

Tackling Racial Injustice:

Children and the Youth Justice System

A Report by JUSTICE

Chair of the Committee

Sandra Paul



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JUSTICE

59 Carter Lane, London, EC4V 5AQ
www.justice.org.uk

THE WORKING PARTY

Sandra Paul (Chair), Kingsley Napley LLP

Sam Cottman, Director of Pro Bono, Travers Smith LLP

Garry Green (Subgroup Chair), Doughty Street Chambers

Maya Sikand QC (Subgroup Chair), Recorder and Barrister, Doughty Street Chambers

Kate Aubrey-Johnson, Garden Court Chambers

Judge Mehran Behvandi, Social Entitlement Chamber

Maya Chandegra, Travers Smith LLP

Tariq Desai (Rapporteur), Criminal Justice Lawyer, JUSTICE

Pippa Goodfellow, Director of the Alliance for Youth Justice

Millicent Grant QC (Hon)

DCC Adrian Hanstock, NPPC Lead for Stop and Search, British Transport Police

N. Lynn Hiestand, Retired Partner, Skadden, Arps, Slate, Meagher & Flom LLP

Dr Laura Janes, Legal Director at Howard League for Penal Reform

Jude Lanchin, Bindmans LLP

Samantha Magness, Head of Policy, Crown Prosecution Service

Danielle Manson, Garden Court Chambers

Adam Mooney, Programme Manager, over-represented children, Youth Justice Board

Katya Moran, Co-head of the Youth Justice Legal Centre

Naomi Redhouse (Observer), District Judge

MEMBERS OF SUBGROUPS

Amal Ali, Policy Officer, the Criminal Justice Alliance

Kimberley Lamb, Director of Bedfordshire Violence and Exploitation Reduction Unit

Claire Sands, Research and Policy Manager, the Howard League for Penal Reform

The views expressed in this report are those of the Working Party members alone, and do not reflect the views of the organisations or institutions to which they belong.

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EXECUTIVE SUMMARY

The roots of racial injustice in the UK run deep. Reports, reviews, and analysis have offered evidence-based solutions for decades. Delays, varying degrees of adoption and a lack of consistent political commitment mean that racial and ethnic disparities remain an incontrovertible reality of our justice system generally and particularly so in its impact on children.

It is commendable that, in recent years, the total number of children arrested has reduced, and there are fewer first-time entrants to the youth justice system. However, the positive developments have not been shared equally. Today, the number of Black, Asian and Minority Ethnic (BAME) children in custody remains at 52%, despite BAME children making up only 18% of the child population.

This Working Party of JUSTICE was convened in October 2019 as a result of our deep concerns with the disproportionate representation of BAME children in the criminal justice system. Since then, in many respects, the problem has worsened. During that time, the killing of George Floyd and the protests that followed shone a spotlight on racial disparity not only in the United States but also in the UK. That spotlight does not tell us anything new but it confirms what the communities affected have always known which is that their legitimate concerns are not taken seriously enough. Racial discrimination thrives because structural disadvantage exists. While individuals have an important role to play, their individual contributions, to either perpetuating or combating discrimination, are dwarfed by the impact of the institutions that make up the criminal justice system. It is the responsibility of the system, and not the children, to change.

At the same time, we have seen that good practices do exist. Examples of child-friendly approaches and programmes are found in police force areas, Crown Prosecution Service guidance and courts around the country. But these need national coordination and commitment.

This report makes 45 recommendations which seek to increase decision-makers' understanding of the child appearing before them. In doing so, our aim is to eradicate, and if not, minimise, the bias, suspicion and misperception that pervades discriminatory exercise of power. In this way, we hope that criminal justice agencies will be able to meet BAME communities' expectations of fair and impartial treatment at each stage of, and interaction with, the criminal justice system. We suggest ways to build a child-first approach into the justice system, with sources of bias and discrimination addressed through changes to policy, institutional culture, and practices. While no one report can undo years of structural racism, we hope to support the continued efforts of communities seeking equal justice.

Suspicion of BAME children

The justice system too readily treats BAME children as inherently prone to criminality. This inevitably results in an alienating and traumatic experience for individuals and the communities that they live in. The continued use of stop and search has worsened these experiences; treating BAME children as objects of suspicion, despite the evidence that shows it is ineffective at managing and deterring crime. For this reason, we call for the police's section 60 powers under the Criminal Justice and Public Order Act 1994 to be immediately suspended, and subject to review. The implementation of neighbourhood policing and provision of mandatory de-escalation training for police officers are equally essential to build BAME children's confidence in policing. Equally, the Gangs Violence Matrix should be abolished, and in the interim deployed as a welfare, not a policing, tool.

Systemic racism has left Black culture repeatedly under attack in this country. One of the most profound examples is the misuse of Drill music to secure convictions. We recommend an overhaul in how this is used as evidence to ensure that it is always relevant and deployed with objectivity.

For Muslim children, we echo the calls to re-start the inquiry into the Government's 'counter-terrorism' programme, PREVENT, in a form that has the confidence of Muslim communities, to ensure that discrimination is fully addressed. Likewise,

Gypsy, Roma and Traveller children deserve a proper engagement strategy so no child is left behind.

Finally, the accounts of exploitation shared by BAME girls and young women throughout the justice system need to be properly recognised as a serious safeguarding issue. Laws and procedures already exist to protect these children but renewed efforts are necessary to ensure these laws are properly enforced.

Treating children as children

Children must be recognised as, and treated as, children. This includes referring to “children” in all relevant legislation and policies. Sadly, this is not currently the case, as seen in the use of terms such as ‘juvenile’, in recent bills passing through Parliament. Treating children appropriately also means making an honest assessment of policies which impact them such as the police’s use of force, including handcuffing and tasers, and we recommend robust reviews to this end.

The evidence base demonstrating the benefits of diverting children from the youth justice system and the corrosive effect of custody for children is universally accepted by the various agencies that form the youth justice system. We call for the introduction of a national diversion framework to give children across the country an equal chance to move away from crime.

A child centred approach is required by all actors across the criminal justice system. We have seen examples of good practice where this is done, and call for its wider application, in line with core principles that ensure the system understands and listens to the voices of children before it. For instance, through restorative practice circles, high-quality diversity training programmes and reverse mentoring programmes that listen to children’s experiences to promote reflective learning. Moreover, the trial and, where appropriate, introduction of pre-sentence hearings, and youth order review panels should also work towards this goal.

Building BAME Children's confidence in the YJS

The criminal justice system must earn BAME children's confidence that they will be treated fairly, with dignity and respect. This can be achieved through ensuring specialists make decisions about children, making consistent decisions, and properly holding criminal justice agencies to account.

We have found that the provision of training for lawyers who represent children and young adults requires greater focus, accompanied by appropriate levels of remuneration reflecting the specialist skills needed. Further, there is considerable scope to improve bail processes, and the decisions to remand in custody. Likewise, we have seen that the police are too often not properly held to account when they fall short of the common standards BAME communities are entitled to expect. The Independent Office of Police Conduct must be empowered to investigate serious complaints fully, especially where they concern children.

Finally, in analysing the decision-making processes of the courts, we have found that there is insufficient data to make a proper assessment of potential bias. This is unacceptable, and we recommend that the Ministry of Justice engage with academics who research sentencing data so that this is urgently reviewed.

The criminal justice system is failing this country's BAME children, and as a consequence its credibility is at stake. These recommendations are designed to tackle a longstanding complex problem. They cannot be effective in isolation. They must be accompanied by a genuine commitment on the part of all criminal justice agencies to make changes not only to their policies, but to their culture and approach to BAME communities. This report, if implemented, would act as an essential step on that journey.

I. INTRODUCTION

The youth justice system is not working for everyone – Keith Fraser, Chair of the Youth Justice Board¹

Background

- 1.1 This Working Party was convened in October 2019 because JUSTICE was increasingly concerned about the continuing rise in racial disparities among children in the youth justice system of England and Wales (YJS). At the time, we did not consider there to be a sufficient focus on this serious issue, with racial disparity in UK prisons as severe as in the United States.² During the course of our work, the killing of George Floyd³ sparked a wave of protests across the US against police brutality. These protests found resonance in the UK, with diverse movements highlighting the grief, frustration and anger which culminated in reinvigorated protests under the banner of Black Lives Matter. This has resulted in much-needed public attention on the treatment of Black, Asian and Minority Ethnic (BAME) people within the criminal justice system (CJS), accompanied with increasing hopes for real, lasting change. These issues must be addressed with sincerity and not merely paid lip service.
- 1.2 The mistreatment of BAME groups is well documented; supported by a litany of reports and inquiries which have examined the problem and made recommendations for its improvement. Key among these are:
- a) **The Scarman Report:** Following the Brixton riots in 1981, Lord Scarman chaired an inquiry, resulting in a report, which warned that urgent action was required to prevent racial disadvantage becoming an “endemic, ineradicable disease threatening the very survival of our society”;⁴
 - b) **The MacPherson Report:** The racially motivated murder of Stephen Lawrence in 1993 led to an inquiry into his murder and its subsequent

¹ Keith Fraser, *100 days as chair of the Youth Justice Board*, 28 July 2020.

² J. Grierson, ‘More than half of young people in jail are of BME background’, *The Guardian*, 29 January 2019.

³ BBC, ‘George Floyd: what happened in the final moments of his life’, 16 July 2020.

⁴ BBC, ‘Q&A: The Scarman report’, 27 April 2004.

investigation. The inquiry was intended to enable the CJS to learn from what went wrong and culminated in the MacPherson Report⁵ in 1999. It concluded that the investigation into Stephen Lawrence’s murder had been “marred by a combination of professional incompetence, institutional racism and a failure of leadership”,⁶

- c) **The Young Review:** Chaired by Baroness Young in 2013, the primary goal of this review was to identify how to improve the negative outcomes experienced by Black and Muslim male offenders between the ages of 18-24. The report highlighted concerns around the drivers that bring young adults into the CJS, the disproportionate use of stop and search, and the risk-driven nature of policing;⁷ and
- d) **The Lammy Review:** Led by David Lammy MP and published in 2017, this review examined the treatment and outcomes of BAME individuals in the CJS, analysing data that has not previously been made available to scrutiny. It concluded that “BAME individuals still face bias, including overt discrimination, in parts of the justice system”.⁸

1.3 In spite of these reports and various legislative initiatives, the public attention they received, and government commitment to the recommendations, many of their recommendations remain unimplemented and racial disparity and discrimination within the CJS persist. At the same time, the challenges faced by BAME individuals become ever more urgent. For instance, during the UK’s first COVID-19 lockdown (March – June 2020), BAME people were more likely to be fined than their White counterparts.⁹ This reinforces the scale and nature of the problem, serving to highlight the need for a complete overhaul in

⁵ Sir William MacPherson of Cluny, *The Stephen Lawrence Inquiry*, (1999).

⁶ *Ibid*, para 46.1.

⁷ Baroness Young, *Improving outcomes for young black and/or Muslim men in the Criminal Justice System*, (The Young Review, 2014), p.11.

⁸ D. Lammy, *The Lammy Review, An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System*, (2017), p. 69.

⁹ R. Currenti and J. Flatley, *Policing the Pandemic: detailed analysis on police enforcement of the Public Health Regulations and an assessment on disproportionality across ethnic groups*, (National Police Chiefs’ Council, July 2020), p. 3.

how the CJS perceives and treats BAME people. Acknowledging that racial and ethnic disparity is an issue is only the first step in a long journey to justice.

- 1.4 We note two important developments in this space. First, the Government’s establishment of a Commission on Race and Ethnic Disparities in July 2020, which was launched to “look at outcomes across the country, with a focus on education, employment, health and the criminal justice system”¹⁰ for BAME people. With the benefit of this Working Party’s interim findings, JUSTICE responded to the Commission’s Call for Evidence,¹¹ and we await its findings with interest. Second, the Ministry of Justice’s (MoJ) recent publication of the White Paper, ‘A Smarter Approach to Sentencing’.¹² As this report sets out, disparate outcomes are apparent at a sentencing level, and we hope this report’s recommendations can contribute to improvements by way of the forthcoming legislation.¹³
- 1.5 The UN Convention on the Rights of the Child (UNCRC) requires that the best interests of the child shall be a primary consideration in all actions concerning children,¹⁴ and that all rights shall be applied without discrimination.¹⁵ In practice, this means that the UK should promote laws and procedures that deal with children without placing them before a court.¹⁶ This is also a requirement of guidelines issued by the Council of Europe.¹⁷
- 1.6 While the UNCRC has not been made part of domestic law, it has been ratified by the UK, and the Courts have considered that rights which fall under the

¹⁰ Commission on Race and Ethnic Disparities, ‘Commission on Race and Ethnic Disparities: sub-group priorities’ September 2020.

¹¹ JUSTICE, ‘Ethnic Disparities and Inequality in the UK: Call for Evidence’ November 2020.

¹² Ministry of Justice, ‘A Smarter Approach to Sentencing’ September 2020.

¹³ We are particularly concerned by the White Paper’s equalities statement that unequal outcomes with respect to BAME individuals are “a proportionate means of achieving the legitimate aims of protecting the public and achieving consistency within the sentencing”. See Ministry of Justice, ‘A Smarter Approach to Sentencing: Overarching Equalities Statement’ September 2020.

¹⁴ Article 3, UN Convention on the Rights of the Child 1989.

¹⁵ *Ibid*, Article 2.

¹⁶ *Ibid*, Article 40(3).

¹⁷ ‘Guidelines of the Committee of Ministers of the Council of Europe on child-friendly Justice’, (Committee of Minister of the Council of Europe, 2010).

European Convention on Human Rights (ECHR) should be interpreted in harmony with international law.¹⁸ Further, section 11 of the Children Act 2004 contains a duty for local authorities and the police to have regard to the welfare and protection of children. Section 44 of the Children and Young Person Act 1933 places a similar duty on courts. Moreover, the Youth Justice Board's (YJB) 'National Standards' for the YJS aim to promote the "child first" principle.¹⁹ In terms of racial equality, the Equality Act 2010²⁰ places a duty on public sector institutions, requiring them to ensure different groups are not treated differently and/or unfairly.²¹ These duties should form the foundation of any inquiry into suspected crime among BAME children.

- 1.7 We recognise that there have been some positive developments in the YJS. The total number of children arrested has reduced by over two-thirds in the past decade.²² Likewise, the number of first-time entrants (FTEs), as well as children held in custody, is decreasing significantly.²³ However, the reductions have primarily been achieved through large reductions in White children at each stage of the YJS. As a result, the proportion of Black FTEs has increased from 8% to 16%, and FTEs from an Asian background have increased from 5% to 7%.²⁴

¹⁸ As the European Court of Human Rights (ECtHR) held in *Neulinger v Switzerland* (2010) 54 EHRR 1087 §131 (endorsed by Baroness Hale in *ZH (Tanzania) v SSHD* [2011] 2 AC 166 §21): "The [ECHR] cannot be interpreted in a vacuum but must be interpreted in harmony with the general principles of international law. Account should be taken ... of "any relevant rules of international law applicable in the relations between the parties", and in particular the rules concerning the international protection of human rights."

¹⁹ Youth Justice Board for England and Wales, '[Annual report and accounts](#)', September 2020.

²⁰ Section 149 of the Equality Act 2010 sets out the general equality duty.

²¹ See also the infographic, Youth Justice Board, '[Exploring Racial Disparity](#)', August 2020.

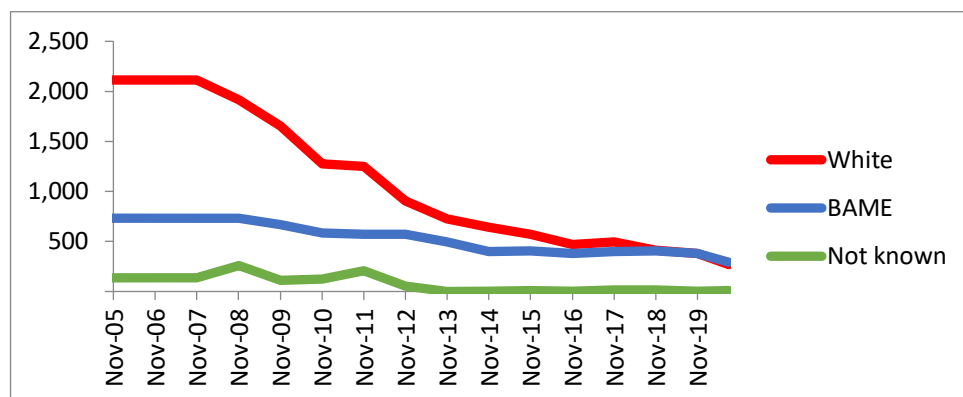
²² Howard League for Penal Reform '[Child arrests in England and Wales 2019](#)', 2020.

²³ However, this reduction follows what was a substantial upsurge in the criminalisation and imprisonment of children over successive Governments from the 1990s and early 2000s. Recent data shows the custodial population of children as declining from this previous high. See T. Bateman, *The state of youth justice 2017: an overview of trends and developments*, (National Association for Youth Justice, 2017), p.13.

²⁴ Youth Justice Board and Ministry of Justice, *Youth Justice Statistics 2018/19: England & Wales*, January 2020, p. 11.

1.8 Moreover, the custodial population of BAME children has remained static.²⁵ As a result, that there are now a similar number of White and BAME children in custody, despite BAME children making up only 18% of the general child population.²⁶ The number of BAME children held in prison represents the most acute manifestation of racial disparity within the YJS. It is within this context that the Working Party has carried out its work.

Under 18 Secure Population by Ethnicity, November 2005 – November 2019²⁷



²⁵ Youth Justice Board for England and Wales, *Ethnic disproportionality in remand and sentencing in the youth justice system*, January 2021.

²⁶ Youth Justice Board and Ministry of Justice, *Youth Justice Statistics 2016/17: England & Wales*, January 2018.

²⁷ Figures provided by Her Majesty's Prison and Probation Service and Youth Custody Service, *Youth Custody Data: August 2020*.

The Working Party

- 1.9 The focus of our work has been the experiences of BAME children in the YJS, as this represents an area where racial disparities are most severe and impactful. For many, childhood experiences represent the start of a life-long series of negative interactions. It is this cycle of criminalisation that we wish to interrupt.
- 1.10 Previous attempts to address discrimination have focussed predominantly on the failings of individuals, with improved training seen as a panacea. This may have contributed to a lack of joined up thinking, with no overarching ownership of the issue. Instead, we consider that focus must shift to addressing institutional failings. If individuals are making biased decisions, it is because there are inadequate structures and processes in place. As such, institutional responsibility for preventing racial biases must be a priority.
- 1.11 A further driver for the shift in focus is the nature of biased decision-making. It is often discretionary decisions that drive poor outcomes for BAME people. Such biases often manifest in the YJS at junctures where discretionary decisions determine outcomes for children. For instance, in the belief that certain behaviour is suspicious, or in the labelling of a group of friends, whether or not caught up in violence, as a gang. It is difficult, at a granular level, to pinpoint the reasons for discretionary decisions, where so many factors are at play and where there is no explicit evidence of racism. Rather, we must turn to look at the wider context in which such decisions are made, how racism and racial disparity are detected, and what steps can be taken by institutions to prevent discriminatory practices. This report will make recommendations that focus on achieving that change.
- 1.12 The Working Party considers its role as acting to identify and shine a light on the good practice that exists within the YJS, as well as to interrogate the reasons for its inconsistent application. In order to do this, we sought to investigate three broad themes within the YJS: (a) policing; (b) biased perceptions and (c) post-charge processes. We selected these themes as we considered that addressing interactions and processes prior to conviction would be the most effective way to reduce racial disparity. We conducted our investigations predominantly by taking evidence from various experts, as well as those with lived experience. Through this evidence, combined with our

collective professional and personal experience, we have been able to identify where we consider the root of the issue lies and what can be done to address it.

- 1.13 Much of this report focuses on building understanding, rather than adapting existing procedures within the YJS. We consider understanding to be a vital aspect of proper procedure. Without it, equal justice outcomes are hard to achieve. By increasing a decision-maker's understanding of the child appearing before them, our aim is to eradicate, and if not, minimise, the bias. In this way, we hope that criminal justice agencies will be able to meet BAME communities' expectations of fair and impartial treatment at each stage of, and interaction with, the YJS.

