear explanations every time they needed this support: *"Yeah I trusted him, cause, he like, explained it thoroughly, this, that and even if I didn't understand it, I'd ask him and he'd explain it again. He's been, like, really helpful."* Another young person told us he got on well with his worker, and highlighted a compliment a worker had paid him, which reinforced his identity outside his offending behaviour: *"He tells me I have cool hair."* Lastly, some children and young people touched upon the feeling of being cared for by their worker during the process: *"She makes sure I come on time. She doesn't want me to get a criminal record I guess."*

Quality of diversion interventions

Although many of the children and young people described positive working relationships with their worker, there was poorer feedback on the actual interventions during the process. Some children and young people reported experiencing practical issues which hindered their engagement, including difficulties with travel and generalised interventions which did not cater to their specific needs. One young person described being put in an intervention to tackle knife crime, despite this being unrelated to his offence: *"...went to a virtual reality session. It was about knife crime... it wasn't really useful. I don't business with knives".* Another said the interventions were unhelpful, *"I didn't really learn anything."*

A young person described how considering the format in which interventions were delivered could help with engagement: *"Personally I think that they shouldn't do computer work because that was so annoying doing work online. I think they should do one and one and talk to them."* There was also acknowledgement of how the Covid-19 pandemic had a detrimental impact on the way interventions were being delivered: *"I said this before, I said it would be better if there were loads of kids together, because of Corona they couldn't, but they're going to go back to that. That is the only thing I could say that would make it better, because you're learning off other people's mistakes as well."*

Despite some of the more negative feedback around the interventions, there was evidence of child-centred practice. Some of the children and young people described enjoying sports in their spare time and one young person told us how he would be completing boxing sessions with his worker, chosen because he enjoyed this activity. Children and young people noted the positive impact of their intervention: *"...keeps me off the streets."* One young person appreciated the options and variety available: *"There was a choice, so if I wanted to talk about family, or staying safe. There were a few things you could talk about, and each session was something new."*

Recommendations: putting findings into practice

Improving engagement with children and young people

Provide relevant and accessible information about legal processes and diversion

Having a clear understanding of legal processes is vital to children and young people's trust in the justice system⁴⁵ as well as their capacity to make informed decisions about crucial questions like whether to waive their right to legal representation, whether to give a no comment interview, whether to admit guilt and whether to accept an informal diversion or out of court disposal. While solicitors are clearly a key route for providing this information (see below for more on the role of solicitors) their work can be supplemented by information provided in appropriate formats at a range of points. In particular, there is a need for children and young people to have access to information that covers the role of their solicitor, their legal rights and the implications of different outcomes in terms of both requirements and the potential to have a criminal record.

A number of multimedia resources are available. In collaboration with the organisation Reality Art, the Centre developed a short video explaining diversion,⁴⁶ which can be used to aid children and young people's understanding. Youth Justice Legal Centre and Just for Kids Law have also produced a more general video on what to expect at the police station.⁴⁷ However, in the context of diversion practice, which varies between local authority areas, there is also a need for appropriate written material which can be given to children and young people while under arrest describing how diversion works in their local area. Youth justice service staff should be familiar with the intricacies of the diversion process, including criminal record implications, and be equipped to clearly explain them to children and young people.

Implement effective communication practices

Building effective relationships with practitioners and valuing clear means of communication were key themes in the experiences of children and young people. They offered concrete examples of positive communication and how this set the tone for working relationships. Children and young people valued communication where professionals used active listening and took a respectful, caring and non-judgemental approach.

Evidence suggests that developing an effective relationship-based practice framework, which identifies the necessary practitioner values, skills and knowledge, can encourage and sustain engagement and give children and young people a stronger voice.⁴⁸ The central characteristic of relationship-based practice is the emphasis it places on the professional relationship as the medium through which the practitioner can engage with and intervene in the complexity of an individual's internal and external worlds. The practitioner and service user relationship is recognised to be an important source of information for the worker to understand how best to help, and simultaneously this relationship is the means by which any help or intervention is offered.⁴⁹ The integrated relationship-based practice framework of Stephenson and Dix (2017), developed specifically for youth justice practitioners, is a useful resource.⁵⁰

Co-produce tailored intervention plans with children and young people

In keeping with the principles of a Child First approach which promotes diversion and collaboration, working with children and young people to coproduce intervention plans may be useful in increasing engagement in diversion. As well as giving children and young people a voice in the process, collaboratively agreeing on interventions may increase their sense of ownership in the process. Collaboration may help manage some of the difficulties that children and young people highlighted to us, such as issues with travel to their appointments, a lack of interventions which were appropriate to their circumstances and a sense that they had not learned anything in the process. Services should also aim to incorporate feedback from children and young people on a wider level to influence service development.⁵¹