Limitations

- 1.14 Although this report will focus solely on matters within the CJS, we recognise that many external factors influence a person's entry into it. BAME people are more likely to be economically disadvantaged and live in impoverished areas. Moreover, their children face higher rates of school exclusion, and are victims of violent crime at disproportionate rates.²⁸ It is clear to us that these issues must be addressed to truly eradicate racial disparity within the YJS. However, this would require socio-economic, structural and legislative change which is beyond our terms of reference. Instead, we have focused on how the YJS can best respond to the deprivation and disadvantage that a significant number of BAME children experience.
- 1.15 There is a lack of robust data throughout the YJS and CJS. Often, data is inconsistently collected. In some cases, there is no requirement to report data to a central body, meaning it must be collected from numerous individual organisations, making research unnecessarily onerous. In further cases, data is not recorded at all. This lack of data reduces the ability of researchers to fully understand an issue and its root causes. In this report, we highlight areas where improved data gathering or data sharing would be useful in order to design interventions that address relevant issues. Overall, we consider that the CJS must improve its collection and publication of data. In the first instance, we

²⁸ For example, the homicide risk for Black people between 16-24 is five times higher than for White people. See: V. Dodd, 'Murder risk in England and Wales much higher for Black people,' *The Guardian*, 17 November 2020.

recommend that the MoJ both collect and make available all data that is necessary to fully assess disproportionality in the YJS.

Terminology

- 1.16 This report focuses primarily on the experiences of Black, Muslim, and Gypsy, Roma and Traveller (GRT) children. While not exhaustive, we consider this range of examples as sufficient to demonstrate the reality of how such groups experience the YJS and believe our findings can be extrapolated to further relevant groups. We understand that the ‘BAME’ acronym is not a term embraced by all those it purports to represent.²⁹ Nevertheless, we have decided to use it in this report as it is a term understood and applied by the organisations to which our recommendations are directed. Where possible, we have identified the specific groups to which we refer. We know that the term encapsulates many different identities, cultures and ethnicities, all with a unique experience of the YJS. Where we refer to White children, we refer to the racial and cultural majority. The experience of minority White communities, such as GRT children, is an exception to this. Their experience of the YJS has more in common with other minoritized groups. The term BAME, as used in this report, overtly includes GRT children as a minority ethnic group. The use of the acronym in this report seeks to describe a wide range of people who have an experience of discrimination as a result of their race, colour, or culture in common. It is not intended to diminish or gloss over those experiences.
- 1.17 We use the term ‘child’ to refer to anyone below the age of 18. We recognise that some older children may find this word to be infantilising. However, we consider it important to use language that is in line with both international and domestic law as to the definition of a child.³⁰ This will reinforce the fact that different rules apply for those below the age of 18, requiring special protections and welfare and safeguarding duties. We believe seeing children as children until they are 18 is central to securing justice. When discussing the system that

²⁹ P. Glynn, ‘UK music industry urged to drop ‘offensive’ term BAME’, *BBC*, 22 October 2020.

³⁰ See for example Article 1 of the UNCRC; the Children Acts 1989 and 2004; Legal Aid, Sentencing and Punishment of Offenders Act 2012, s 91(6); and the Criminal Justice Act 2003, schedule 21. Other legislation, as well as the Sentencing Council Guidelines, use the term ‘children and young persons’. It should however be noted that there is no longer any legal significance attached to ‘children’ (historically under 14s) and ‘young persons’ (14-17 years inclusive).

responds to children in conflict with the law, we refer to the ‘Youth Justice System’ or ‘YJS’, as it is the term that is used in our legislation, policy and practice. Nevertheless, the way children are referred to in the CJS is very important to ensuring that they are recognised as - and treated as - children. We consider that this is an area in need of broader discussion among criminal justice actors.

- 1.18 For those aged between 18 and 25, we use the term ‘young adult’.³¹ We recognise that, although this age group is legally considered to be adult, growing scientific evidence and research show that adolescence and brain development continues until at least the age of 25.³² As such, young adults have distinct needs, which require distinct interventions.³³

³¹ See for example the Sentencing Council’s General Guideline: overarching principles, 1 October 2019, which state: “*young adults (typically aged 18-25) are still developing neurologically and consequently may be less able to: evaluate the consequences of their actions; limit impulsivity; limit risk taking.*”

³² See S.J. Blakemore and S. Choudhury, ‘Development of the adolescent brain: implications for executive function and social cognition’, *Journal of Child Psychology and Psychiatry*, 47:3, 296–312, 2006.

³³ See ‘Research & Reports’ T2A (Transition to Adulthood).

II. SUSPICION OF BAME CHILDREN

We know the police treat Black people differently...it means that we do not feel safe ever.

My next interaction after that was being pulled over because there were suspicions that I had a knife on me; and I was about six years old coming home from the park.
– Children speaking to the Home Affairs Select Committee³⁴

Introduction

- 2.1 BAME children experience the YJS very differently from, and often more negatively than, White children.
- 2.2 The history of Black people in the UK is rich and varied. However, it is marred by a persisting context of discrimination in the CJS against BAME people, as articulated in numerous reports and the voices of BAME people themselves. This goes as far back as the post-war arrival of migrants from the Caribbean to the ongoing Windrush scandal, as well as events such as the 1958 Notting Hill riots, the Brixton riots, the Broadwater Farm riots, the murder of Stephen Lawrence and its subsequent investigation, the 2011 Riots and the Home Office's hostile environment policy. A common theme is the experience of injustice and mistreatment felt by Black people, which forms part of the collective memory of the Black community's children and young adults today. Years of continued discrimination have meant that Black boys in particular are often erroneously associated with serious violence and so-called 'gang' culture. Within this context, the CJS has failed to meet the expectations of Black communities that they, and their children, will be treated fairly and justly at each stage, for example, in policing and criminal justice responses that negatively impact them.
- 2.3 Muslim people – and those who present as Muslim – face similar hardship to other BAME communities. For instance, among 16-24 year-olds of Pakistani and Bangladeshi origin, the unemployment rate in 2019 was 23%, compared

³⁴ Home Affairs Select Committee, *Serious youth violence*, Sixteenth report of session 2017-2019, (2019).

to 10% for their White counterparts.³⁵ In addition, Muslim people are more likely to experience higher rates of poverty and homelessness than White people.³⁶ In this context, it is also concerning that public attitudes often emphasise an erroneous link between ‘terrorism’ and Islam, which has heightened racist and Islamophobic prejudice against Muslim communities.³⁷ Criminal justice agencies therefore frequently view religious observance as inherently suspicious.³⁸

2.4 Within society, discrimination against GRT people is still largely accepted. This was further evidenced when the Traveller Movement commissioned YouGov to conduct a poll in Great Britain, which found that:

- a) 66% of people do not consider GRT people as an ethnic group;
- b) Over a third of parents would be unhappy if their child had a playdate at the home of a GRT person;
- c) 42% of people would be unhappy if a close relative married a GRT person; and
- d) 13% of people said pubs and restaurants should refuse entry to GRT people for no other reason than their identity.³⁹

2.5 With discrimination being so widespread, it is no surprise that misconceptions and tropes about the GRT community continue to prevail.⁴⁰ These stereotypes and attitudes compound the suffering of GRT children, who have some of the

³⁵ Powell A, ‘Unemployment by ethnic background’, Briefing Paper Number 6385, 22 May 2019, p. 3.

³⁶ Women’s Budgeting Group (WBG), *Intersecting Inequalities – The impact of austerity on Black, and Minority Ethnic women in the UK*, (2018), p.2 and Institute of Race Relations ‘Inequality, housing and employment statistics’, para 4.

³⁷ E. Bayrakli and F. Hafez (Eds), *European Islamophobia Report 2019*, (SETA, 2020).

³⁸ Maslaha and T2A, *Young Muslims on Trial*, (March 2016) p.10.

³⁹ Traveller Movement, ‘New YouGov poll finds shocking racism toward Gypsies and Travellers’.

⁴⁰ A common trope is that the GRT community have criminal tendencies and are to be avoided. A further misperception is that GRT people live in caravans and drive around the country in a nomadic fashion – often supposedly parking on private land without permission. However, up to three quarters of GRT people live in brick and mortar housing. Moreover, GRT people have one of the highest proportions of people living in social rented accommodation, with over half living in council accommodation. See Office for National Statistics, 2011 Census analysis: What does the 2011 Census tell us about the characteristics of Gypsy or Irish travellers in England and Wales?, (2014). Moreover, Romanian Roma are the fastest growing group of rough sleepers in Greater London: Women and Equalities Committee, *Tackling inequalities faced by Gypsy, Roma and Traveller Communities*, (2019), para 26.

worst developmental outcomes. GRT children are more likely to suffer mental and physical health issues, including substance abuse; at greater risk of infant mortality, maternal mortality and suicide; more likely to be bullied at school and more likely to be excluded from school; and less likely to attain formal qualifications.⁴¹ This highlights a similar structural issue to other BAME communities: the prevalence of poverty and deprivation. There has been a lack of focus on GRT communities, with little research or lack of projects being undertaken to better understand better their experiences of the CJS.⁴² This is compounded by the fact that the experience of BAME children is often contrasted with that of their White peers, which could overlook the fact that GRT children, as a white minority ethnic group, are part of the BAME community.

- 2.6 The same is true for BAME girls and young women. There appears to be a lack of understanding of the difference in what drives them into the CJS, accompanied by insufficient appreciation for how they behave when involved in criminality. This leads to BAME girls and young women often being penalised harshly for crimes they may have committed, while not being safeguarded in cases where they are victims. Moreover, drivers of crime among girls and young women of different racial and ethnic groups can also vary from group to group, as well as from men of similar backgrounds.
- 2.7 Recently, there has been a 73% increase in the number of women and girls – many of which are BAME - arrested and prosecuted for carrying knives,⁴³ with 25% being under 18 years of age.⁴⁴ These increases do not paint the whole story. Criminality in girls and women is often driven by domestic abuse, sexual violence, exploitation, and coercion. As such, the rise in girls and young women being arrested and prosecuted for these crimes suggests a rise in their own abuse and exploitation. Despite an increase in awareness of these drivers,

⁴¹ The Traveller Movement, 'Sentencing Gypsy, Traveller and Roma Children', 2017. See also, for example, a television show titled 'The Truth about Traveller Crime', broadcast in April 2020, which has received numerous complaints to OFCOM from GRT groups, including the Traveller Movement.

⁴² Fair Trials, 'Uncovering anti-Roma discrimination in criminal justice systems in Europe: Key findings', (November, 2020), p. 3.

⁴³ J. Grierson, 'Female knife possession crimes in England rise by 73%', *The Guardian*, 8 August 2019.

⁴⁴ C. Firmin, 'To stop women and girls carrying knives, tackle the abuse and violence they face,' *The Guardian*, 9 August 2019.

there continues to be a lack of support services available to help girls and young women.⁴⁵

- 2.8 These and other structural issues provide the necessary context for understanding BAME children's experience of the YJS. In the face of such challenges, criminal justice agencies disproportionately suspect and focus on punishing BAME children, while neglecting to provide adequate support and resources. Key examples of damaging measures that impact on BAME communities are well known: stop and search, gang enforcement and PREVENT. We outline these below and make recommendations to mitigate their effects.

Stop and Search

- 2.9 Stop and search is one of the principal contributors to the fractious relationship between police and BAME communities. Reports from Stopwatch, Release, the Criminal Justice Alliance and the Equality and Human Rights Commission,⁴⁶ among others, have detailed stop and search's disproportionate use and impact on BAME people. It is also one of the main ways that children are brought into the YJS. Combined with current drug laws, it is the largest contributor to the disproportionate representation of Black people in the CJS.
- 2.10 Nevertheless, the police are known to praise its purported value in addressing crime. The Metropolitan Commissioner of Police, Cressida Dick, has stated that the tactic has been "an extremely important part of our success in the last few months in suppressing violence in some areas."⁴⁷ Other officers have expressed the view that although it may not be effective as a deterrent, "finding one weapon means one life saved". While some BAME people might agree that stop and search is necessary when used appropriately, the evidence in respect of its corrosive effect is clear, with three quarters of BAME children

⁴⁵ *Ibid.*

⁴⁶ Equality and Human Rights Commission, *Stop and Think: a critical review of the use of stop and search powers in England and Wales*, (2010).

⁴⁷ Home Affairs Committee, 'Oral evidence: Serious Violence, HC 1016', 2019, Q 312.

and young adults thinking their communities are unfairly targeted.⁴⁸ Although all BAME groups experience stop and search at a higher rate than White people, Black boys experience the highest proportion of stop and search. Despite overall rates of stop and search decreasing in the last 10 years,⁴⁹ no corresponding drop exists for BAME individuals, with Black young men in London 19 times more likely than their White counterparts to be stopped, with similarly disproportionate levels for those under the age of 18.⁵⁰ Moreover, rates of stop and search are now on the rise, with a 52% increase in use between March 2019 and March 2020.⁵¹

2.11 Powers under section 1 PACE⁵² and section 60 CJPO⁵³ are the most frequently used,⁵⁴ with 558,973 stops and searches conducted under section 1 between March 2019 and 2020.⁵⁵ Yet there is no evidence to suggest that the use of stop and search powers has any tangible effectiveness in reducing crime,⁵⁶ with a

⁴⁸ P. Keeling, *'No Respect: Young BAME men, the police and stop and search'* (Criminal Justice Alliance, 2017), p. 20.

⁴⁹ J. Brown, *'Police powers: stop and search'*, November 2020, p. 15.

⁵⁰ Dr. Matt Ashby, UCL, *'Stop and search in London: July to September 2020'*, (November 2020), p.5.

⁵¹ Home Office, *'Police powers and procedures, England and Wales, year ending 31 March 2020'*, p. 1.

⁵² Police and Criminal Evidence Act 1984 (PACE). Section 1 of PACE gives a police officer the power to stop a person or vehicle if they have reasonable grounds to suspect the person has stolen or prohibited articles in their possession. There is no need for the authorisation of a senior officer. Section 2 of PACE requires officers to inform those they are searching of their name, police station, the object they are trying to find and the grounds for the search. Failure to comply with such requirements will render a stop and search unlawful (see *R v Bristol* [2007] EWCA Crim 3214).

⁵³ Criminal Justice and Public Order Act 1994 (CJPO). Section 60 of CJPO allows any senior officer to authorise the use of stop and search powers within a designated area for up to 48 hours where they reasonably believe that incidents involving serious violence may take place, or that weapons are being carried. Once authorisation is given, the implementing officer does not require any grounds to stop a person or vehicle within the area.

⁵⁴ P. Keeling, *'No Respect: Young BAME me, the police and stop and search'* (Criminal Justice Alliance, 2017), p. 20.

⁵⁵ Home Office *'Police powers and procedures, England and Wales, year ending 31 March 2020'*, (October 2020), p.1.

⁵⁶ Evidence on the effectiveness of stop and search at reducing violent crime is extremely limited. An academic review published in early 2018, using ten years of data from London examined the potential effect of the tactic on different forms of crime. The researchers found that a 10% increase in stop and search (S&S) was associated with a 0.32% monthly drop in “susceptible crime”—a statistically significant but very small effect. The authors concluded it “seems likely that S&S has never been particularly effective in controlling crime”, and yet “police officers believe that S&S is a useful tool of

College of Policing report finding that there is a “weak” association between the use of stop and search and its impact on crime levels.⁵⁷ A recent Home Office publication highlighted that of all the stops and searches undertaken in the year ending March 2020, 76% resulted in no further action.⁵⁸ Moreover, only around 20% of the MPS’ stops result in an outcome that was linked to the reason for the search.⁵⁹

- 2.12** Section 60 powers are primarily used in deprived areas, which often have a higher population of Black people.⁶⁰ These stops are even less effective, with merely 4% resulting in arrest.⁶¹ Indeed, the cost of the policy is steep, both in terms of significant resources deployed, as well as with respect to the detrimental impact on the confidence of BAME communities in the police.⁶² As a result, BAME communities, not least the victims and witnesses of crime, are understandably reluctant to co-operate with a police force that acts in such a disproportionate fashion. This risks crimes going unreported, and unaddressed, resulting in increasing damage to communities alongside associated policing costs.
- 2.13** The Independent Office for Police Conduct (IOPC) has also added to these criticisms, noting that the legitimacy of stop and search is undermined by, for instance, the MPS’ lack of understanding around disproportionality, poor communication, the frequent use of force over seeking cooperation, the failure to use body-worn video cameras during incidents and continuing to seek

crime control”: Tiratelli, M., Quinton, P., & Bradford, B. *The British Journal of Criminology*, Volume 58(5), (September 2018), p. 1212–1231, available at [Does Stop and Search Deter Crime? Evidence From Ten Years of London-wide Data](#)

⁵⁷ M. Tiratelli, P. Quinton, and B. Bradford, *Does more stop and search mean less crime?*, (College of Policing, 2017) p. 4.

⁵⁸ Home Office ‘[Police powers and procedures, England and Wales, year ending 31 March 2020](#)’, (October 2020), p.1.

⁵⁹ See Metropolitan Police Service [Stop and Search Dashboard](#) and Full Fact, ‘[Stop and Search in England and Wales](#)’, 2019.

⁶⁰ ‘[Section 60 stop and search powers](#)’, Runnymede.

⁶¹ Home Office, ‘[Police powers and procedures, England and Wales, year ending 31 March 2020](#)’, p. 13.

⁶² V. Dodd, ‘[Police losing legitimacy among people of colour, top officers say](#)’, *The Guardian*, 8 September 2020.

further evidence after the initial grounds for suspicion were demonstrated to be unfounded. In light of these issues, the IOPC made 11 recommendations to the MPS so that it can improve its practice, which the MPS has accepted.⁶³ We consider many of these issues significantly undermine any attempts to build confidence between the police and the BAME communities they serve. How stop and search is conducted provides the single most important opportunity to change the relationship between BAME children and the police. **As such, we support the IOPC recommendations and consider that all police forces should take steps to implement them.**

- 2.14 Against this already concerning background, there are current proposals to expand the remit of stop and search powers. The Government has consulted on the introduction of Serious Violence Reduction Orders (SVRO), which would allow courts to confer on police the power to stop and search individuals who have a previous conviction for any relevant offence, such as carrying a knife, without the need for reasonable suspicion.⁶⁴ As highlighted in JUSTICE's response to the Home Office, this new measure could risk significant damage to community relationships, particularly where BAME individuals would be treated as "*perpetual criminals*".⁶⁵ The Working Party agrees, and believes it is imperative that the Government consider the disproportionate impact on BAME communities before expanding police powers in this way.

Damage to community relations

- 2.15 The opening words to this chapter clearly articulate the detrimental impact that stop and search has on BAME communities' confidence in the role of the police. Many of these incidents are not isolated events, as BAME people experience being stopped and searched on multiple occasions from childhood

⁶³ Independent Office for Police Conduct, '[Review identifies eleven opportunities for the Met to improve on stop and search](#)', October 2020.

⁶⁴ Home Office, '[Serious Violence Reduction Orders: a new court order to target known knife carriers](#)', September 2020, p. 2.

⁶⁵ JUSTICE, '[Serious Violence Reduction Orders Consultation, Home Office Response](#)', November 2020, p. 7. See also the Criminal Justice Alliance's response, which was supported by a focus group discussion with children and young adults, and includes their views in its appendix - Criminal Justice Alliance, '[Serious Violence Reduction Orders Home Office Consultation Response](#)' November 2020.

and throughout their lives.⁶⁶ The corrosive effect is unsurprising.⁶⁷ BAME communities should be able to expect a service from the police that is equal to that experienced by everyone else.

- 2.16 Unfortunately, the Working Party, in its discussions with children, heard that when a stop is unsubstantiated, police officers often do not consider an apology to be necessary. As such the encounter ends with no acknowledgement of the embarrassment or disruption it has caused.
- 2.17 It is unsurprising, then, that having experienced repeated stop and search, some BAME children may be resistant. Rather than the police understanding the reasons for this resistance, they are often met with police force, including for example, higher use of hand-cuffs and taser deployment.⁶⁸ This in itself could generate criminal outcomes for the child, for instance a charge of obstructing the stop and search, resisting arrest, or assaulting a police officer, alongside a charge for any illicit article found, rather than a caution.
- 2.18 Aggressive policing tactics are unfortunately widespread and frequently deployed against children and those with mental health issues. We are deeply concerned by the increased use of handcuffs at stops and searches, which has risen by 158% over the last three years in Hackney alone.⁶⁹ Handcuffing is a use of force, and should always be proportionate to the threat at hand. It is unacceptable that such a tool should therefore become regularised.⁷⁰ To this end, we welcome the MPS' recently concluded review into the use of handcuffing, and look forward to its recommendations being implemented in

⁶⁶ Another child said that “*the only interaction that you have with police nowadays is when you are being pulled over, when you are being stopped and searched,*” Home Affairs Select Committee, *Serious youth violence*, Sixteenth report of session 2017-2019, (2019).

⁶⁷ P. Keeling, ‘*No Respect: Young BAME men, the police and stop and search*’ (*Criminal Justice Alliance*, June 2017), p. 3.

⁶⁸ K. Pimblott, *A growing threat to life: taser usage by Greater Manchester Police*, (Resistance Lab, 2020). Home Office statistics on use of force also confirm this. See also ‘*Police use of force statistics, England and Wales: April 2019 to March 2020*’, p. 21.

⁶⁹ Account, *Policing in Hackney: challenges from youth in 2020*, (Hackney CVS, 2020), p. 21.

⁷⁰ ‘*officers should not routinely handcuff people in order to carry out a stop and search. They must judge each case on its merits in line with conflict management principles and to be able to justify any use of force, including the use of handcuffs. Any force used should be proportionate to the aim of preventing crime*’ See, ‘*Stop and search: Legal application - Most proportionate: detention for the purpose of search*’, College of Policing.

full.⁷¹ Equally, tasers are disproportionately used against BAME people and those experiencing mental health issues.⁷² For instance, between 2017/18 and 2018/19, Manchester saw the largest increase in taser usage, with Black people being subject to taser use at four times the rate of their White counterpart.⁷³ The figures are similarly concerning with respect to Black children, who accounted for 54% of taser incidents in 2017-18, as compared to 28% for White children.⁷⁴ Taser use on children is always unacceptable. Moreover, the excessive use of force can have serious long-term impacts on the mental health of children, and we do not consider that this is fully understood by police officers.⁷⁵ Compounded with an absence of prosecutions for excessive use of force in police custody, there is unsurprisingly an impression that the police unfairly target BAME children and can act with impunity. We therefore recommend that **the Home Office should launch a review on the use of force,⁷⁶ and specifically tasers, on BAME people; particularly children and those with mental health difficulties.⁷⁷**

2.19 In London, stop and search is often carried out by the Metropolitan Police Service's (MPS) 'Territorial Support Group' (TSG). TSG officers - who are

⁷¹ Metropolitan Police 'Met concludes review to further improve handcuffing processes' 8 January 2021.

⁷² See: Home Office, *Police Use of Force Statistics, England and Wales: April 2018 to March 2019*.

⁷³ K. Pimblott, *A growing threat to life: taser usage by Greater Manchester Police*, (Resistance Lab, 2020).

⁷⁴ Child's Rights Alliance for England and Just for Kids Law, *State of Children's Rights in England 2018: Policing and Criminal Justice*, (2019), p. 6.

⁷⁵ *Ibid*, p. 22.

⁷⁶ See CJA response to the Home Affairs Select Committee Inquiry:

"We are also concerned that under Code A of the Police and Criminal Evidence Act there is no requirement for forces or officer to record information about whether handcuffs (or any other use of force) are used during a stop and search. This information is expected to be recorded separately on a use of force form. From our understanding, current police systems are not configured in a way which allows an officer to make a seamless transition from stop and search records to use of force records – making it difficult to monitor whether the two are being applied in conjunction with one another." – Criminal Justice Alliance, 'Written evidence submitted by the Criminal Justice Alliance'.

⁷⁷ While we welcome the College of Police and National Police Chief's Council's recently commissioned review of the disproportionate use of tasers in December 2020, we consider that wider work is needed to understand the way in which force is used more broadly, with greater direction at a departmental level. See National Police Chief Council, 'Disproportionality in Police Use of Taser: Independent Panel Chair Announced', (17 December 2020).

tasked to undertake the most confrontational element of policing - do not have on-going relationships with the communities into which they are parachuted. This means they are less likely to be invested in the outcome for children they stop. In our evidence, we found that BAME children often experience aggressive policing tactics by TSG officers. Local communities speak to their aggressive approach and lack of connection to the area which they police. As such they are, unsurprisingly, distrusted and disliked by BAME communities.⁷⁸ This has led us to conclude that their continued use is detrimental to building positive, sustainable relationships. It is essential that officers be familiar with the communities they serve. We therefore recommend that the deployment of the TSG be limited to only the most serious policing crises. Instead, police forces must prioritise **a return toward neighbourhood policing**. While this is clearly not a complete solution, we consider it would go some way to reducing aggressive and violent policing tactics, thereby meeting communities' expectations of fair and equitable treatment.

- 2.20** In addition, **TSG officers should undergo specific de-escalation training**. We understand that a level of anxiety and fear for their personal safety during patrols is intrinsic to the way that TSGs operate. For the most part, this is a function of policing policy rather than objectively justified. It can never be acceptable to behave violently, not least towards children. We therefore consider that increased focus on de-escalation within policing to be crucial. For instance, we have heard that best practice in the BTP is to maintain a dialogue before, during and after a stop. This allows officers to gather further information to determine whether a stop is necessary, and then allows them to explain the process while it takes place. This builds rapport and reduces tension. Following the stop, they provide individuals with 'Z-Cards', which detail the individual's rights, and try to end positively, sometimes through expressing gratitude for cooperation. **We recommend, therefore, that police officers, as a matter of course, thank individuals stopped for their cooperation and acknowledge the inconvenience caused, where a stop resulted in no further action.**

⁷⁸ We note the Mayor's Office for Policing and Crime's Action Plan to address issues of accountability and trust in policing practices for BAME people in London, and we hope this report contributes to their assessments. See Mayor of London, '[Action Plan: Transparency, Accountability and Trust in Policing](#)' (November 2020).

- 2.21 By prioritising de-escalation, police officers can ensure that incidents remain calm and avoid the risk of traumatising the children they have stopped. Not only will this contribute to a child being more open to being searched, it will reduce the likelihood of children having a negative experience, as well as the risk of unnecessarily punitive outcomes. For this behaviour to become embedded, training must focus on the quality of the interaction, underpinned by solid, justifiable reasons for the interaction.
- 2.22 In the Working Party's view, the lack of accountability for the disproportionate use of stop and search has resulted in negative - and sometimes traumatic – experiences for BAME individuals. If police officers were more cognisant of, and expected to acknowledge, the impact of a stop and search, it could help to reduce the negative, and sometimes traumatic, experiences that BAME people have, and lead to more cooperative searches and improved relationships in the future. More than this, the police should be held to account for discriminatory practices when individuals are stopped on suspicion of crime without objective grounds for doing so.
- 2.23 At present, there is no consistent recording of age, with different age brackets used by different forces. We understand that the majority of forces record self-defined ethnicity, and if a suspect refuses to state their identity, officers may record either the perceived ethnicity or, less helpfully, select 'unknown/not stated'. **To instil self-reflection, and ensure that the police act in accordance with the law, we recommend that stop records should include what activity was suspected, what was found, what the outcome was, and most importantly, both the 'perceived' and self-defined ethnicities of the person stopped, where possible. This would build on the requirements of PACE Code A⁷⁹ and make it possible to effectively monitor the legality of stops and research best practice, with a view to producing learning to improve stop and search interactions.**

⁷⁹ 'Recording Requirements', PACE Code A, para 4.

GOWISELY

The College of Policing's Authorised Professional Practice guidance sets out best practice for stops and searches in accordance with the following principles, which are designed "to maximise the person's understanding before starting the search".⁸⁰

G	A clear explanation of the officer's grounds for suspicion, e.g., info/intel or specific behaviour of person.
O	A clear explanation of the object and purpose of the search in terms of the article being searched for.
W	Warrant card, if not in uniform or if requested.
I	Identity of the officer(s): name and number or, in cases involving terrorism or where there is a specific risk to the officer, just warrant or collar number.
S	Station to which the officer is attached.
E	Entitlement to a copy of the search record within 3 months.
L	Legal power used.
Y	You are detained for the purposes of a search.

Drug-related searches

2.24 Suspicion of drug possession is one of the main reasons for a stop. The stop rate for drugs per 1,000 people is 18.6 for Black people and 2.1 for White people, despite White people being more likely to be found with drugs.⁸¹ While this could be accounted for by the fact that stop and search is used more often in deprived areas (which have a higher proportion of Black residents) than

⁸⁰ 'Stop and Search: Professional', College of Policing.

⁸¹ M. Shiner, Z Carre, R. Delsol and Niamh Eastwood, *The Colour of Injustice: 'Race', drugs and law enforcement in England and Wales*, (StopWatch, Release and IDPU, 2018), p. 15.

affluent areas⁸² the fact that find rates for drug stops are lower for Black people⁸³ than White people indicates stops for Black people are based on weaker grounds.⁸⁴ This strongly suggests bias and discrimination in decisions to stop and search.

2.25 This chimes with what we have heard: that often the reasons given for suspicion can be spurious. We understand that it is common for police officers to use the smell of cannabis as a reason for suspicion.⁸⁵ This is despite the College of Policing's Authorised Professional Practice guidance stating that it should not, by itself, be used as a ground for a search.⁸⁶ Moreover, it makes no difference to how effective a search is when the alleged smell of cannabis – a highly subjective and inscrutable standard - is stated as a ground for a search.⁸⁷ Indeed, the IOPC recently upheld a complaint where such grounds were used. It found that “the officer's grounds for the search [...] were not reasonable as the use of the smell of cannabis as a single ground is not good practice as set out in the College of Policing's Authorised Professional Practice on stop and search”.⁸⁸

2.26 We have heard of many instances where children are stopped on weak grounds.⁸⁹ Such instances highlight the seemingly low bar that some officers

⁸² For example, according to Home Office Statistics, 4,070 (of which 2907 were Black) stops were made in Thames Valley, compared to 665 (of which 233 were Black) stops in Suffolk, See: Home Office 'Police powers and procedures, England and Wales, year ending 31 March 2020', (October 2020), p.1.

⁸³ There was a 33% find rate for White people compared to 26% find rate for Black people in drug searches in 2017, See, M. Shiner, Z Carre, R. Delsol and Niamh Eastwood, *The Colour of Injustice: 'Race', drugs and law enforcement in England and Wales*, (StopWatch, Release and IDPU, 2018), p.15.

⁸⁴ HMICFRS, *PEEL: Police legitimacy 2017 – a national overview*, (2017), p. 29.

⁸⁵ K. Irwin-Rogers and M. Shuter, *Fairness in the Criminal Justice System: what's race got to do with it?*, (Catch 22, 2017), p. 10.

⁸⁶ This guidance is not mandatory, and its implementation among police forces remains inconsistent, with some resisting. See *Stop and Search: legal basis*, College of Policing.

⁸⁷ P. Quinton, A. McNeill and A. Buckand, *Searching for cannabis: are grounds for search associated with outcomes?* (College of Policing, 2017).

⁸⁸ IOPC 'IOPC upholds cyclist's stop and search complaint against Metropolitan Police officer', September 2020.

⁸⁹ The PACE Codes of Practice detail the approach to reasonable suspicion: the officer must have formed a genuine suspicion in their own mind that they will find the object for which they search and that there must be an objective basis for that suspicion based on facts, information and/or intelligence which are

apply when making a stop and that the PACE Codes and policing guidance are often ignored. Although PACE explicitly states that a “hunch or instinct which cannot be explained or justified to an objective observer can never amount to reasonable grounds”,⁹⁰ it is hard to tell the difference between a ground such as “avoiding eye contact” and a hunch. **We support calls for the PACE Codes to be amended to clarify what a genuine suspicion entails, including that the smell of cannabis alone cannot be grounds for suspicion.**

- 2.27** Where there is a positive finding, particularly if drugs are found, there are worse outcomes for BAME people – specifically Black people – than White people. Following a stop for drugs, Black people are more likely than White people to be arrested and convicted of cannabis possession. Moreover, Black people are more likely to be convicted for cannabis possession than for the supply of class A and class B drugs combined,⁹¹ showing stop and search does not primarily target gangs or the drivers of serious violence.
- 2.28** While analysis of the UK’s drug policy is outside the scope of this report, we consider that divergent ways in which White and Black people are treated when drugs are found signals the need for a different approach. At present, we understand that there is an expectation that police officers must charge if they find drugs on an individual who has three previous cautions. However, reducing the number of children charged for simple cannabis possession, and instead identifying and ensuring their welfare needs, would have a significant, positive impact in reducing racial disparity in the youth justice system. In any event, should drugs be found, particularly those of a higher classification, it seems to us that a “child first” approach should recognise this as abnormal behaviour for any child and prioritise safeguarding above punishment. **Police officers should always prioritise the welfare of the child (such as utilising diversion and deferred-prosecution schemes) over punitive responses through the YJS.**

relevant to the likelihood that the object in question will be found - PACE Codes of Practice, Code A 2:2.

⁹⁰ PACE Codes of Practice, Code A, para 2.6B.

⁹¹ M. Shiner, Z Carre, R. Delsol and Niamh Eastwood, *The Colour of Injustice: ‘Race’, drugs and law enforcement in England and Wales*, (StopWatch, Release and IDPU, 2018), p. 42.

2.29 A number of police forces have already adopted this approach; for example, schemes such as ‘Checkpoint’ in Durham, ‘The Drug Education Programme’ in Avon and Somerset, and the Youth Drug Diversion Scheme in the Thames Valley.⁹² A similar scheme has also been announced in the West Midlands.⁹³ These aim to prevent reoffending and have been found to have positive results. For instance, we understand that the large majority of children diverted by Young Hackney⁹⁴ do not re-enter the justice system. However, these schemes are not in every police force area and, as such, remain a postcode lottery. Moreover, simply copying these schemes is not enough. Forces wishing to implement similar schemes must make sure they are designed to meet the specific needs of the people in their area, with appropriate levels of transparency so as to garner confidence in diversion-related decisions (see **Chapter 3** below).

Checkpoint

Checkpoint was established by Durham Constabulary in 2015. It aims to reduce the number of victims of crime through an innovative scheme to reduce reoffending. It does this through a four-month programme in which the individual who committed the crime is able to tackle underlying issues such as alcohol or drug misuse or mental health issues. Through this programme, the scheme aims to improve the life chances of participants.⁹⁵

Individuals who successfully complete the programme are not charged. However, if they fail to do so, a decision to charge and prosecute is likely. Of those who agree to the programme, 90% successfully complete it. Moreover, those who participate in the programme have lower reoffending rates (13.3%

⁹² Thames Valley Police ‘[Youth Drug Diversion Scheme to be rolled out forcewide – Thames Valley](#)’ 13 October 2020.

⁹³ West Midlands Police and Crime Commissioner, ‘[Police Commissioner funds new scheme to break the cycle of drug crime](#)’, October 2020.

⁹⁴ Young Hackney is part of Hackney’s Children and Young People Service, who work alongside the “Youth Justice service and in Children’s Social Care to offer young people support when they most need it”. See ‘[About](#)’, Young Hackney.

⁹⁵ ‘[Checkpoint](#)’, Durham Constabulary.

lower) than those who do not participate in the scheme.⁹⁶ Importantly, victim satisfaction also seems to be higher than traditional prosecution, due to the focus on preventing reoffending.⁹⁷ This trend has been found in similar schemes.⁹⁸

Although only available to adults, we are aware of an MoJ pilot, ‘Chance 2 Change’, based on the experience from Checkpoint, in the MPS’ North East Basic Command Unit and West Yorkshire. We therefore see no reason why best practice and positive findings from this programme cannot be deployed more widely for similar schemes aimed at children.

Violent Crime

2.30 Stop and search is also used in anticipation of serious violence – particularly where Black boys and young men are concerned.⁹⁹ For instance, stop and search under section 60 – which does not require any reasonable suspicion on the part of the police to stop an individual – is regularly deployed at the Notting Hill Carnival, purportedly in response to an increased risk of knife crime at the event. In the year ending March 2019, the power was used 13,175¹⁰⁰ times and in the year ending March 2020 it was used 18,081 times.¹⁰¹ This increase was driven by the MPS, who accounted for over 63% of section 60 stops.¹⁰² Moreover, in 2019, Black people were 40 times more likely to be stopped and

⁹⁶ K. Weir, G. Routledge, S. Kilili, ‘Checkpoint: An Innovative Programme to Navigate People Away from the Cycle of Reoffending: Implementation Phase Evaluation’, *Policing: A Journal of Policy and Practice*, 2019.

⁹⁷ House of Lords Debate, *Offender Management: Checkpoint Programme*, Lord Bates, column 339.

⁹⁸ Centre for Justice Innovation, ‘*Briefing – Pre-court diversion for adults: an evidence briefing*’, 2019, p. 7.

⁹⁹ S. Cushion, K. Moore and J. Jewell, *Media representations of Black young men and boys. Report of the Reach media monitoring project*, (Department for Communities and Local Government, 2011).

¹⁰⁰ Home Office ‘*Police powers and procedures, England and Wales, year ending 31 March 2019*’, (October 2019), p.1.

¹⁰¹ Home Office ‘*Police powers and procedures, England and Wales, year ending 31 March 2020*’, (October 2020), p.5.

¹⁰² *Ibid*, p.12.

searched through the use of section 60 powers.¹⁰³ This disproportionate trend continued even at the height of the first wave of COVID-19 infections in the UK,¹⁰⁴ despite crime levels having fallen in the period immediately before.¹⁰⁵

2.31 This steep rise in the use of the power has been further aided by a pilot scheme that made the following changes to the authorisation process for section 60 powers:

- a) reducing the level of authorisation needed for officers to deploy and extend Section 60 from senior officers to inspectors and superintendents;
- b) lowering the degree of certainty required by the authorising officer, so they must reasonably believe an incident involving serious violence ‘may’ rather than ‘will’ occur; and
- c) extending the initial period in which section 60 can be in force, from 15 to 24 hours, as well as the overall period from 39 to 48 hours.¹⁰⁶

2.32 This means that the police can exercise a power which significantly impacts BAME individuals with greater ease and less oversight. In 2019, the Home Office’s Equality Impact Assessment evaluated the section 60 policy change, stating “it is likely that more BAME individuals are searched under this power despite not committing any offences, and without being provided with significant person specific justification for searches taking place”.¹⁰⁷ While some weapons may be taken off the street, there is limited evidence that stop and search reduces serious violence. At best, it shifts violence from one area to another.¹⁰⁸ West Midlands Police, which, by contrast refused to adopt the

¹⁰³ M. Townsend, ‘*Black people ‘40 times more likely’ to be stopped and searched in UK*’ *The Guardian*, 4 May 2019.

¹⁰⁴ During the first COVID-19 lockdown (March to May 2020), over 20,000 young Black men (a quarter of all Black 15 to 25 year old in London) were stopped by the Metropolitan Police, with 80% of stops resulting in no further action – See S. Marsh, ‘*Met police increased use of s60 stop and search during lockdown*’, *The Guardian*, 27 July 2020.

¹⁰⁵ ‘*Police continue to see falls in crime during lockdown*’, *National Police Chiefs’ Council*, 19 June 2020.

¹⁰⁶ ‘*Government lifts emergency stop and search restrictions*’ Gov.uk, 11 August 2019.

¹⁰⁷ Home Office ‘*Equality Impact Assessment Relaxation Of Section 60 Conditions In The Best Use Of Stop and Search Scheme*’ p.10.

¹⁰⁸ Tiratelli, M., Quinton, P., & Bradford, B. ‘*Does Stop and Search Deter Crime? Evidence From Ten Years of London-wide Data*’, *The British Journal of Criminology*, Volume 58(5), September 2018, p. 1212–1231.

pilot measures detailed above, saw an 85% decrease in the number of stops and searches in the year up to March 2020 (i.e. 316 from 2041 in the previous year),¹⁰⁹ with crime falling by 5% over roughly the same period.¹¹⁰

- 2.33** We see little benefit in how section 60 stops are currently used. It is of great concern to us that continued use of this tactic in this way will continue to damage the relationship between the police and the communities, which section 60 targets. Given its ineffectiveness, its increased use and its undue targeting of BAME people, **we consider that the Home Office should immediately suspend any further section 60 authorisations until it has undertaken an independent evaluation, supported by public consultation, of the impact and effectiveness of these searches. In the meantime, while section 60 authorisations continue, we recommend that the changes made under the pilot scheme be immediately reversed, and be subject to the prior review of Community Scrutiny Panels (see Chapter 4 below).**

Gangs

For some Black kids, stigmatised and overpoliced, the toxic ‘gang’ label, once you scratch the surface, seems to be little more than who your friends are, what music you like and where you live – Dr Eithne Quinn¹¹¹

- 2.34** Gangs are often blamed for the rise in serious violence among BAME children and young adults, particularly in connection with the distribution and sale of drugs, and dispute over territory. The 2011 riots which followed the police’s killing of Mark Duggan¹¹² marked a turning point in the Government’s approach towards the issue of so-called ‘gangs’. With little evidence, the Government focussed on gangs as being responsible, promising a “concerted,

¹⁰⁹ Home Office, ‘Police powers and procedures, England and Wales, year ending 31 March 2020’, p.12. and see D. Gayle, ‘Police force declines new powers lowering bar for stop and search’ *The Guardian*, 16 August 2019. See also Criminal Justice Alliance, ‘[CJA and EQUAL respond to s.60 stop and search equality impact assessments](#)’ 2019.