Supporting culture and practice change within criminal justice agencies

Ensure that eligibility criteria and referral routes for diversion do not exacerbate racial disparities

As a locally-designed, non-statutory intervention, the criteria for who is eligible for diversion are determined at the local level in negotiation with a range of local stakeholders. Our youth diversion mapping exercises have highlighted that the criteria used vary widely between different areas in terms of the offences which are eligible, whether offenders are required to admit guilt and the number of times an individual can be diverted. However, there is significant evidence that choosing inappropriate eligibility criteria can make it less likely for children and young people from some ethnic groups to access diversion and thus contribute to racial disparities.⁵²

Our mapping suggested that in 2019, 57% of diversion schemes required children and young people to make a formal admission of guilt.⁵³ However, this requirement may contribute to disparities. Research shows that people from Black, Asian and Minority Ethnic backgrounds have significantly lower trust in the justice system than their White counterparts, and that they are therefore less likely to admit an offence or plead guilty at court.⁵⁴ We suggest that the more flexible criterion of 'accepting responsibility' could be preferable to requiring a mandatory admission.⁵⁵ This still safeguards against criminal justice interventions being undertaken with children and young people who maintain their innocence, while helping address racial disparity and unnecessary escalation.

Our mapping also found that 40% of schemes limited the number of times a child or young person could access diversion.⁵⁶ Again, there is reason to believe that this may contribute to disparity as children and young people from some ethnic backgrounds face a significantly higher risk than their White British counterparts in coming to the attention of the police through stop and search and other routes.^{57 58} Inequalities in how different communities are policed mean the apparently race-neutral eligibility criterion of 'prior record' can increase disproportionality. Restricting the number of times children and young people can be diverted similarly has the potential to compound disproportionality, moving those coming from groups at higher risk of arrest through an escalating ladder of outcomes faster than their White peers. We suggest that previous offending and diversion(s) should not be an automatic bar to diversion, but should rather be considered on a case-by-case basis when determining the suitability of diversion.

Establish protocols to facilitate cases which have reached court inappropriately

Given the difficulties which children and young people reported to us in navigating the diversion process it is likely that a significant number of cases appropriate for diversion still reach the point of formal prosecution. We therefore recommend that youth justice services develop protocols to ensure that these cases, which reach court despite diversion being a suitable alternative, still have the option to deescalate to diversion where appropriate. This approach has been tried in Gloucestershire as part of their 'Children First' diversion scheme. They have developed a protocol where, with the approval of all parties, a child or young person can be offered a diversion intervention scheme with the guarantee that the case will be dismissed by the court if the intervention is completed.

Address the risk of 'adultification' of children and young people by embedding Child First principles in practice

Children and young people highlighted the power dynamics that were present during the diversion process and feelings of being fearful of professionals. As evidence has indicated how children and young people (particularly from Black and Black Mixed Heritage backgrounds) can be 'adultified' – inappropriately identified as having adult qualities and capabilities – practitioners should continuously assess their practice against the Child First approach. They should ensure that they see children as children by accurately assessing their particular needs, capacities, rights and potential. Practitioners should also be mindful of the language they use to describe children and young people from ethnic minority backgrounds, as commonplace descriptions such as 'streetwise' can reinforce negative stereotypes and undermine the recognition of children and young people's vulnerability.⁵⁹

Make effective use of data to monitor local disparities

Since April 2021 youth justice services are required to record the same information on children and young people receiving diversion as they do for children and young people on statutory disposals.⁶⁰ This includes important data on ethnicity and offence details. Youth justice services should take advantage of this locally collected data to assess the nature and extent of racial disparity in accessing diversion in their local area by comparing the profile of children and young people being diverted for a given offence type with that of children and young people who receive statutory disposals for similar offences. This can enable them to identify which, if any, ethnic groups, are less likely to be diverted and consider a targeted response. Indeed, HM Inspectorate of Probation highlighted ‘the effective use of data is reflected in better quality service delivery’ as an area of practice that enhanced the quality of work delivered to black and mixed heritage boys.⁶¹

Implement anti-racist and anti-discriminatory practices

A number of children and young people reported to us experiences with police which they described as racist or discriminatory, something which aligns with other studies of policing. Despite progress in some areas, there remains a significant need to build trust between the police, marginalised children and young people, and the wider community.

This is an entrenched and long-standing issue with no easy solutions. We would echo the recommendations of JUSTICE’s 2021 report *Tackling Racial Injustice: Children and the Youth Justice System*⁶² which highlighted the need for both cultural change through training and education and improved safeguards such as mandatory use of body worn cameras during stop and search. In the context of youth diversion specifically, we are encouraged by the work of youth justice services like Hackney which has embedded anti-racist and anti-discriminatory practice in their approach to diversion, for example by using a power and dynamic assessment tool.

Hackney Youth Justice Service’s Power and Dynamic Assessment Tool

In order to better capture and articulate children’s experiences of racism and discrimination, Hackney Youth Justice Service developed a Power and Dynamic assessment tool which encourages professional curiosity and the ability to have trauma-informed conversations about identity, intersectionality and experiences of systemic racism and racialised trauma.

The tool provides a space where children, families and practitioners have the opportunity to directly discuss their experiences and be offered support and advocacy should they want it. Examples of direct support provided include: aiding understanding of the Independent Office Police Conduct process; signposting to relevant services such as therapeutic support; and providing advocacy in school. Where a child or parent raises concerns about the arrest or police interview process, Hackney’s youth justice service police officer follows up with the officer in charge.

Power and Dynamic assessments are completed prior to a disposal decision being reached at the multi-agency Joint Decision-Making panel, with the voice of the child informing decisions that are made about them. Audits of the tool demonstrate that some children and families welcome the opportunity to talk about their experiences of racism and discrimination. Practitioners report that hearing the child’s voice as opposed to a practitioner’s account of the child’s voice has created a more open dialogue with police partners. Police have also offered sessions to children where they can have the opportunity to discuss their experiences and talk about police practices directly with them.

For more information about the Power and Dynamic assessment tool, contact Hackney Youth Justice Service.

Build the capacity of solicitors to support children and young people in accessing diversion

Solicitors play a key role in guiding children and young people through the criminal justice process and their advice can be crucial in helping children and young people to access diversion. But many of the children and young people that we spoke to expressed confusion and suspicion about the role of their solicitor. Given that children and young people from disadvantaged ethnicities are more likely to have lower levels of trust in the professionals they encounter in the criminal justice process, it is particularly important that their legal advice is delivered in an appropriate and culturally competent way.

We identified two particular areas where there may be a need to develop the capacity of some solicitors. The first is around diversion itself. While the Centre for Justice Innovation is currently developing national-level guidance materials for solicitors around diversion, there will also be value in local youth justice services producing their own locally-specific guidance. We recommend that youth justice services produce solicitor-oriented guidance materials or training explaining how diversion is practiced in their local area with a focus on eligibility criteria, referral processes, the requirements that may be made and potential criminal record outcomes.

The second area is around cultural competence. Cultural competence – the ability to understand and interact effectively with people from other cultures – is an emerging theme across a range of fields including healthcare and social work.⁶³ However, despite its importance to effective criminal defence practice there are few resources available which are specific to the UK legal profession. We recommend that solicitors review existing resources aimed at other professionals and that legal training bodies develop cultural competence training aimed at solicitors.

Final thoughts

The evidence base on youth diversion in England and Wales is still in its infancy. However, we hope that this research provides a much needed contribution, helping to drive equitable access to diversion.

Children and young people told us about a range of factors which impacted their experiences in accessing and engaging with diversion, specifically in regards to their ethnicity and on a more general level. These included experiencing racist and discriminatory practice by the police, fear and overwhelm during the diversion process, and practical issues which hindered engagement.

“ *I'm a Black young teenage boy, if I was a White boy it would be different...Probably better. Things would probably have been better.*

However, there were lots of examples of positive practice: being listened to and being treated with respect by police and youth justice service workers, and being supported in police interviews by solicitors providing tailored guidance. These examples and feedback from children and young people provide key starting blocks to build upon.

“ *They were treating me like an actual human. They were treating me like a normal person. ... They were treating me with respect and decency, you know what I'm saying?*

We have suggested some recommendations based on the findings. These are not an exhaustive list, only a starting point for reflection on how to best implement the findings in practice. The wider evidence on disproportionality in the youth justice system is very clear: children from Black, Asian and Minority Ethnic Backgrounds, on the whole, continue to experience worse outcomes than their White counterparts. With the Youth Justice Board guidance now requiring that clear plans are put in place by local authorities to tackle overrepresentation, we hope that this research will provide key insights into how children and young people experience diversion and assist in driving organisational and systemic change.

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