¹¹⁰ ‘Crime falls by five per cent in the West Midlands’ *West Midlands Police*, 29 October 2020.

¹¹¹ K. Rymajdo, ‘Drill lyrics are being used against young Black men in court’, *Vice*, August 2020.

¹¹² Forensic Architects, ‘[The Killing of Mark Duggan](#)’, June 2020.

all-out war on gangs and gang culture”¹¹³ - despite gang activity making up a small percentage of the riot activity.¹¹⁴

- 2.35 Within six months of the riots, the Home Office and the Mayor of London had announced flagship anti-gang strategies. This resulted in the introduction of the national Ending Gang and Youth Violence strategy at the end of 2011, accompanied by statutory guidance for new ‘gang injunctions.’ In addition, the Mayor launched the Trident Gang Crime Command in February 2012.¹¹⁵ To support this, the MPS established the Metropolitan Police Service Gangs Violence Matrix (the GVM). Other police forces have since established similar gang databases.

What is a gang?

Street gangs have existed since at least Victorian times and are usually clustered in districts characterised by high levels of poverty, unemployment and ill health.¹¹⁶ However, in modern times, street gangs are largely associated with Black children and young adults, with media portrayals suggesting a connection to the growth of Black communities. Critics argue that the association of Black boys and young men with gangs and the loose definitions used by law enforcement, has led to a disproportionate number of Black boys and young men being labelled as gang members.

The Policing and Crime Act 2009 (PCA) and the GVM both have their own definition of a gang. The PCA defines a gang as a group of at least three people having “one or more characteristics that enable its members to be identified by

¹¹³ T. Newburn, M Taylor & B. Ferguson, ‘What is a gang?’ *The Guardian*, 6 December 2011; for an outline of this argument, watch: BBC, ‘England riots: ‘The Whites have become Black’ says David Starkey’, 12 August 2011.

¹¹⁴ Overall, 13% of those arrested were reported to be gang affiliated, with this dropping to less than 10% outside London (two forces – West Yorkshire and Nottinghamshire reported higher (19% and 17% respectively), but this is still a low proportion). In London, 19% of those arrested were said to be affiliated to a gang. Moreover, where gang members were involved in the rioting, most forces believed that they did not play a pivotal role, see Home Office, *An overview of recorded crimes and arrests resulting from disorder events in August 2011*, (2011), p. 18 – 19.

¹¹⁵ Amnesty International, *Trapped in the Matrix*, (2018), p. 5.

¹¹⁶ University of Liverpool, ‘Youth gangs and street violence in late Victorian Manchester’.

others as a group."¹¹⁷ The GVM defines a gang as a 'relatively durable, predominantly street-based group of children and young adults who:¹¹⁸

- a) see themselves (and are seen by others) as a discernible group; and
- b) engage in a range of criminal activity and violence.
- c) They may also have a range of the following features:
 - i) Identify with or lay claim over territory
 - ii) Have some form of identifying structuring feature; and
 - iii) Are in conflict with other, similar 'gangs'.

Both of these definitions have been criticised as allowing a 'dragnet' that can sweep up Black boys and young adults. This is because they are wide enough to be applied to any number of different groups, including friendship groups. It has therefore been suggested that these definitions – particularly vague references to colours, emblems and identifying features – really targets certain groups of people, rather than a defined criminal activity. This can be seen in the PACE Codes of Practice governing stop and search, which allow reasonable suspicion to be satisfied for a stop if an individual is implicitly identified through clothing or other means as a member of a gang that habitually carries weapons. No suspicious behaviour is required.¹¹⁹

2.36 The increased focus on gangs as dangerous groups who are at the root of serious violence and disorder has led to two concerning outcomes. The first is that children, their friendship groups and their culture have become inextricably linked to perceptions of what a gang is. This means that fights between individuals from different friendship groups may be labelled as 'gang violence', or the loose associations of children be labelled as a 'gang'. Secondly, aspects of Black culture have started to become viewed through the prism of gang activity. For instance, the creation and performance of Drill music (Drill) is often used as evidence of gang association in joint enterprise prosecutions (see below). Without a clear understanding of typical childhood expressions of youth culture – whether it is creating music, hanging out in groups in public places or even getting into disagreements with peers – current actions against gangs will consistently label innocent children as inherently

¹¹⁷ Section 34(5), the Policing and Crime Act 2009.

¹¹⁸ 'Gangs Violence Matrix', Metropolitan Police.

¹¹⁹ PACE Code of Practice – Code A para 2.6

dangerous gang members.¹²⁰ Moreover, we have heard of cases where children identified as gang members were placed under surveillance, rather than safeguarded, so as to allow further evidence to be gathered about a gang's activity. This betrays a lack of understanding of the vulnerability of children and a lack of awareness that they are more likely to be exploited.

2.37 This myopic perception of dangerousness also leads to policy responses that do not address a child's welfare. For example, a common reason expressed by children for carrying knives is due to a fear of being attacked, rather than to carry out attacks. **We therefore recommend that the police automatically consider the possession of a knife by a child as a safeguarding concern rather than as an indicator of potential violence.** For instance, it is worth noting the negative impact that knife possession can have on school participation, with MoJ data indicating that 85% of those convicted of knife possession have been temporarily excluded from school, with 21% permanently excluded.¹²¹ Effective and proportionate responses could be designed that acknowledge that it is not normal for any child to carry a knife and that, if they are, the starting point should be to consider whether it is because they are either vulnerable and/or being exploited. A multi-agency safeguarding response, including social care and education, as opposed to a criminal response could help to protect children from becoming more vulnerable to exploitation and offending. We consider that this would improve outcomes and reduce violence.

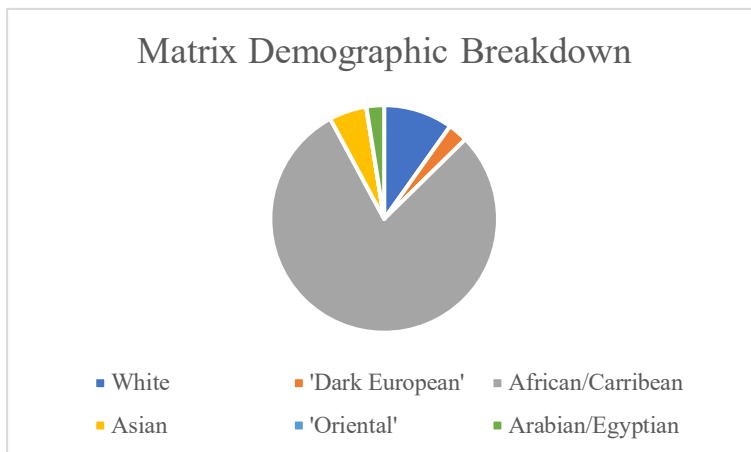
¹²⁰ This propensity can be seen through a comparison of two London boroughs, one majority BAME and one majority White. In the census of 2011, in Hackney, 36% of respondents described themselves as White British, while 74.4% in Bromley did so. In 2017, both boroughs experienced similar rates of child violence. Despite this, Hackney recorded 285 gang-related crimes, as opposed to only 12 in Bromley. This suggests that the gang label is more readily applied to BAME people than White people.

¹²¹ Ministry of Justice, 'Examining the Educational Background of Young Knife Possession Offenders' 2018.

The Gangs Violence Matrix

When I was labelled a gang member I lost my victimisation straight away – participant in a Criminal Justice Alliance Policy Forum on BAME victims of crime¹²²

- 2.38 The GVM is an intelligence tool the MPS uses to identify and risk-assess individuals – often children and young adults – across London who are allegedly involved in ‘gang’ violence. It also seeks to identify those at risk of victimisation, and can include individuals who have simply been victims of serious violence themselves, with no prior convictions. Other forces, such as in Manchester, use similar databases. In 2017, it was described by Commander Duncan Ball as “a way for us to order our intelligence and our information where there is corroborated intelligence that people are involved in gangs.” In addition, “it’s a violence matrix”, resulting in individuals on it being scored “according to the level of violence [that they] have shown.”¹²³
- 2.39 The GVM’s demographic breakdown shows approximately 90.1% being non-White, of which Black individuals make up the majority. One consultee explained to us that 99 out of 100 nominals on a version of the GVM he had seen for Haringey were Black. This is despite the largest so-called ‘gang’ in the borough being the Green Lane Turks.



¹²² Criminal Justice Alliance, ‘CJA/MOJ Policy forum on BAME victims of crime’, 2019.

¹²³ Amnesty International, *Trapped in the Matrix*, (2018), p. 6.

- 2.40 Being placed on the GVM can have negative consequences for an individual, even if they are considered low risk. For example, the MPS is known to share the names of children with other public bodies such as job centres, social services, and schools. We have heard that in these instances, the MPS will refrain from providing crucial contextual information, such as the harm/risk score, the reasons for being on the GVM or whether the child is considered a victim or perpetrator of gang violence. We also understand that this information sharing can go both ways. The Department for Work and Pensions was one of the first places in which the government placed gang advisers, who work with children and young adults to move away from gang life.¹²⁴ We understand that in one year, it identified more gang members than the police.
- 2.41 As a result, many of those named on the GVM, as well as their families, have been denied housing, excluded from school (pursuant to ‘zero tolerance policies’, which may even impact their close friends)¹²⁵ and refused job opportunities.¹²⁶ The policy inflexibly portrays all those involved in gangs as dangerous and requiring a tough criminal justice response to desist. This approach is particularly inappropriate with respect to children, whose welfare should take primacy. One of the stated purposes of the GVM is to safeguard vulnerable children at risk of exploitation. It is impossible to see how this can be achieved where victims and perpetrators are not clearly defined in the GVM.¹²⁷
- 2.42 The danger of these approaches is that it can serve to marginalise and criminalise BAME people, particularly those at a young age. This, ironically, makes criminal behaviour more likely, and the pull of gangs stronger. In

¹²⁴ *Ibid*, p. 25.

¹²⁵ Just for Kids Law & Children’s Rights Alliance for England, *Excluded, exploited, forgotten: Childhood criminal exploitation and school exclusions*, (August 2020), details how schools often excluded children for activities resulting from exploitation from gangs, leading to a deepening of their exploitation.

¹²⁶ For instance, in 2017, Tower Hamlets Council and the MPS established Operation Continuum. This programme aims to create a hostile environment for those suspected of drug dealing, which includes the denial of housing. See also A. Mistlin, ‘Hundreds of charges in ‘Operation Continuum’ drug dealer crackdown’, *East London Times*, 15 November 2019.

¹²⁷ “a lot of people [are] being labelled gang members who are not”, Amnesty International, *Trapped in the Matrix*, (2018), p. 11.

addition to outcomes that limit an individual's (and their family's) opportunities, inclusion on the GVM can also contribute to worse criminal justice consequences. This has been relied on as evidence in bail applications and in joint enterprise prosecutions, to substantiate gang membership – despite the fact that an individual's inclusion may be a result of their status as a victim of serious violence, and not as a result of prior convictions.¹²⁸ Many of these issues are well known, even to the MPS, and we note that in 2020 the GVM underwent an overhaul at the initiative of the Mayor of London, which resulted in a 31% reduction in the number of names listed.¹²⁹ This was followed by further reductions in February 2021.¹³⁰

2.43 Nevertheless, we are deeply concerned by the use of the GVM, as an intelligence tool and source of evidence in courts. We are not convinced that the alleged policing benefits outweigh the manifest disproportionate and negative effect it has on BAME communities. The GVM exacerbates perceptions of children, especially BAME children, as sophisticated criminals rather than vulnerable individuals. **We therefore recommend that the GVM should be abolished.**

2.44 Until this is achieved, **we consider that the GVM should primarily serve as a safeguarding tool, with respect to children, young, and vulnerable adults.** If BAME children associated with gangs are not identified as at risk as early as possible, they will lose visibility of whether they are victims or perpetrators, and are unlikely to seek help when they need it. Our proposal would mean that, where an individual is identified as being at risk of participating in gang activities, a multi-agency safeguarding response is implemented as quickly as possible. It should under no circumstances be used to reduce a child's life chances, for instance by causing school exclusion. For example, when a child comes to Young Hackney with gang associations, it seeks to frame the discussion around peer influence and what the child gets out of those relationships, rather than talking about gangs. Northamptonshire Youth Offending Service (YOS) also have a similar mindset and have set up a

¹²⁸ D. Lammy, 'Speech to London Councils', 2016.

¹²⁹ The Matrix has been the subject of reports from the Information Commissioner's Office and the Mayor's Office for Policing and Crime in London, both of which highlight biases within it. As a result of these reports, a large number of low-risk individuals have been removed from the GVM. However, large disparities remain. See '[Mayor's intervention results in overhaul of Met's Gangs Matrix](#)' Mayor of London, 16 February 2020.

¹³⁰ V. Dodd, '[A thousand young, black men removed from Met gang violence prediction database](#)' *The Guardian*, 3 February 2021.

project for children at risk of committing gang-related crimes, working with them to address their needs. This can include mentoring and is completely voluntary.

- 2.45** Such schemes require a level of transparency that does not currently exist in the YJS. It is essential that individuals are urgently informed of their inclusion on the GVM, and that they are aware of the steps they can take and the support that is available to them, to enable their names to be removed. This should take place alongside a referral to local authority safeguarding, or the National Referral Mechanism¹³¹ (NRM) if there is suspicion of modern-day slavery.¹³² A clear safeguarding plan should be created for the child by a Youth Offending Team (YOT) that will provide a realistic chance of their being removed from the GVM.
- 2.46** If a child is in fact involved in a criminal gang, there is at least a likelihood that they are themselves victims of exploitation. Children are inherently vulnerable; joining a gang may enable them to obtain the feeling of belonging and protection, which is the natural instinct of every child. As such, we consider that the procedures in place for the NRM (and the safeguarding steps prior to referral) should be considered for every child with or at risk of gang associations in the same way they are for county lines operations.

Prosecuting gangs

- 2.47** Perceived associations with gangs or so-called ‘gang culture’ can have serious CJS consequences. We understand that gang membership is often invoked in the context of joint enterprise prosecutions in cases involving more than one suspect or defendant¹³³ as key evidence in establishing a common purpose

¹³¹ The NRM ensures that those at risk of modern slavery and trafficking are identified and safeguarded as quickly as possible. Home Office, ‘National referral mechanism guidance: adult (England and Wales)’.

¹³² Such referral should already take place under the NRM. However, it only appears to be considered where a child is a victim of county lines. County lines is a drug dealing strategy, where gangs from cities go to rural locations to deal drugs. They often take advantage of vulnerable people by using their homes, and exploit children by forcing them to do much of the work. See Ministry of Justice, *County Lines Exploitation: Practice guidance for YOTs and frontline practitioners*, (2019).

¹³³ Joint enterprise is a common law principle where an individual can be convicted for the crime of another, if they foresaw that the associate was likely to commit an offence. The case of *R v Jogee* [2016] UKSC 8 established that the doctrine had taken a wrong turn for thirty years, with an increasing number of people being convicted under the doctrine, particularly Black boys and young men. This has resulted in a large number of what many consider to be miscarriages of justice. Despite *Jogee* ensuring the law has changed tack, for an individual to successfully appeal a conviction that happened prior to *Jogee*,

and/or motive.¹³⁴ However, in practice, we consider that there are frequent instances of prosecutors deploying such evidence with insufficient care.¹³⁵

2.48 While evidence of inclusion on the GVM may be relevant, for the reasons set out above, the basis for inclusion on the GVM can often be flawed and weak.¹³⁶ The introduction of such ‘intelligence’ into a trial can have an adverse effect on the fairness of proceedings. In such a case, “the court ought not to admit it”.¹³⁷ In light of the opaque way in which individuals are added to the GVM, it is vital that decisions to use it as evidence are made with sufficient care. **When provided with evidence of an individual’s inclusion on the GVM, prosecutors should ask to review the underlying data that triggered the inclusion. Further, if adduced in court (including for bail applications and injunctions), this information should be disclosed as a matter of course.**

2.49 The CPS’ recently published guidance ‘Decision making in “gang” related offences’ seeks to address this. It identifies the negative connotations of the term “gang” and states that the term “gang” also disproportionately affects minority ethnic people. It states that for these reasons, prosecutors must not the

they must show that they have suffered ‘substantial injustice’, a hurdle that is too high for many. JENGBA and other organisations continue to campaign for the law to improve.

¹³⁴ Evidence of gang membership is usually admitted as bad character evidence under gateway (d) of section 101(1) of the Criminal Justice Act 2003. This allows evidence that is “relevant to an important matter in issue between the defendant and the prosecution.

¹³⁵ Examination of this issue has recently been reported by the BBC. See S. Swann, “Drill and rap music on trial” *BBC*, 13 January 2021. See also P. Williams and B. Clarke, *Dangerous associations: Joint enterprise, gangs and racism*, (Centre for Crime and Justice Studies, 2016).

¹³⁶ In one incident, a crime report without evidence stated that an individual was a gang member. This crime report was then used by another officer to support their decision to include the individual on the GVM, see note Amnesty International, *Trapped in the Matrix*, (2018), p. 11.

¹³⁷ Section 101(3) CJA 2003. *Lewis & ors v R* [2014] EWCA Crim 48, para 82: When considering relevance, the court must ask itself the following questions:

- a) Is the evidence relevant to an important matter in issue between the defendant and the prosecution?
- b) Is there proper evidence of the existence and nature of the gang or gangs?
- c) Does the evidence, if accepted, go to show the defendant was a member of or associated with a gang or gangs which exhibited [behaviour or beliefs relevant to the case at hand]?
- d) If the evidence is admitted, will it have such an adverse effect on the fairness of proceedings that it ought to be excluded?

use term “gang” unless there is evidence to support that assertion.¹³⁸ We welcome this helpful clarification for prosecutors. However, to counter and root out potential unconscious bias in the prosecution of gangs, **the CPS must ensure that it reviews every decision to adduce gang association for accuracy and racial bias and explore different ways of prosecuting crimes perpetrated by groups of children and young adults.**

Drill Music as Evidence

2.50 We are also concerned by the increase in use of Drill music evidence in trials. Drill is a musical genre that first arose in London estates consisting of rap accompanied by a trap beat. Lyrics are intended to shock and are often violent and sexual, with artists using exaggeration and dramatic license to create impact.¹³⁹ The CJS has come to [mis]construe Drill as a form of realism, depicting what the artists have directly seen, heard and done.¹⁴⁰ As a consequence, lyrics are often adduced as biographical, and therefore admissible evidence. The police, in particular, frequently see Drill as an incitement of violence, from one gang against another. Therefore, anyone involved in the production of songs chosen as evidence, or who appear in the music videos of those songs, are considered potential gang members. This viewpoint has led to Drill artists, the majority of which are young Black men and boys,¹⁴¹ being subject to injunctions that prohibit them from creating Drill,

¹³⁸ The CPS has published guidance which provides a summary of the relevant principles and case law to be applied when making charging decisions in gang related offences and when seeking to use gang related evidence in proceedings – see, ‘[Gang related offences – Decision making in](#)’ CPS.

¹³⁹ Drill videos often consist of a large group of children and young adults congregating, with many simply being in the background. On occasions, weapons are used as props in the videos. Those who produce Drill music see commercial success as a possible route out of the life they lead and therefore aim to be popular and to garner fame. They do this through creating music that is an artistic reflection of what they see around them. Lyrics are often in the first person but they are also stories of what the artists see and hear; a blend of reality and fiction. Drill artists take on a persona when they perform and do not consider their music to be biographical.

¹⁴⁰ This different view may have been driven by high profile cases where there was a direct link between what was said in a Drill video and a crime that took place soon after. However, we consider the current approach of the CJS has used exceptions to make a rule, as the vast majority of Drill is not tangibly connected with crimes and is merely a manifestation of a culture that is often viewed with suspicion.

¹⁴¹ “The vast majority of the defendants were young black men and boys. We identified a total of 232 people facing trial in the 67 cases. Only eight of them were female. Almost half were teenagers.” See - S. Swann, ‘[Drill and rap music on trial](#)’ *BBC*, 13 January 2021.

demonising a predominately Black-led genre of music. Convictions have been secured on the basis of an individual's appearance in a music video.

- 2.51 To support such evidence, the police have invested significant resources on researching Drill videos and 'translating' their lyrics, so as to make them understandable to the court. A unit within the MPS focuses on identifying Drill music and analysing its contents. In 2018, the unit had compiled a database of 1,400 Drill videos.¹⁴² Officers from this unit then provide "expert" evidence in court for the prosecution. In our view, the use of police officers as experts amounts to no more than the prosecution calling itself to give evidence. They have little understanding of the culture within which Drill is created, and how it is made.
- 2.52 We are also concerned by the use of Drill as evidence of bad character, which purports to suggest that a musical genre unique to a certain demographic is inherently dangerous and criminal, a standard not applied to any other music genre or art form. By presenting an artistic act that shows drive, determination and creativity as dangerous and criminal, it negates positive aspects of a defendant's character, making a finding of guilt based on weak evidence more likely. It also sends a message to Black boys and young men that their cultural activities will be policed and prosecuted.
- 2.53 Academic research on the use of Drill as evidence in trials is at an early stage.¹⁴³ However, we are aware of preliminary research that suggests that almost half of defendants in trials involving Drill as evidence are teenagers at the time of sentencing, with some as young as 14 at the time of the relevant alleged offence.¹⁴⁴ Painting a child as inherently criminal for producing music flies in the face of the child-focused, welfare-based approach required of the YJS and we are particularly concerned by this. **We consider that evidence of producing Drill music or appearing in Drill videos should not be used as bad character evidence unless it can be shown to be relevant to the specific crime. Moreover, we consider that courts should apply more rigour in**

¹⁴² C. Blower, 'Courts relying on Drill music to reinforce racist stereotypes', *The Justice Gap*, September 2020.

¹⁴³ E. Quinn, 'Lost in Translation? Rap music and racial bias in the courtroom' *Policy@Manchester Blogs*, 2018.

¹⁴⁴ See also S. Swann, 'Drill and rap music on trial' *BBC*, 13 January 2021.

determining the relevance and admissibility of Drill due to the corrosive effect of portraying a genre of music so closely connected to Black communities as innately illegal, dangerous and problematic.

- 2.54** Moreover, Drill should only be presented as expert evidence where it is indeed indecipherable to a reasonable juror. Such expert evidence must meet the ordinary requirements pursuant to Criminal Practice Direction 5 and Criminal Procedure Rule 19; namely that prosecution and defence must identify the real issues in dispute before the evidence is submitted to a jury for consideration. In order to avoid the potential for misinterpretation, we recommend that **joint experts should genuinely understand Drill and its cultural context. Any report on the content should, where possible, be agreed by both the defence and prosecution. This would allow for a more objective assessment of the relevance of the evidence, and safeguard against inappropriate extensions of what might be viewed as opinion evidence.**

The PREVENT Programme

- 2.55** Following 9/11, the ‘war on terror’ and subsequent terrorist attacks in the UK, the Muslim prison population within the UK doubled in 16 years. Muslim people now account for 16% of those in prison, despite representing just 5% of the general population.¹⁴⁵ Moreover, only one percent of Muslim prisoners have been convicted of terror related offences, while at the same time make up half of all people held in Close Supervision Centres.¹⁴⁶ This suggests that factors other than the offence committed are taken into account when considering close supervision.
- 2.56** In addition to being sentenced for longer periods, Muslim communities have felt that they have been placed under increased surveillance, primarily through PREVENT.¹⁴⁷ While guidance is clear that PREVENT is not a police programme, we understand that policing plays a vital role in the programme. As a result, the roll-out of PREVENT has led to Muslim communities feeling

¹⁴⁵ Prison Reform Trust, ‘Prison: the facts – Bromley Briefings Summer 2019’, p. 7.

¹⁴⁶ *Ibid* – “CSCs are designed to manage highly disruptive and high risk people in prison”.

¹⁴⁷ PREVENT is one of four elements of CONTEST, the government’s counter-terrorism strategy.

unfairly targeted, and a strong suspicion and fear of PREVENT.¹⁴⁸ with one individual with whom we spoke saying that the Muslim community had “lost all faith” in the programme, with some believing that PREVENT is used to “give people permission to hate Muslims” and it “risks being used to target young Muslim people.”¹⁴⁹ However, there are positive views of the programme as well, with one member of a PREVENT Advisory Group (PAG) stating, “we believe the PAG partnership is extremely useful and helpful as seen at times of great emergencies as well as for promoting common understanding on issues of common concern”.¹⁵⁰

2.57 The majority of complaints appear to relate to the referrals process. There is a significant and disproportionate representation of Muslim children and young adults referred to PREVENT, relative to the proportion of Muslim children and young adults in the school and college-age population,¹⁵¹ with 60% of children referred to PREVENT within school in 2016 being Muslim.¹⁵² Recent data has shown that, in the year ending March 2020, there were a total of 6287 referrals, 54% of which were under the age of 20.¹⁵³ Moreover, following the introduction of the section 26 duty,¹⁵⁴ a number of inappropriate referrals were made to PREVENT, including a nursery which considered reporting a four-

¹⁴⁸ Qurashi, F. *The Prevent strategy and the UK ‘war on terror’: embedding infrastructures of surveillance in Muslim communities*. *Palgrave Commun* 4, 17 (2018).

¹⁴⁹ D. Parker, D. Chapot and J. Davis, ‘The Prevent Strategy’s Impact on Social Relations: a report on work in two local authorities,’ *Feminist Dissent* 2019, 4, p. 160-193.

¹⁵⁰ *Ibid.*

¹⁵¹ P. Thomas, ‘Britain’s Prevent Strategy: Always Changing, Always the Same?’ in: J. Busher, L. Jerome (eds), *The Prevent Duty in Education*, Palgrave Macmillan, 2020.

¹⁵² The Muslim Council of Britain, *The impact of Prevent on Muslim communities: a briefing to the Labour Party on how British Muslim communities are affected by counter-extremism policies*, (2016).

¹⁵³ Home Office, ‘*Individuals referred to and supported through the Prevent Programme, April 2019 to March 2020*’, November 2020.

¹⁵⁴ Section 26 of the Counter-Terrorism and Security Act 2015 places a duty on certain bodies, such as local authorities, schools, prisons, police, and healthcare providers, to have “due regard to the need to prevent people from being drawn into terrorism” in the exercise of their functions. Although it aims to address all forms of terrorism, its main focus, when implemented, was on those associated with Al Qa’ida.

year-old boy for mispronouncing “cucumber” as something that they thought sounded like “cooker bomb” when describing a picture he drew.¹⁵⁵

2.58 Within schools, the programme may be causing a disproportionate focus on Muslim communities’ perceived extremism in a context where far right movements are increasing in scope. For instance, at a national level, recent figures indicate that of cases referred, 43% were for right-wing radicalisation, with 30% for Islamist radicalisation. This is despite worrying anti-Muslim trends in schools, where polling in 2015 indicated that 31% of young children believe Muslims are “taking over England” and 26% believed that “Islam encourages terrorism”.¹⁵⁶ The threat of referral has led to many children being “more careful about what they talk about for fear of being referred through PREVENT.”¹⁵⁷

2.59 Muslim children experience many of the same negative justice outcomes as other BAME groups, but on top of this they believe their religion is considered dangerous by the YJS. Indeed, PREVENT, in conjunction with the GVM, can result in a heightened level of undue scrutiny on communities where intersections exist. It is wholly unacceptable that children should be made to feel this. We therefore consider **that the Government must urgently re-start the inquiry into PREVENT, in a form that will secure the confidence of Muslim communities. It is vital that this review fully assess the drivers for the disproportionate way in which referrals are made.**¹⁵⁸ Muslim children and Muslim organisations should have confidence in the impartiality of the review, and be engaged to better understand their concerns as well as their religion. This should result in guidance for not only PREVENT, but each stage

¹⁵⁵ B. Quinn, ‘Nursery ‘raised fears of radicalisation over young boy’s cucumber drawing’, *The Guardian*, 2016.

¹⁵⁶ Largest survey of schoolchildren by Show Racism the Red Card: see M. Taylor, ‘Racist and anti-immigration views held by children revealed in schools study’ *The Guardian*, 2015.

¹⁵⁷ *Ibid.*

¹⁵⁸ While the inquiry was paused after Lord Carlisle stepped down in December 2019 (Matrix Chambers, ‘Lord Carlisle stood down as independent reviewer of Prevent programme’, 2019), a new chair, William Shawcross, has since been appointed. However, this has provoked controversy due to previous comments he has made, and Muslim communities have reasonable concerns as to his suitability. For instance, he has stated “Islam is one of the greatest, most terrifying problems of our future. I think all European countries have vastly, very quickly, growing Islamic populations...” - The Muslim Council of Britain, *The impact of Prevent on Muslim communities: a briefing to the Labour Party on how British Muslim communities are affected by counter-extremism policies*, (2016), p. 40.

of the CJS that reiterates that religious views are not in themselves dangerous and ensures the specific circumstances of each child is taken into account.

Overlooked Groups

- 2.60** GRT children and BAME girls and young women also face significant challenges within the YJS. However, we have found that there has been insufficient focus and a lack of research aimed at understanding and improving their experiences and outcomes.

Gypsy, Roma and Traveller Children

- 2.61** While GRT people represent approximately 0.1% of the UK population, their children make up 12% of the population in Secure Training Centres (STCs) and 7% of the population in Young Offender Institutions (YOIs), including making up 17% of the Keppel Unit.¹⁵⁹ Concerningly, only 51% of the GRT boys surveyed in YOIs said it was their first time in custody.¹⁶⁰ Despite the large numbers, prison inspectors found that there was still a lack of understanding of GRT people's needs.¹⁶¹ For instance, within custody and in YOIs, GRT boys were far more likely than other boys to be in education or other purposeful activity. However, this trend was reversed in STCs, suggesting there are not enough targeted education programmes, outside of STCs, for GRT children.
- 2.62** Bias toward GRT children has been apparent in many of the discussions we have had. One consultee with whom we have spoken to described how they had been told by a police officer that the police force they work for do not consider GRT children for diversion as they do not believe they will complete the course. Worryingly, it appears that such views are prevalent among police forces. A report by the Traveller Movement highlights how some police

¹⁵⁹ The Keppel Unit is a specialist unit, designed for high-dependency individuals to provide a special level of care and support to them. It is the first unit of its kind. *See* The Traveller Movement, 'Sentencing Gypsy, Traveller and Roma Children', 2017.

¹⁶⁰ The Traveller Movement, 'Westminster Hall Debate, Outcomes for Gypsies and Travellers in the youth justice system', p.1, 2017.

¹⁶¹ HM Inspectorate of Prisons, *HM Chief Inspector of Prisons for England and Wales – Annual Report 2017-18*, (2018), p. 32.

officers view the majority of GRT people as “criminals”¹⁶² and details how discrimination is brushed off by those in authority.¹⁶³ This bias manifests itself in many other ways. For instance, we are aware that should some police forces be called to a GRT site for a minor disturbance, they will arrive with far more officers than the immediate situation requires. GRT heritage is held in such low regard that some police officers hide their own heritage, so as not to be on the wrong end of bias.

- 2.63** It is clear to us that such bias is prevalent throughout society, with GRT people often depicted negatively by film, media, and politicians. This has allowed prejudicial views to take hold and become, if not widely accepted, at least normalised to such an extent that they are not challenged or questioned. GRT people generally present as White, perhaps explaining why some do not consider them to be an ethnic group. Moreover, the small size of the GRT population means that the extent and rate of negative outcomes GRT people face are not readily understood.
- 2.64** The inherent societal bias GRT people face is similar to that of other BAME groups, resulting in overwhelmingly more negative criminal justice outcomes. When decision-makers come face to face with GRT children, some will be less likely to consider rehabilitative options. It is likely that the differential educational achievement within the community as a whole (itself a consequence of bias), contributes toward a lack of voice within the justice process. Moreover, the fractious relationship means that GRT communities do not consider the police will meet their expectations of fairness, leading to a lack of engagement in many societal systems. This lack of voice and engagement is particularly pronounced in GRT children, and compounds their inherent vulnerability.
- 2.65** Against this background, we welcome the YJB’s decision to improve its data gathering to include GRT as a distinct category. This should be followed in all statistical studies undertaken by government bodies. Moreover, we urge

¹⁶² “I was talking to a police officer the other day and he said to me, ‘why are the majority of Gypsies and Travellers criminals?’” – Female, Irish Traveller, in, The Traveller Movement, *The preliminary report: policing by consent: Understanding and improving relations between Gypsies, Roma, Irish Travellers and the Police*, 2018, p. 4.

¹⁶³ “Somebody made a comment very quietly...‘dead Gypsy, good Gypsy’... I complained to the sergeant and he [said] ... ‘they are not racist, they are just very frustrated’” – male constable in *ibid*.

academics and organisations to begin studying the bias GRT people face to include the marginalisation of this particular community in their research. **Criminal justice agencies must proactively improve their relationship with the GRT community or take steps to better understand through a GRT community engagement strategy. The Traveller Movement has produced recommendations on how to do this and we fully endorse them.**¹⁶⁴

BAME girls and young women

- 2.66 BAME girls and young women also have a unique experience of the YJS, which can vary across a diverse range of racial and ethnic groups. There appears to be a lack of understanding of the different drivers for BAME girls and young women (as opposed to BAME boys and young men) who interact with the justice system. Furthermore, there is little understanding as to the nature of BAME girls and young women's offending. We consider that where their experience is better understood, BAME girls and young women will be less likely to be penalised harshly for crimes they may have committed and instead more often safeguarded as victims of crime.
- 2.67 Despite increased knowledge of the risks, there is a lack of support services available to help girls and young women.¹⁶⁵ Moreover, particularly for Asian girls and women, there appears to be a reluctance to get legal help due to fear of familial consequences.
- 2.68 Where they appear, BAME girls and young women are usually involved on the periphery of gangs, with very few reaching the top of the hierarchy. In such groups, it is common for BAME girls and young women to be sexually exploited. In addition, BAME girls and young women involved in the broader community of gangs, as mothers, sisters or girlfriends are likely not to be dealt with as victims of crime but as criminals.¹⁶⁶ The inability of the YJS to see them as victims may be partly due to girls and young women being perceived and perhaps presenting themselves as strong and defiant in the face of a system

¹⁶⁴ *Understanding and improving relations between Gypsies, Roma, Irish Travellers and the Police*, 2018, p. 4.

¹⁶⁵ *Ibid.*

¹⁶⁶ Race on The Agenda, *This is it. This is my life...Female voice in violence, final report*, (2011), p. 9.

they do not recognise as supportive and protective. This highlights the need for a YJS that is curious about the people before it and seeks to fully understand them. Sadly, at present many BAME girls and young women feel that their histories and circumstances are often not accounted for in proceedings.¹⁶⁷

2.69 Away from gangs, similar patterns exist within other contexts. Asian and Muslim girls and young women are often coerced into criminality and are not treated seriously as victims. There are also additional elements of shame and lack of confidence in the police, meaning that Asian and Muslim girls and young women may find it difficult to report crimes against them,¹⁶⁸ and suffer acute stigma if they are found to have committed a crime.¹⁶⁹

2.70 There is a failure on the part of the police to convince Muslim, Asian or GRT girls and young women that their reports of crime will be taken seriously. Where investigations do take place, there are regular complaints that they are not investigated to an acceptable standard.¹⁷⁰ This reduces the likelihood of those individuals reporting further offending in the future.¹⁷¹ Proper investigation of crime, with an understanding of the risks that BAME girls and young women face, would allow the police to identify any potential risks of exploitation and avoid criminalising victims. If such risks are properly identified, referrals to safeguarding mechanisms (either through the local authority or the NRM) can be made.

2.71 However, for this to be effective, there must be a clear understanding of what vulnerability and exploitation is and when safeguarding is required. We have

¹⁶⁷ J. Cox and K. Sacks-Jones, *“Double disadvantage”: the experiences of Black, Asian and Minority Ethnic women in the criminal justice system*, (Agenda, 2017), p. 6.

¹⁶⁸ S. Gohir, *Muslim Women’s Experiences of the Criminal Justice System: Executive Summary*, (Muslim Women’s Network UK, 2019).

¹⁶⁹ Prison Reform Trust, *Counted out: Black, Asian and minority ethnic women in the criminal justice system*, (2017), p. 5.

¹⁷⁰ In one investigation where a woman of Somali heritage was attacked, “an officer later questioned her about whether she had been buying something from her attackers, which she had taken to mean drugs. She also said no statement was taken from her for two months, and still not from her two friends. She said police failed to secure CCTV footage, which has now been lost, and might have helped tracked down the racist attackers, who remain free,” in V. Dodd, *‘Met apologise over errors in racist attack investigation’*, *The Guardian*, 22 October 2020.

¹⁷¹ S. Gohir, *Muslim women’s experiences of the criminal justice system*, (Muslim Women’s Network UK, 2019).

heard that potential issues of vulnerability and exploitation are explained away as social norms. For instance, we have heard that on one occasion, a girl was at risk of forced marriage, with all the relevant indicators. Despite this, the social worker dismissed concerns by stating that girls within the GRT community always get married young. There is also a perception from within BAME communities that first responders and police will not act, as the community's "faith allows" some crimes to happen against girls and young women. This is extremely concerning. Although we encourage understanding of community contexts this should not excuse dismissing indicators of vulnerability and exploitation. **Where indicators of vulnerability and exploitation of BAME girls and young women are identified, the proper procedures – whether for forced marriage or modern slavery – must be followed.**

2.72 Across all BAME groups, children need to be seen as children by actors in the YJS. The next chapters consider how this can be achieved.

KEY RECOMMENDATIONS

- The Home Office should launch a review on the police's use of force, and specifically tasers, on children, BAME people and those with mental health difficulties;
- Police forces must prioritise a return toward neighbourhood policing;
- The Home Office should immediately suspend and review the use of section 60 powers, which allow individuals to be searched indiscriminately without reasonable suspicion;
- The Gangs Violence Matrix, which unfairly labels children as potentially violent, should be abolished; and
- Evidence involving Drill music should not be used as bad character evidence unless it is strictly relevant to the crime at hand.

III. TREATING CHILDREN AS CHILDREN

Gerard said he asked the officer to help him to safety, or to an ambulance “and he was like: no” Gerard said. “He had to go and help the rest of his team. He did at least try to talk me through it and look for injuries, but he also stopped and searched me.” – Gerard, a young attendee of the Black Lives Matter protests in London 2020, after being attacked by a far-right protestor.¹⁷²

Introduction

- 3.1 The YJS operates differently to that of its adult counterpart, and in many ways has already adapted to the needs of children. This can be seen in the creation of Youth Courts and in YOTs. However beyond those structural pillars, inconsistent practice is widespread, which we believe contributes to disparate outcomes between BAME and White children.¹⁷³
- 3.2 The YJS should treat each child uniquely, rather than determining their treatment based on preconceptions. We envisage a YJS that takes the time to understand the child before it, that is flexible enough to meet that child’s needs and that has procedures in place to guard against biased thinking and decisions, however these may manifest.
- 3.3 Dr Kathryn Hollingsworth’s research on child friendly judgments and using child sensitive approaches, reinforces that the fairness of criminal justice decision-making and process can be transformative in terms of outcomes. In other words, if the sentencer communicates to the child clearly, ensuring the child understands and effectively participates in the sentencing process, “it can demonstrate the judge was neutral, the child’s voice has been heard and treated with dignity and respect. This can increase the child’s trust in the system, and the legitimacy of the decision in their eyes, which in turn helps the child to accept the sentencing outcome”.¹⁷⁴ Child friendly judgments have

¹⁷² D.Gayle, ‘Injured boy ‘stopped and searched’ by Met officer he asked for help’ *The Guardian*, 1 July 2020.

¹⁷³ Noting that the term BAME includes Gypsy, Roma and Traveller children, who are a White minority ethnic group.

¹⁷⁴ Professor Kathryn Hollingsworth (Newcastle University) ‘Sentencing Remarks for Children: A New Approach’ Newcastle Law School Research Briefing No 14. It draws on research conducted by Kathryn

communicative, instructive, developmental and legally transformative functions. This child sensitive and child centred approach can be applied by all criminal justice professionals throughout the criminal justice process.

3.4 JUSTICE's 2019 report, *Understanding Courts*, identified that legal processes are often confusing and distressing for those involved. The report details how to present information in a way that users of the system, including children, can more easily digest. Moreover, it identified that courts often do not take sufficient care to ensure that the people before them understand the process. We endorse the recommendations in the report, particularly those regarding court familiarisation visits, the provision of information on the court process in child appropriate formats, and the adaptation of language for children appearing in court.¹⁷⁵ In practice, this can also mean ensuring important information is available in relevant languages.¹⁷⁶ We consider that more initiatives like this need to be introduced throughout the whole YJS in order to understand the children within it. By understanding the children and their context, a clearer assessment of their needs should emerge, which would allow for more appropriate outcomes.

3.5 In this chapter we highlight where good practice is already developing these approaches and should be more broadly tested and implemented, in line with core principles that we consider are necessary to enable fairer processes for accused children in the YJS:¹⁷⁷

Hollingsworth and Helen Stalford (see especially “This is a case about you and your future”: Towards Judgments for Children (2020) 83(5) *Modern Law Review* 1030-1058).

¹⁷⁵ For example, we note the work of Y-Stop, who have developed a stop and search help card in Somali for those who have English as a second language. See ‘Search card in Somali’, Y-Stop.

¹⁷⁶ For good examples of information being presented in a child-friendly format, see ‘Notice of rights and entitlements: easy read’; and materials from the Youth Justice Legal Centre.

¹⁷⁷ These principles align with Procedural Justice Theory which we consider to be vital in creating a YJS that works for everyone. The key aspects of PJT are: understanding; voice, respect; and neutrality. While some of these elements already operate within the CJS, we are not satisfied that they are implemented fully, or satisfactorily. Taking a PJT informed approach will help decision-makers challenge their own subconscious biases and ensure that the children before them are seen and heard: Thibaut and Walker in 1975 in *Procedural Justice: A psychological analysis*, and expanded upon by Tom Tyler in 1990 with his book *Why do people obey the law?* which explored people's perceptions of procedural justice and how this shapes perceptions of legitimacy. See also E. Lagratta and P. Bowen, *To be fair: procedural fairness in courts*, (Criminal Justice Alliance, 2014), p.2.

- a) *Ownership.* The programmes with which we have been most impressed involved criminal justice agencies taking ownership of issues and trying to address them. We consider that where there is an actual or perceived problem, agencies should be proactive in addressing any concerns. A good example of ownership is the move by Hackney YOT to create a statement on disproportionality, which it is in the process of finalising. This will set out what Hackney YOT expects of its staff when it comes to racial disparity.
- b) *Reflection.* Linked to ownership, we consider that criminal justice agencies should evaluate how current processes work, whether they are suitable and, if necessary, be proactive in changing those processes which are not working. For example, the CPS has improved diversity among its staff and introduced increased scrutiny of case files focused on racial bias. Reflection also means being curious about the children in the YJS, finding out as much about them and their circumstances as possible and reflecting on how these circumstances may have contributed to their behaviour and culpability.
- c) *Engagement.* All criminal justice agencies need to actively listen to the communities they serve, and the children with whom they come into contact. This means that rather than hearing accusations of bias and taking a defensive stance, agencies should understand the causes of concern and try to explain or address them. All too often, defensive reactions entrench the ‘us versus them’ perception, diminishing the relationship between criminal justice agencies and the communities they should serve. By working with communities and children to address concerns, a justice system that is, and is seen to be, fair can be developed.
- d) *Child first.* When considering how to improve their processes and procedures, criminal justice agencies should have the child at the forefront of their mind. This may mean seeking the opinion of children affected, designing child-friendly procedures or challenging misperceptions that result in children being inappropriately considered more mature than they are. The YJS must always account for the inherent vulnerability of children, as well as their large capacity for change. The use of appropriate terminology is key, and **we support calls for all those under 18 to be referred to as children in all future legislation and policies.** This is particularly important in this context as we have heard of numerous

instances during sentencing, or within prisons, where BAME children are ‘adultised’ and receive worse outcomes due to the perception of their (usually physical) maturity, rather than their chronological or developmental age.

- e) *Collaborative decision making.* Criminal justice agencies are designed to tackle, investigate and prosecute crime rather than care for the welfare of children. Although they have made strides in filling gaps in this regard, the fact remains that there is a considerable lack of child welfare expertise. As such, it is vital that criminal justice agencies work with experts and relevant partners and give more weight to their views during the criminal justice process.

3.6 In line with these principles, the whole CJS must develop an awareness of and concern for racial disparity. While we acknowledge the requirements of the public sector equality duty pursuant to the Equality Act 2010, we consider that it has not been effective in bringing racial disparity to the forefront of public sector bodies’ minds.¹⁷⁸ It is clear that it must be strengthened with further initiatives. One promising initiative is the proposal by the Magistrates Association and YJB to create a *National Protocol for BAME Children*. It is intended that this would be based on the *National Protocol on Reducing Criminalisation of Looked-After Children*,¹⁷⁹ and promote adherence to key principles when dealing with BAME children, such as the primacy of their welfare. For the protocol to be successful, it would require a range of organisations to join, including police forces, educational institutions, mental health services, children’s services and the Youth Custody Service. Although in its early stages, this is an initiative that we welcome and support.

¹⁷⁸ Public bodies are required to take steps to remove or minimise disadvantages, as well as tackle prejudice and promote understanding. Further, if any public body fails to address these issues, or indeed exacerbates them, the Equality and Human Rights Commission can sanction public bodies for any breach of the Equality Act. See the Equality Act 2010, s.149.

¹⁷⁹ Department of Education, Home Office and Ministry of Justice, *National Protocol on reducing unnecessary criminalisation of looked-after-children*, (2018).

Restorative Practice

3.7 Where restorative justice seeks to address the complex issues that result from crime, restorative practice looks to the root causes of problematic behaviour by focusing on preventing social ills. Central are the core aims of:¹⁸⁰

- a) reducing crime and violence;
- b) improving human behaviour;
- c) restoring relationships; and
- d) repairing harm.

3.8 We have heard of the need for this approach from communities who experience mistreatment from the police, with such incidents described as a form of trauma. 65% of BAME individuals believe the police to be biased.¹⁸¹ These communities framed the solution as starting with an acknowledgement of historic wrongdoing, accompanied by a strong commitment to both improve practice in the future, and to listen to their lived experiences. The police must recognise that this perception of bias is unacceptable, and look to address it as a matter of priority. Lessons can be learned from the CPS Community Engagement Forums, where members of the community are invited to share their experiences. Magistrates will also visit communities to speak about their work through the Magistrates Association's programme 'Magistrates in the Community'.¹⁸² We consider that additional meetings deploying restorative practice with BAME children, building on such admirable initiatives, can help to create a shared understanding between these agencies and the communities they serve. This is particularly important where confidence is low and there is a growing call for uncomfortable conversations to happen before the CJS can (re)gain credibility.

3.9 Restorative practices can also be used to better understand and engage with children in the YJS. For instance, the Restorative Engagement Forum has convened circles between police officers and children and young adults from Northamptonshire and Gloucestershire. In these meetings a facilitator guided participants' self-expression, ensuring due focus on the impact of actions rather

¹⁸⁰ T. Wachtel, 'Defining restorative', International Institute for Restorative Practices.

¹⁸¹ V. Dodd, '65% of minority ethnic Britons say police are biased against them', *The Guardian*, 20 August 2020.

¹⁸² 'Magistrates In The Community'. Magistrates Association.

than on the blameworthiness of individuals. This gives children the opportunity to explain to police officers what their experience of policing feels like, thereby fostering opportunities for the development of trust and mutual understanding. For example, at the end of one session, trust exercises are used to further build a positive relationship. Such sessions will not simply decrease the unacceptable levels of racial disparity in a community. However, they represent an opportunity for the police to see the children within their respective areas as children and consider the impact of their investigative methods.

- 3.10 We were pleased to learn that at a national level within the police force, there is an emerging understanding that not only should children be treated differently, but that processes designed for adults are not suitable for children.¹⁸³ To this end, the MPS have teamed up with the Mayor's Office for Policing and Crime to start the 'Voice of the Child' project. This project seeks to see children as their 'clients' and to use this viewpoint to improve the 'service' they provide.

Voice of the child

In order to assess how children experience the booking in process for custody, the MPS have organised mock custody scenarios, involving a mix of real custody sergeants and actors, where they go through each step with children who have either prior experience or are at risk of doing so in future. The MPS aim to use this learning to improve the process.

After one of the sessions, they were informed by a girl that the police were known as 'The Perverts', due to the presence of cameras in the toilets. This anxiety could have been easily avoided but the MPS had never thought to tell children going through custody that the cameras are pixelated.

As a result, the process was changed, with children now informed of the cameras and the pixilation of any footage. In addition, girls are told that they should be assigned a female officer and can be provided with toiletry items, if needed. To ensure that the correct procedures are followed, a mandatory

¹⁸³ National Police Chief's Council, 'National Strategy for the Policing of Children & Young People' 2015.

checklist has been introduced, which must be reviewed and signed off by a designated officer (Inspector).¹⁸⁴

- 3.11 The MPS has also embraced the fact that the way they use language is important, acknowledging that communications with children have at times been ineffective. As a result, children have not understood what was happening to them, compounding the trauma that arrest can cause. The MPS now works with MOPAC to improve language and information. In addition, they have begun working with the UK Youth Parliament to design leaflets with language that is easier for children to understand.¹⁸⁵
- 3.12 The IOPC have also used a similar model, creating a ‘Young Adults’ panel, some of whom have had experiences in the YJS. Their task is both to help inform young adults about their rights and the complaints process, as well as to create learning opportunities for police officers about how to interact with children.
- 3.13 We are impressed with the desire to learn from children that has been shown through these projects. In addition to learning and improving processes, it can only serve to improve communication and ensure children understand important processes. We consider that there is potential for similar mock walk throughs to take place in other parts of the YJS. For instance, this may improve stop and search practice, trials and sentencing hearings.
- 3.14 We consider that such initiatives would be beneficial for all actors in the CJS, from police, through to the judiciary. Indeed, in some prisons restorative practice is improving the relationship between prisoners and staff.¹⁸⁶ This should result in better outcomes for the children passing through the YJS as both sides more fully understand not only their own role, but the experience of the other person – helping a judge to see a child as a child, and adjust their approach accordingly.

¹⁸⁴ ‘Freedom of Information Request – Police Protection of Children Policy’, 2018.

¹⁸⁵ The UK Youth Parliament is a youth organisation in the United Kingdom, consisting of democratically elected members aged between 11 and 18. It has 369 members, who are elected to represent the views of children in their area to government and service providers.

¹⁸⁶ A. Ali, *Responding restoratively series: #1 Responding restoratively to COVID-19*, (Criminal Justice Alliance, August 2020), p. 17.

- 3.15** As such, **criminal justice agencies should pilot and evaluate the use of restorative practice circles.** These should be tailored to local needs, and implemented by relevant Youth Offending Teams and include police, CPS, defence lawyers, magistrates and the judiciary. They should be a forum where everyone can safely and openly discuss their experiences within the YJS, including harmful experiences, without feeling challenged. Should evaluation show positive results, restorative practice should be embedded within the YJS as part of regular engagement efforts by these agencies.

Cultural competency initiatives

- 3.16** Improving the diversity of the criminal justice workforce will contribute to improved cultural competency and outcomes for BAME children and young adults. For example, JUSTICE's report, *Increasing Judicial Diversity*,¹⁸⁷ highlighted ways to improve the diversity of the judiciary. It is predicated on the understanding that cognitive and cultural diversity enables the best decisions to be made and improves legitimacy. We endorse this report and note that all criminal justice agencies, including the legal profession – other than the CPS – currently lack suitable diversity. This must change. However, diversity is not a panacea to racial disparity, for two main reasons. First, a discriminatory system will discriminate, regardless of who pulls the levers; the processes must change. Second, increased diversity alone is not inherently culturally competent. It provides no tangible comfort to the outcomes for a Black boy before a White magistrate, and it does not aid an Indian judge's understanding of a GRT child's upbringing.
- 3.17** It is essential that criminal justice actors are able to understand the communities that they serve, as well as reflect on their own inherent biases and any racist behaviours. While a range of programmes and guidance already exist throughout the CJS, we consider that there remains significant room for improvement. **A comprehensive diversity training programme is required that is fit for purpose, encompassing written guidance,¹⁸⁸ cultural competency and bias training, and reverse mentoring.** Such programmes should be run in all criminal justice agencies and developed together with a

¹⁸⁷ JUSTICE, *Increasing Judicial Diversity*, (2017).

¹⁸⁸ For example, the *Equal Treatment Bench Book* is a useful resource for judges that details the structural difficulties different groups face. On its own, however, we consider its benefit for accused children appearing in court is minimal.

diverse and broad range of community representatives, along with experts in youth justice and race. While designed at a national level, training should be adapted to the needs of each local area as well as the relevant criminal justice agency. For instance, training in courts may require more of a focus on understanding differing expressions of body language between different cultural groups.

- 3.18 There is no requirement for the police, CPS¹⁸⁹ or defence representatives to have specialist training for dealing with child cases, nor cultural competency or awareness in that context. Although District Judges in Youth Courts receive some training, as do Youth court magistrates, there is no similar requirement for judges in Crown Courts and often Recorders (part-time judges) preside over trials involving child defendants. This lack of specialism can be overcome where children are well supported and well understood. However, too often this is not the case for BAME children.
- 3.19 The training methods and approaches are critical to this aim. For instance, when asked about the training they received concerning GRT people, the Working Party heard that police officers considered it would be more beneficial to spend time in the community. This is particularly important in policing, as being familiar with communities is likely to lead to less aggressive approaches, informed by knowledge of the people being policed, bringing improved assessments of risk and dangerousness.¹⁹⁰ This is vital, especially where police officers increasingly live outside of the communities they serve. **We consider that anti-racism training programmes should incorporate ‘in the field’ community engagement, to supplement high-quality desktop-**

¹⁸⁹ The CPS have a policy, set out in their Youth Offender Guidance, that cases are reviewed by a Youth Offender Specialist (YOS). However, there is no requirement for the prosecutor in court to have undertaken any specialist training or be a YOS. Furthermore, the HM Crown Prosecution Service Inspectorate ‘Review of how the CPS handles serious youth crime’ highlighted that the one day Youth Offender Training Courts for YOS was a “good starting point from which prosecutors can build their knowledge, but it does not cover in sufficient detail all the relevant law, practice and policy”(para 3.24). The Review identified poor handling of youth cases and that YOS were not consistently used to deliver charging advice (5.26). HMCPSI, *Serious Youth Crime: A review of how the CPS handles serious youth crime*, (March 2020).

¹⁹⁰ We understand that PJT is utilised in current police training, with unconscious bias and its impact on communities considered. For instance, videos of the Brixton riots and the consequent Scarman Review are played during training sessions. However, despite the range of training in the College of Policing’s Authorised Professional Practice, forces have discretion – within a set of guidelines – on what they wish to implement. We consider that a more consistent approach is required.

based exercises. Moreover, we consider that it should be an entry level requirement for TSG officers to spend time in the communities within which they are likely to be active. Without gaining the cultural competency for the communities they service, there is a real risk that they will undermine any good work and progress achieved by local officers.

- 3.20** Reverse mentoring inverts the traditional mentor-mentee relationship. In this relationship, the experiences of the child are centred and their perspectives engaged. When it works well, the experience of the child can inform decision makers, which should help bridge the knowledge gap about the experiences of growing up and living as a part of a minority community. Through regular mentoring sessions, the hope is that biased preconceptions are challenged and corrected. However, without buy-in from both sides, it may fail, and entrench a feeling of helplessness in the child mentor.¹⁹¹ As such, sufficient care must be taken to the design of such programmes. In order to ensure high levels of participation, criminal justice agencies should appoint champions to encourage their peers to participate and YOTs should identify suitable and willing mentors. As it is likely to be quite a demanding role, we believe that confident young adults, rather than children, would be best placed to act as mentors.
- 3.21** Training should be compulsory, and treated with equal seriousness to other mandatory courses, such as fire safety training. It should also take place yearly, **supplemented with reading and watching lists**, which employees and practitioners should use to enhance their learning experience. With respect to implementation, **we recommend that the relevant HM Inspectorates for each agency form specialist teams to evaluate the programmes. We also recommend that the Judicial College, the Inns of Court College of Advocacy and the Law Society set out a clear plan to implement such training, which must be evaluated and measured.**

Local mapping

- 3.22** Regular mapping exercises that identify the ethnic, religious and cultural mix of a community are essential if criminal justice agencies are to understand the communities which they must serve.

¹⁹¹ D. Batty, ‘Cambridge may drop BAME mentoring of White academics’, *The Guardian*, 14 March 2020.

- 3.23** This is an exercise that the IOPC carries out as part of its ongoing work, which enables it to consult those affected, as well as the wider community, on any investigation and issue regular updates.
- 3.24** In addition to improving engagement, mapping will also allow services to be more targeted and effective. For instance, following a YJB requirement to address disproportionality in their youth justice plan, Buckinghamshire YOS decided to map the demographics of the local area. This allowed Buckinghamshire YOS to identify that it was mixed race children from a specific area that were experiencing the biggest difficulties. Following this mapping, Buckinghamshire YOS intends to design interventions that target this particular group.
- 3.25** This is an approach we consider to be particularly beneficial to police forces. By fully understanding the community demographic, and where concerns can be raised and investigated properly, relationships between BAME people and the police could improve. Similar to GRT liaison officers, these programmes should not be concerned with investigating crime, but relationship building, and should help improve understanding of cultural concerns.¹⁹²

Problem-solving approaches

- 3.26** BAME individuals are more likely to be sentenced to immediate custody for drug offences than White people.¹⁹³ Moreover, BAME children are more likely to receive a custodial sentence¹⁹⁴ and are given unduly harsher sentences than their White counterparts.¹⁹⁵ Such data alone is insufficient to definitively

¹⁹² For example, we consider it would be beneficial to consult organisations such as 100 Black Men and Manhood Academy, among others.

¹⁹³ A. Isaac, ‘Investigating the association between an offender’s sex and ethnicity and the sentence imposed at the Crown Court for drug offences’ (Sentencing Council, July, 2020)

¹⁹⁴ E.Cardale and P. Jooman ‘Assessing the impact and implementation of the Sentencing Council’s Sentencing Children and Young People Definitive Guideline’ (Sentencing Council, November 2020).

¹⁹⁵ See the recent Youth Justice Board report on, *Ethnic disproportionality in remand and sentencing in the youth justice system*, January 2021, which finds that “Compared to White children, in almost all cases, Black, Asian and Mixed ethnic groups were more likely to receive harsher sentences. Disproportionality for children of Other ethnicities was only observed for out-of-court-disposals which they were less likely to receive compared to White children.”

conclude that such disparities are caused by bias among judges.¹⁹⁶ Nevertheless, we consider that an increased understanding of what can drive a child's criminal behaviour should reduce disparities in sentencing outcomes.

- 3.27 We have heard that sentencing disparities may occur for two main reasons. First, sentencers may consider BAME children to pose a higher risk of (re)offending, most likely due to a misperception that they are more mature (and therefore more culpable for their actions) than their White counterparts. Second, sentencers may not have confidence in, or be aware of, the range of available non-custodial options.

Diversion

- 3.28 Diversion is a key moment in the journey of the child through the YJS where ensuring children are treated equally and fairly makes all the difference to their future prospects. This is because BAME children are less likely to be diverted than their White counterpart.¹⁹⁷ Diversion ensures that when a child commits a less serious crime, the YJS acts to provide support and address the underlying issues, rather than focus on punitive measures, which often increase the risk of reoffending.
- 3.29 Although data for diversion is patchy, statistics for First Time Entrants (FTEs) suggest that more White children are offered diversion than BAME children. The reasons underlying this are complex. They include feelings of distrust on the part of such children that the CJS will act fairly and so the required (and perhaps unnecessary) "admission" generally required to access diversion is not forthcoming. Likewise, as we set out in the previous chapter, police officers may not recommend a child for diversion due to the offence they are suspected of committing. As indicated in **Chapter 2**, we have heard that in one area, GRT children are not offered diversion due to the erroneous belief that they would

¹⁹⁶ *Ibid*, "This research cannot shed light on the reasons for this finding; however, technically there are two potential (non-mutually exclusive) explanations:

- There are biases in the sentencing of Black children.
- There are other factors that could explain this difference (such as plea, type and quality of representation, etc.) and we do not control for them in this research as they are not recorded in the data."

¹⁹⁷ Youth Justice Board for England and Wales, *Ethnic disproportionality in remand and sentencing in the youth justice system*, January 2021.

not complete the relevant course for reasons related to their lifestyle. Regardless of causes, the consequences are clear. The differential access to diversion means White children are more likely to be the beneficiaries of interventions that are more likely to stop repeat offending. The lamentable waste in opportunity is evidenced by the fact that most children held on remand do not receive a custodial sentence.

3.30 We consider the use of diversion to be essential in mitigating disparate outcomes for BAME children.¹⁹⁸ For instance, participants in the DIVERT programme in Brixton have a reoffending rate of 7%,¹⁹⁹ and the scheme at Young Hackney also has excellent initial results²⁰⁰ – although it is awaiting the results of a formal evaluation. In the United States, the Philadelphia Police School Diversion has been running since 2014, and has been replicated throughout the country. It has resulted in a 54% reduction in arrests at school and 75% reduction in the number of expulsions from school. This shows that diversion not only reduces reoffending but can improve many different outcomes for children.²⁰¹

3.31 Despite these excellent results, access to diversion remains a post code lottery. This is because there is no national framework; each area has a different way of doing it, if indeed it does it all. This can mean that some areas require an admission of guilt to be considered for diversion, while others do not.²⁰² Moreover, some areas do not have programmes at all, or where they exist they are either ineffective or culturally inappropriate. This differing practice means

¹⁹⁸ Diversion is a process where those who are arrested are not dealt with through traditional criminal justice mechanisms. Rather, they are ‘diverted’ to less formal programmes that seek to address the root causes of the behaviour that led to arrest. In this way, the individual should be less likely to reoffend. Although relatively recent developments, initial indicators are that diversion schemes are highly effective at turning people away from crime.

¹⁹⁹ DIVERT, ‘[DIVERT briefing note](#)’, 2018.

²⁰⁰ Centre for Justice Innovation, ‘[Understanding Youth Diversion in London Evidence and practice briefing](#)’ June 2020.

²⁰¹ Philadelphia Police School Diversion Programme, *Keeping kids in school and out of court*, 2018.

²⁰² See, for example, the ‘[CPS Director’s Guidance on Charging \(6th Edition\)](#)’ at para 8.9: “A caution or conditional caution will require that the person admits guilt. This is in addition to the requirement that the evidential stage of the Code test is met. **More informal resolutions require that responsibility is acknowledged.**”.

that children in different parts of the country will have better or worse outcomes simply because of where they live.

- 3.32 We have been impressed by how Young Hackney reformed its diversion process, which applies many of the principles we consider valuable in the YJS. It worked with the police to change the procedure from a police-led decision, to a panel decision, which includes members of the community, as well as the police.
- 3.33 Although only recently implemented, and with results yet to be thoroughly evaluated, early indications of low reoffending rates are promising. However, the panel still does not make a decision on every child that is arrested. This is because the police will only refer certain types of offences for diversion, usually excluding those where violence was either threatened or used. This causes a problem when charging practices are taken into account. As set out in **Chapter 1** above, repetitive stops and use of force during arrest can lead to charges of resisting arrest or assaulting an officer. Moreover, BAME children are more likely than White children to be charged with robbery rather than theft. These practices may explain why there is a higher proportion of BAME FTEs into the CJS, than White. This highlights another stage of the YJS where discretionary decisions can result in widely different outcomes for different cohorts of children, and could be significantly remedied by updating the Youth Gravity Matrix such that discrepancies between levels of perceived dangerousness are addressed.²⁰³
- 3.34 In addition, we consider the fact that diversion is not a statutory activity as deeply damaging to YOT funding schemes particularly as diversion is rightly becoming a large part of their work. This has led to inconsistent practice, as YOTs develop schemes based on the resources and knowledge they have. In order to remedy this a **national framework for diversion schemes should be developed and implemented**. The process should be mandatory and followed by all those who are part of the diversion decision-making process, including the police, YOTs and the CPS. The underlying objective of this framework is

²⁰³ See Youth Justice Resource Hub, '[ACPO Youth Gravity Matrix](#)'. For example, Robbery is given a gravity score of 4, resulting in a mandatory referral to the CPS, whereas trespass with intent to commit a Sexual Offence receives a 3, which can receive a caution. The level of dangerousness between the two offences is difficult to delineate.

to strengthen the existing presumption in favour of diversion for children²⁰⁴ and for this presumption to be properly embedded and consistently applied in all criminal allegations involving children. The framework should include:

- i. a requirement that children are bailed or released under investigation in order to enable the police to arrange a voluntary interview. Only in the most exceptional and serious of cases should a child be held in police custody. A chief constable must approve detention for more than six hours.
- ii. a requirement that children always receive legal advice. Police should notify the duty solicitor or solicitor of the child's choice.²⁰⁵
- iii. YOTs to convene regular local diversion panels with a range of experience, including representatives from the local community, especially BAME individuals.
- iv. a requirement to refer all cases, regardless of the nature of the allegation or the child's number of historic offences, to the local diversion panel, including road traffic cases and where a civil injunction is being contemplated, or where this is not possible, to record why a referral has not taken place. Should the police not adopt the diversion panels' recommendation, this decision must be susceptible to judicial review.
- v. Legal Aid funding for pre-charge casework to enable defence solicitors to provide written representations to assist and engage collaboratively with the diversion panels.

²⁰⁴ See CPS Legal Guidance on Youth Offenders – “When applying the public interest factors in the Full Code Test in a case involving a youth, paragraph 4.17 b) will always be a particularly important one. This paragraph provides that: “A prosecution is less likely to be required if...the seriousness and the consequences of the offending can be appropriately dealt with by an out-of-court disposal which the suspect accepts and with which he or she complies. “This is a factor which will always carry a special weight in the case of youths who are at a very early stage of their offending, and can be traced back to historic police practice (as set out, for example, in Home Office Circular 18/1994) of starting from a presumption of diverting youths away from the courts where possible.”

²⁰⁵ *Ministry of Justice, Tackling Racial Disparity in the Criminal Justice System: 2020 Update*, February 2020. – “Findings showed that children and young adults do not always utilise their right to legal advice. Whilst police inform children of their entitlement to free legal advice, children do not always understand what this means, the solicitor's role or how this could benefit them. The Youth Justice Policy team, Legal Aid Agency and Legal Aid Policy teams are working closely to ensure that young adults engage with legal advice in the police station.”

- vi. the requirement to charge a child only in the presence of their solicitor or legal advisor, as well as a prohibition on the use of requisitions for children.
- vii. no requirement to admit guilt in order to be considered for diversion.
- viii. a statutory requirement, with associated funding, for YOTs to provide informal diversion through individualised interventions and, if completed, the police take no further action.²⁰⁶
- ix. a mechanism for the police to re-refer to a diversion panel when further information becomes available.
- x. a continuous reassessment of whether diversion is appropriate throughout the legal process.

3.35 In order for the national framework to be effective, it must be monitored properly. This means that data gathering on diversion – and all out of court disposals – must improve. As such, **we support the recommendations of the Justice Select Committee that the MoJ and YJB work together to collect accurate and consistent data on the impact and effectiveness of out of court disposals.**

3.36 In addition, to strengthen the principle that arrest should be used as a last resort, restorative justice as an out of court disposal should be considered more often, especially for BAME children. Used mainly for more minor crimes, this allows children to avoid criminal prosecution if they apologise and make a form of reparation.²⁰⁷ In general, use of this disposal has been declining, with there being racial disparities as to who receives it. Greater transparency and monitoring is required to better understand this trend.

3.37 We are satisfied that consistent diversion schemes based on this framework will mean more BAME children are diverted. In addition, we consider that our proposed national framework would deliver cost saving in the long term, as the Justice Committee has also identified. This is because criminal justice agencies, such as YOTs, would deal with fewer children. In addition, diversion schemes would lead to reductions in reoffending, which also reduce costs to

²⁰⁶ This is currently available in many areas, in most London YOTs it is called ‘triage’, in other areas it may be described in different ways such as youth restorative diversion or youth restorative intervention.

²⁰⁷ See, for example, s.73 and s.74 of the Powers of Criminal Courts (Sentencing) Act 2000

the CJS.²⁰⁸ Lastly, it will ensure that children's needs will be met as early as possible. This would ensure issues such as addiction or mental health conditions do not escalate, and thus require greater resources to address further on.²⁰⁹

Problem solving sentencing hearings

- 3.38 Northamptonshire YOT considers that problem-solving sentencing hearings (PSHs) could offer a solution to these issues. These are hearings that seek to understand the complex needs of the child prior to sentencing.²¹⁰
- 3.39 PSHs are labour-intensive and longer than traditional sentencing hearings. In addition, we have heard that, although well-intentioned, they may not be suitable for every child. For instance, where a child has urgent needs, preparing and undertaking a PSH may not be the best use of resource, even if the aim is to find the best outcome. For these reasons, we do not consider that PSHs should be used in every case. However, **should an evaluation demonstrate positive results, we recommend that PSHs be rolled-out to every Youth Court, with clear guidance on its suitable use.** We also consider that PSHs could be beneficial to young adults and believe that a pilot for this age group, subject to careful monitoring, should take place. This would be in keeping with the spirit of the new proposals to pilot problem-solving courts in the *Smarter Approach to Sentencing* White Paper, insofar as they supplement, and do not displace, diversion-based approaches.²¹¹

²⁰⁸ A. Petrosino, C. Turpin-Petrosino and S. Guckenberg, *Formal System Processing of Juveniles: Effects on Delinquency*, (Campbell Systematic Reviews, 2010:1).

²⁰⁹ B. Estep and C. Robin-D'Cruz, *Valuing youth diversion: a toolkit for practitioners*, (Centre for Justice Innovation, 2019), p.9.

²¹⁰ As such, attendees include a range of people concerned for the child's welfare, including youth workers, YOT workers, gang mentors, educators, and others deemed to have relevant information about the child. At the PSH, everyone is given a chance to speak and express their thoughts discuss what they believe is best for the child, including the child themselves. This seeks to provide improved understanding of the child, their context and their reasons for offending. This will allow for disposals to be designed that better suit the child and their needs.

²¹¹ Ministry of Justice, *A smarter approach to sentencing*, (September 2020).

Youth Order Review Panels

- 3.40** To compliment PSHs, Northamptonshire YOT has also introduced Youth Order Review Panels (YORPs).²¹² The purpose of YORPs is to support a child who has been given a Youth Rehabilitation Order (YRO) to complete their sentence.²¹³
- 3.41** Anecdotal feedback and preliminary research suggest that both the children and magistrates who have participated in these panels have valued the experience and believe them to be worthwhile.²¹⁴ We have heard that magistrates believe they better understand the child, and their circumstances, which allows them to make better decisions concerning the child. Although evaluation of the approach is still underway, initial feedback has suggested that they have helped to improve children's engagement with YROs.
- 3.42** YORPs demonstrate how important it is to engage with a child brought into the YJS. Without this kind of encouragement it is likely that many of the children who have participated in YORPs would otherwise have breached their orders, rather than adaptations being made to help the child achieve the aims of the order. Such an approach can provide learning at different stages of the justice system, whether it is engaging with children to find out why they are struggling with Knife Crime Prevention Orders, or talking to children before instituting a stop and search. Should an evaluation demonstrate that YORPs have a positive impact, **we recommend that they take place at every Youth Court, with a particular emphasis on ensuring access for BAME children.** Further, we understand that sentence review hearings are only available for those under the age of 18. **Should evaluation of YORPs prove positive, we**

²¹² A YORP consists of two magistrates and a member of the Youth Offending Team (YOT), meeting with the child at the YOT centre. The focus is on encouraging the child to complete the YRO, rather than guilt and shaming them into doing it. As such, it is not mandatory for the child to attend. Should the child attend, they will discuss the YRO with the magistrates, with the conversation revolving around how to ensure compliance and understanding whether there are any barriers to completion. Should problems be identified, amendments to the orders can be made.

²¹³ A Youth Rehabilitation Order is a community sentence which can include one or more of 18 different requirements that the young adult must comply with for up to three years. These are provided for in sections 1-4 and Schedules 1 to 4 of the Criminal Justice and Immigration Act 2008.

²¹⁴ 'Northamptonshire Model - YRO Review Panels' Northamptonshire Youth Offending Service.

consider that these restrictions should be lifted with YORPs available for young adults.

Enhancing children's voices

- 3.43** Throughout the YJS, children often feel that they understand neither what is happening to them nor the consequences of their actions. This can usually be remedied through supportive parents or good legal representatives taking the time to explain the procedure to the child. However, with BAME children this safety net cannot always be relied upon.
- 3.44** The diversity of BAME communities and the greater likelihood that they are economically deprived can mean that parents struggle to represent their child's interests. In large part, this is because they themselves do not fully understand youth justice processes, how to raise concerns, or trust that the best is being done for their child. Poorly paid or insecure employment can make it hard to be available to advocate on behalf of a child. Inadequate provision for non-English speakers can compound this. We have heard that in a Romanian community in Manchester, the children can speak English but the parents cannot. Due to a lack of available interpreters, children are required to translate complex legal matters to their parents, which can mean they leave out, downplay, or misunderstand important pieces of information. Conversely, parents may urge a child to go to trial or plead guilty as they become frustrated waiting for interpreters to become available. Although legal representatives try their best, their limited resources and relationship with the child's family can make it difficult to explain the process as fully and carefully as is necessary.
- 3.45** This lack of parental voice is something that is beginning to be understood within the context of school exclusions. JUSTICE's report, *Challenging School Exclusions*,²¹⁵ highlighted how BAME children suffer exclusion at a disproportionately higher rate than White children, with GRT and Black children being particularly badly affected. Exclusions can be profoundly damaging to a child, sometimes resulting in subsequent involvement in gang activities. As such, organisations such as Hackney CVS have understood the importance of ensuring children are not excluded in the first place. In order to prevent exclusions, Hackney CVS supports children at exclusion hearings, and engages with parents throughout the process. This has led to successful

²¹⁵ JUSTICE, *Challenging School Exclusions*, (November 2019).

challenges of many school exclusions, ensuring children stay in school, preventing the risk of them becoming involved in criminal activities.

- 3.46 We consider that such support would be useful throughout the CJS (in addition to provision for adequate legal assistance) and **recommend a service be established that supports disempowered parents through to court**, perhaps similar to the work of Support through Court.²¹⁶ This would allow parents to better understand the process and ensure their child has the support they need, should it be necessary. Some organisations have been doing this informally, such as Another Night of Sisterhood, who have been hosting online community discussions throughout lockdown. These discussions educate parents and raise awareness about issues such as police powers, serious violence reduction orders and COVID-19 fines.
- 3.47 In this vein, Wood Green Police station is piloting a scheme where parents or guardians of children who are arrested are shown a video at the police station. The video “reassures [parents and guardians] they are not alone and describes the experience of people who managed to find a route away from crime. At the end, they are handed a card with tips on talking to the children and contacts for support groups.”²¹⁷ Similarly, Y-stop have produced a guide for parents on stop and search.²¹⁸ These are all excellent initiatives that should be widely disseminated and supported if a service is not established.
- 3.48 Moreover, **it is vital that interpreters are available for parents as well as children at every stage of the justice system**. If an interpreter is not available, the process should be paused, unless delay will adversely affect the child.
- 3.49 Out of court, there are many opportunities for criminal justice actors to better understand BAME children.²¹⁹ We consider that the earlier this happens, the

²¹⁶ Support through Court is a UK charity that supports people who have to represent themselves in court. The aim is to “reduce the disadvantage of people facing the civil and family justice system without a lawyer, enabling them to access justice” and believe that “no one should face court alone”. See ‘About’ Support Through Court.

²¹⁷ The results of the evaluation should be published at the end of this year: see R. Wright, ‘Met police gather clues to best practice in fighting crime’, *The Financial Times*, 8 October 2020.

²¹⁸ StopWatch, *Stop and Search: a guide for parents and children*, 2017.

²¹⁹ See, for example, Hazel, C. Drummond, M. Welsh, K. Joseph, *Using an identity lens: constructive working with children in the criminal justice system*, (University of Salford, Manchester, April, 2020).

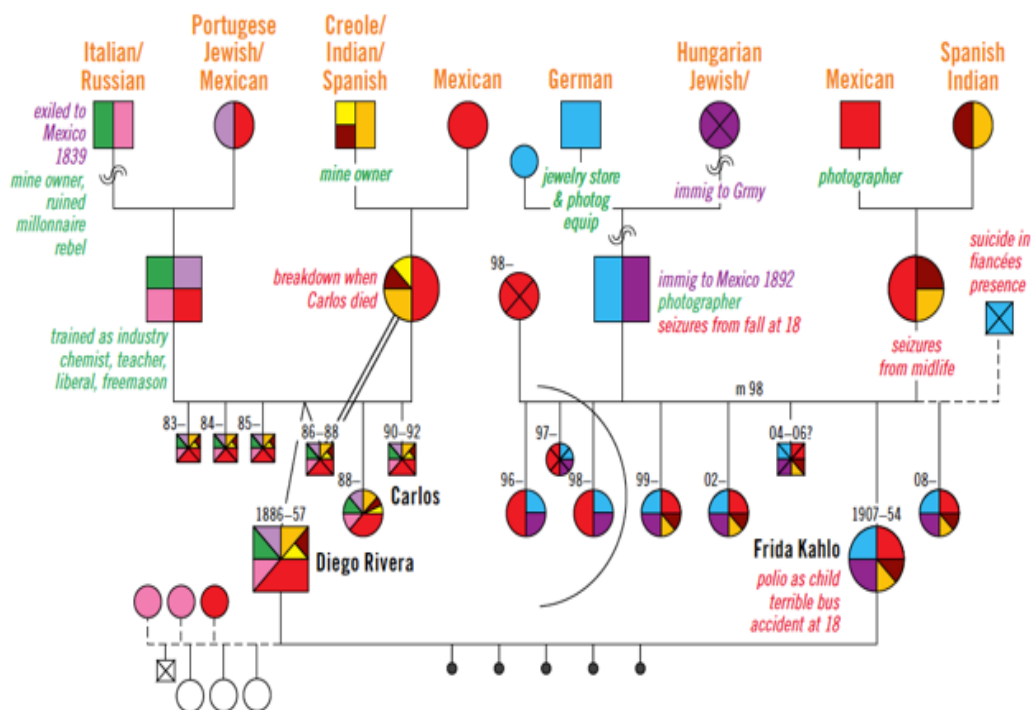
better the chance for more positive outcomes for the child. Although all YOTs carry out AssetPlus²²⁰ assessments as the first stage of working with a child, we were particularly impressed by the work of Young Hackney. In addition to AssetPlus, their practitioners will encourage the child they are working with to create a ‘cultural genogram’.

- 3.50** A genogram is a visual representation of a family tree that displays detailed information on relationships between individuals. It allows a user to identify and understand hereditary patterns and psychological factors that punctuate relationships. Genograms use a range of symbols that can indicate family relations (such as separation or affairs); emotional relationships (such as abuse or neglect); medical conditions (such as HIV or autism); and addictions or mental illness (such as alcohol or drug abuse or being in recovery for mental illness).²²¹ In addition to this, cultural genograms provide data on the heritage of family members, as the genogram below shows.²²²

²²⁰ AssetPlus is an assessment and planning interventions framework developed by the Youth Justice Board. Its aim is to provide a holistic end-to-end assessment and intervention plan, allowing one record to follow a child or young adult throughout their time in the youth justice system.

²²¹ ‘Genogram Basic Symbols’, GenPro.

²²² Young Hackney, example Genogram. This diagram uses colours to identify nationality as it moves through the family tree. It also shows a variety of things, such as specific emotional relationships and health concerns. Although it is at first complicated to look at, it contains a wealth of contextual information that is far easier to grasp than through writing a report.



- 3.51 Young Hackney maintains that the use of cultural genograms allows children to better understand themselves and their family history. We understand that this, in turn, allows the child to understand the drivers of their behaviour, which is an important step towards improving behaviour. In addition, it also helps the practitioner working with them to better understand the child and how best to help them. This is particularly important where the practitioner does not share the same background or experiences as the child.
- 3.52 We consider that innovative methods aimed at exploring a child's experiences, and the impact they may have, would be useful throughout the YJS. As well as serving to mitigate concerns that practitioners do not understand the children they interact with, this approach may help to improve trust by showing a willingness to learn and listen. Such approaches should result in better designed disposals for children, allowing them to better overcome the drivers that may have contributed to their criminal behaviour. For example, embedding a procedure that asks a child about their experience of race and racism, or asking why a child has not been attending school, will allow for a deeper understanding of the child's context and their needs, as well

as the performance of statutory services. This could be done through triaging a child upon arrest, rather than making a quick decision for charge, or before a magistrate passes a sentence. This would, in turn, highlight what is needed to meet those needs. Moreover, it would ensure that any child's cumulative disadvantages are identified as early as possible, so as to avoid further complications developing later down the line.

KEY RECOMMENDATIONS

- All those under 18 should be referred to as children in all future legislation and policies;
- A national framework for diversion schemes should be created, so that children across the country are able to receive the support they need away from the criminal justice system;
- Problem-solving sentencing hearings be rolled-out to every Youth Court, with clear guidance on its suitable use, subject to a positive evaluation;
- Youth Order Review Panels should take place at every Youth Court, subject to a positive evaluation; and
- A service should be established that supports disempowered parents through court processes, as well as making interpreters available for all parents and children who need them.

IV. BUILDING BAME CHILDREN'S CONFIDENCE IN THE YJS

I do solemnly and sincerely declare and affirm that I will well and truly serve the Queen in the office of constable, with fairness, integrity, diligence and impartiality, upholding fundamental human rights and according equal respect to all people – extract from the Policing Oath²²³

Introduction

- 4.1 BAME children are entitled to expect that criminal justice agencies will treat them fairly. When we speak of children's 'trust' in the YJS and its agencies, we must be clear that this is something to be earned, with the responsibility resting solely on the state. Its failure to earn such trust can result in negative outcomes for children. Rather than trusting that the police will deal with a complaint, a child may decide to attempt to solve the problem themselves and thereby take the law into their own hands. Or, a child who refuses to admit guilt because they do not trust that alternatives are available to them will not benefit from diversion or a discount for early plea, resulting in a harsher outcome or sentence. The consequence of a lack of trust is a lack of legitimacy, resulting in worsening relationships between the YJS and the communities it serves.
- 4.2 This is not sustainable, and requires urgent redress through two simple steps. First, children must be treated fairly. Second, criminal justice professionals must be held accountable where they make discriminatory decisions. Whether the unfairness or discrimination is deliberate or inadvertent makes no difference to the poor outcome for the BAME child.
- 4.3 Children require reassurance that the YJS seeks to promote their welfare, rather than their punishment. Creating an environment in which children feel safe, listened to and understood should reduce the traumatic impact of the YJS. This could help meet the statutory aim of reducing further offending, as well as ensure positive long-term outcomes for those involved. There are a number of ways to ensure children are, and feel, treated fairly in the YJS. We discuss

²²³ Schedule 4, the Police Reform Act 2002.

these under the headings: (a) ensuring specialists make decisions about children, (b) making consistent decisions, and (c) holding the CJS to account.

Ensuring specialists make decisions about children

Custody Suites

- 4.4 The CJS is designed for adults. This is why there are currently no permanent child custody suites. Although adaptations have been made, with YOTs and Youth Courts, the fact remains that children are often subject to conditions similar to adults. In addition, there is a palpable lack of specialist training on how to interact with children.
- 4.5 Recent initiatives within the MPS are attempting to address the problem, prompted by a large number of children being arrested at the Notting Hill Carnival in 2018. For example, in addition to plans to build two child custody suites within London, we have heard of pilots aimed at improving the experience of custody for children by using it as an opportunity to engage.
- 4.6 Learning from Redthread²²⁴ and working with, among others, DIVERT²²⁵ and the Children's Society,²²⁶ the MPS has developed a new police station liaison programme for children, to be piloted in Wood Green police station. In the temporary custody suite, youth custody workers will screen every child to identify their welfare needs and relevant risk factors. The youth workers will be responsible for the initial engagement with children brought into custody and seek to understand more about the child's context and support networks. The youth workers will also identify whether there are any welfare concerns in the child's relationships. For example, we have heard of one instance where a police station representative engaged with a young pregnant teenage girl who had run away from foster care and stolen a mobile phone as she was being exploited. The police were not aware of this background until the representative sat on the floor with her and chatted informally. In this way, custody will be used as a reachable moment and as a chance to implement

²²⁴ Redthread is a youth work charity. It aims to empower young people to thrive as they navigate the challenging transition to adulthood, by integrating trauma-informed youth work into the health sector.

²²⁵ DIVERT is a Metropolitan Police Service intervention programme aimed to reduce reoffending.

²²⁶ The Children's Society is a national children's charity.

appropriate diversion interventions.²²⁷ While a step in the right direction, we consider that children may connect with and trust more an individual who is not connected to statutory services as is currently the case. Despite welcoming the positive anticipated pilot, **we recommend that the police embed independent navigators in custody suites which receive high numbers of BAME children.**²²⁸

4.7 These navigators could be from youth centres or have had similar experiences to the children in custody. As BAME children tend to have so little trust in the YJS, simply having BAME workers may not be enough. We have seen useful parallels in ‘Credible Messengers’, which have been increasingly used in the United States.²²⁹ The results have been positive, with a 50% reduction in felony arrests, 33% reduced reoffending and a 76% reduction in gun homicides for those who participated in the programme.²³⁰

4.8 Although the independent navigators we recommend would not go on to form mentoring relationships with the children, the value of their independence and communication skills is clear. We consider that Violence Reduction Units (VRUs) may be best placed to identify and assess these navigators. This is because VRUs should have knowledge of local issues, and who is working locally on them, through the connections they have built. We also consider that the MoJ must allocate adequate resource to YOTs and VRUs. These are the two YJS agencies that children are most likely to come into contact with, after

²²⁷ MyLondon, ‘[New project to divert children away from crime launched in North London](#)’, October 2020.

²²⁸ In addition to this programme, a remote welfare hub has been established at Wood Green custody suite. This treats the first hour that a child is in custody as a ‘golden hour’, where workers seek to obtain as much relevant information about the child as possible. Using remote experts, who are able to contact different local authorities, the hub can establish any welfare needs a child may have, and develop interventions if necessary. We have heard examples of success from this model. For example, in one instance, workers identified that a 14-year-old girl was pregnant, and so the police consequently removed her from custody. This might not have happened in normal circumstances, as she did not tell the police officers but she did tell the youth workers. We are encouraged by this, and subject to positive evaluation, consider that this programme be rolled out to custody centres that are likely to receive the most children.

²²⁹ Credible Messengers are mentors for children either in trouble with the law or at risk of doing so. They have similar lived experience to the children they mentor, often having been incarcerated themselves and have gone on to transform their lives. Coming from a similar background, they are able to engage with the children they mentor on a similar level, allowing trust to develop.

²³⁰ ‘[A transforming approach to justice](#)’, Credible Messenger Justice Center.

the police. As such, ensuring that they work effectively is of paramount importance. If children can see the benefits of engaging with these agencies they are more likely to desist from crime. However, YOTs are not given statutory funding for diversion work and VRUs do not have long term funding to be sustainable.

Violence Reduction Units

VRUs have expanded following the success of the model being used in Glasgow. VRUs are commissioned to implement a public-health approach, identifying evidence-led practice that will reduce violence. For example, some VRUs place navigators in hospitals so that they can reach the victims of violent crime. By speaking to these victims as early as possible, they are able to reduce the prospect of retaliatory attacks.

The Government has provided funding for 18 areas to establish VRUs, which are given the power to convene a range of expertise to tackle the issue. For this reason, the Youth Violence Commission viewed VRUs as having a key role to play in reducing child violence. It saw VRUs as having three primary purposes:

- a) to lead on the development, implementation and commissioning of local level initiatives to reduce violence;
- b) to feed the learning generated by each VRU's local level work into relevant evidence bases; and
- c) to identify and promote the national level policy changes that are beyond each VRU's scope and control, but are nevertheless crucial to securing reductions in serious violence.

We agree that VRUs will play a key part in reducing violence.²³¹ They can also play a key part in reducing racial disparity.²³²

- 4.9 This programme shows that drawing on the experience of experts allows children to be better safeguarded and for improved decision-making processes. Rolling out the intervention programme in all custody suites would help all children who are arrested. Where it is not possible to embed workers, we

²³¹ Recent research indicates that 64% of VRUs believe their interventions to either be fairly effective or very effective, and a further 31% of respondents believing it is too early to say. See Home Office, *Process evaluation of the Violence Reduction Units*, August 2020, p. 54.

²³² See Youth Violence Commission, *Final Report*, (July 2020).

consider that the police could create hubs, from which workers could attend a number of stations in an area.

- 4.10 This programme would ensure a greater level of welfare protection than currently provided. At the moment, the responsibility for ensuring the welfare of children in custody rests on volunteer Appropriate Adults (AA)²³³ who carry out a statutorily defined role limited to supporting children in custody and during an interview. Although many are excellent, they may not be immediately available, meaning a child has to wait for a long time without support. The majority of AAs are people with a socio-economic background that allows them to volunteer. As a consequence, most are White. Although matching people's background to children in custody is not essential, it can be immensely helpful where the AA has sufficient cultural competence to form a positive connection with the child. Parents can fulfil the role of AAs. However, although they may know more than a volunteer about their child, they are unlikely to be legal experts and may not know what rights their child has or be able to digest information provided to them by police in the short time given.

Specialist Legal Advice

- 4.11 The failure of the YJS to meet BAME children's expectations has led to worse outcomes for them. This is most apparent where they refuse legal advice at the police station, due to the perception that duty solicitors work for the police. This means that children may not realise they have a defence, or respond 'no comment' when providing information may be beneficial to their case. We understand that distrust may emanate from a lack of understanding about what a duty solicitor is, as well as misperceptions that they are 'pally' with police officers.
- 4.12 A lack of understanding of the role of duty solicitors is typical of the lack of information children are provided with throughout the YJS, and the form in which it is provided. **In order for children to understand what is happening, all information provided to them should be child friendly and culturally**

²³³ The role of an AA is to safeguard the interests, rights, entitlements and welfare of children and vulnerable people who are suspected of a criminal offence. They do this through ensuring they are treated in a fair and just manner and are able to participate effectively. Local authorities are required to ensure AA provision in their areas and this is done through the recruitment of volunteers – See the National Appropriate Adult Network, 'What is an appropriate adult?' see also Section 38, Crime and Disorder Act 1998.

competent. For example, we recognise Dr Vicky Kemp’s attempts to secure funding for an app that children could use in custody to better understand their rights. However, financial support is not forthcoming, and we urge the MoJ to back the project. We also understand that the MPS have developed a video that can be played to children in custody, detailing their rights. These are vital and important initiatives, which we welcome.

- 4.13 The provision of good quality legal advice is crucial for those accused, particularly where there are inherent vulnerabilities due to background or age. BAME children should be able to expect that their lawyer is appropriately trained and knowledgeable in the YJS, given its complexity and the lifelong consequences that flow from interaction with the YJS. Representing children is a specialist area of law and requires specialist knowledge to practice safely.
- 4.14 At present, we consider the training requirements for lawyers who work in the YJS to be inconsistent and patchy. Police station representatives are often not legally qualified and are not required to undertake Continuing Professional Development activities which for solicitors include relevant law and appropriate diversity or cultural competency skills.
- 4.15 More work must be done to remedy this. We note, for example, that the Bar Standards Board requires that barristers and pupils working in the Youth Court register with them and declare that they have the specialist skills, knowledge and attributes necessary to work effectively with child defendants. This is set out in the Youth Proceedings competences and guidance.²³⁴ While this is a recent and positive change, we note that this is a self-declaration and we are unaware of what evidence is required to support the declaration of competence. While not a panacea, such requirements help to ensure BAME children are well-represented at a time of particular vulnerability and need. **We recommend the Bar Standards’ Board’s youth proceedings competency requirement be extended to all pupils and barristers representing and prosecuting children in the Crown Court.**
- 4.16 It is concerning that similar requirements do not exist for solicitors who represent children and young adults. **We therefore recommend that the Solicitors Regulation Authority make foundation training with ongoing**

²³⁴ Bar Standards Board, ‘[Youth Proceedings competences](#)’, 2017.

child-specific continuing professional development training mandatory for all solicitors who provide representation for children and young adults. In respect of both barristers and solicitors, the Legal Aid Agency must better remunerate such work to reflect the specialist expertise required for competent practice.²³⁵

- 4.17 With specialist training legal representatives will be better equipped to foster trust, for example by questioning the reasons for stops and circumstances in which they are conducted, and explaining to their child clients why they may be on first name terms with the police officers during police custody. They should also be alert to the possibility that they may have their own biases that may negatively affect their clients.
- 4.18 We recognise the work of Just for Kids Law, through the Youth Justice Legal Centre,²³⁶ in offering such training, and commend it to all those involved in representing children and young adults or working on YJS-related matters.²³⁷ The Howard League for Penal Reform and the Youth Justice Centre have also jointly developed a guide on representing looked after children at the police station, with particular attention paid to race.²³⁸ This will be further expanded upon in forthcoming anti-racism guidance for lawyers.²³⁹

Making consistent decisions

- 4.19 For trust to be built in the YJS, the right decisions must be made, at the right time. This is a truism but it is worth stating as we have seen the YJS fail to take the right decision time and again when it concerns BAME children. As set out above, BAME children are less likely to be diverted, more likely to be

²³⁵ Recognition of this can be implied from the Terms of Reference for the [Independent Review of Criminal Legal Aid](#) (2018), which stated that the criminal legal aid provider market should “operate to ensure that Legal Aid services are delivered by practitioners with the right skills and experience.”

²³⁶ [Just for Kids Law](#) is a UK charity that works with and for children and young people. In 2015, it set up the [Youth Justice Legal Centre](#) to provide legally accurate information, guidance and training on youth justice law.

²³⁷ Youth Justice Legal Centre, ‘[Training](#)’.

²³⁸ Howard League for Penal Reform, ‘[Representing looked-after children at the police station: A step-by-step guide for lawyers](#)’, 2019.

²³⁹ Howard League for Penal Reform, ‘[Making sure Black lives matter in the criminal justice system: Practical steps towards change](#)’, 2020.

remanded in custody, and more likely to receive a custodial sentence, in comparison to their White counterparts.

- 4.20 We consider that one reason for these disparities is that decision-makers are not empowered to make the right decisions. This is particularly difficult when the decision-maker may not be an expert in youth justice or child welfare issues. This section sets out recommendations which would improve remand and bail processes concerning children.

Custody as a last resort

- 4.21 Remanding a child in custody unnecessarily, risks incurring serious physical and psychological damage to the child. Chronic underfunding of the YJS exacerbates these concerns, with the current court backlog resulting in children remaining in custody for significant periods of time; deprived of their liberty absent a finding of guilt. This places strains on family relationships and impacts their education. The COVID-19 pandemic has also led to children having to remain in their cells for up to 23 hours a day, without family visits, which is damaging to their mental health.²⁴⁰ Our concerns have intensified following the temporary increase in custody time limits.²⁴¹
- 4.22 Custody should always be the last resort for children, be that in decisions to arrest or to remand. We consider that there must be consistent practice in the decision to detain a child. We have heard that, in police custody, children often have to wait for many hours before being interviewed. This could mean they may be left alone for long periods. When placed into adult facilities, the risk of children being inappropriately exposed to more mature individuals or experiences is heightened. As such, **we consider that voluntary or where**

²⁴⁰ Howard League for Penal Reform, ‘[Children in prison during the Covid-19 pandemic](#)’ April 2020.

²⁴¹ MoJ, HMCTS & The Rt Hon Robert Buckland QC MP, ‘[Suspected criminals held for longer as criminal courts recovery plan announced](#)’, September 2020.

See also Just for Kids Law ‘[Just for Kids Law welcomes Government U-turn to exempt children from extended custody time limits](#)’ 14 January 2021:

“Today, the Ministry of Justice announced that they will introduce further regulations exempting children from the extended custody time limits. The regulations will apply retrospectively to children who had their custody time limits set under the September 2020 regulations, and so all children remanded at the Crown Court will have a custody time limit of 182 days even if their first appearance took place prior to the laying date of these new regulations. Their trials will also be required to be relisted to take place within the shorter custody time limits.”

that is not possible, planned interviews should be used where there is no immediate risk of harm to other people or no history of the child absconding. This would allow a time to be arranged that suits everyone, including legal representatives and appropriate adults. Data suggests that an appropriate adult is more likely to attend voluntary interviews, due to the advanced notice they receive. This can only be a positive for a child and will ensure a fairer process.

- 4.23 We also understand that police officers and magistrates can see custody as a place of safety for children. While we understand and applaud the desire to safeguard a child from potential harm, we stress that police custody should never be considered a place of safety for a child. Local authorities have a statutory duty under section 22 of the Children Act 2004 to provide secure accommodation for children. **Should a bail package fail to identify secure accommodation, we consider that magistrates should require social services to attend court to explain why.** We understand that takes place in some courts and consider that embedding this within existing procedures would ensure consistent practice. For this to be successful, magistrates and social workers need to build effective relationships. This is especially so given the national scarcity of placements. An effective working relationship would allow more space for solutions to be found, rather than accepting a lack of placements. To aid this, it is important to ensure that there is enough time for a bail package to be created.

Encourage reasonable questioning of the provenance of police intelligence

- 4.24 At present, police intelligence acts as a significant factor in the decision-making process for granting bail. The quality of such evidence, therefore, is crucial, given its potentially significant impact in the decision to imprison children and young adults.
- 4.25 **We therefore recommend that there should be a duty of candour evidenced by a statement of truth, for example in a witness statement, which must accompany the police intelligence provided for a remand hearing.**²⁴² Given the importance placed on the police's assessment of

²⁴² See [College of Policing advice](#) to officers in respect of intelligence - "Reasonable steps should be taken to check that the information is accurate, recent and not provided maliciously. The identity of an

suitability for bail, we consider that this requirement would act as a strong procedural safeguard to such evidence. This would increase the level of care and attention given to the relevance and accuracy of the information provided to the court. The court would then be able to make a more fully informed decision regarding bail.

- 4.26 We consider that such a certification could be modelled on the format required when the police make an application for a warrant under section 8 of PACE.²⁴³

Checklists

- 4.27 As mentioned in **Chapter 2**, following the ‘Voice of the Child’ project, the MPS is now introducing booking-in checklists for certain custody suites in London. **Similar checklists should be introduced for diversion, remand and sentencing decisions.** For example, we have been told of one instance where a sentencer felt that the only option available to them was to sentence a child to custody. However, there were further options, only the sentencer was not made fully aware of them. After this was pointed out, the child was recalled from custody and their sentence was changed, avoiding immediate custody.
- 4.28 A checklist would have helped to avoid this situation. It may have required the sentencer to have sight of the pre-sentence report (PSRs) prior to making a decision, or to go through each possible disposal option, requiring information to be sought about the feasibility of each one and allowing the sentencer to record their consideration, adoption or rejection of each option. In this way, the right decision would have been made the first time, reducing the trauma

informant need not be disclosed, but the officer should be prepared to answer questions about the accuracy of previous information or intelligence they have provided, as well as any related matters” – ‘Investigation: Search powers and obtaining and executing search warrants’.

²⁴³ See ‘Application for Search Warrant: Police and Criminal Evidence Act 1984, Schedule 1 – Second Set of Access Conditions’ (April, 2016), question 8:

“(8) Declaration. See Criminal Procedure Rules r.47.25(4), (5). The Crown Court can punish for contempt of court a person who knowingly makes a false declaration to the court.

To the best of my knowledge and belief:

(a) this application discloses all the information that is material to what the court must decide, including anything that might reasonably be considered capable of undermining any of the grounds of the application, and

(b) the content of this application is true.”

the child may have gone through and its reverberating long-term effects. There is a risk that practitioners will simply tick off a checklist without giving it due consideration. To ensure this does not happen, questions will have to be designed and technology employed that prompt practitioners to full answers e.g. not allowing the practitioner to continue without fully answering all questions.

Pre-sentence reports

4.29 PSRs are an essential tool for magistrates and judges. These are created by YOTs and detail their assessment of the child, as well as a sentence recommendation. PSRs allow practitioners, who have assessed and understand the child, to significantly influence the final sentencing decision. As such, should a magistrate not follow the recommendation within the report, we consider that **they should explain, and formally record in writing, why they have deviated from the PSR.** This would provide more transparency in the decision-making process and allow magistrates to engage with YOT workers so that they can produce improved PSRs. In addition, considering the importance of PSRs, we are concerned unconscious bias may affect the content of PSRs, with negative consequences for the child. **As such, we recommend that YOTs regularly scrutinise PSRs for any bias,** with a particular focus on identifying potential bias, learning from mistakes and sharing good practice, as we suggest in the previous chapter.

4.30 This is particularly important as we understand there is a risk that out of date or incorrect information can be included in PSRs. A child's situation can change significantly during the course of a judicial proceeding, and YOTs often do not have adequate resources to update them. Although there is a requirement for children to read PSRs and correct any mistakes, we consider that in practice this may not be effective, both for reasons of capacity as well as engagement. In such circumstances, specialist legal representation is key.

Pause and reflect in bail application decisions for children

4.31 Pursuant to the Bail Act 1976, a court may decline bail to a child and instead remand "*where the court is satisfied that it has not been practicable to obtain sufficient information*".²⁴⁴ We have heard that there are significant time

²⁴⁴ Schedule 1, Part 1, Section 5, Bail Act 1976.

pressures within the current processes, given that the court must engage with multiple parties, each of whom have interlocking responsibilities for the child in question in order for the preparation of a robust bail package. These include defence representatives, the YOT, and the police. While the court is required to be satisfied that sufficient time has been allowed to consider the information presented,²⁴⁵ we understand that this can be challenging in practice.

- 4.32** This is clearly far from ideal, and we believe could be remedied with additional clear guidance, for example from the YJB, that all agencies should be required to work together to produce an emergency bail package that will keep the child out of secure accommodation. **Where bail is refused at the first hearing, a child should be remanded to local authority accommodation (rather than youth detention accommodation), and the court should be provided with a refined and bespoke bail package within 14 days.**
- 4.33** We recommend that decisions regarding remand should be determined with the same seriousness, care, and consideration as sentencing,²⁴⁶ supported by a commensurate breadth and quality of information, and possibly referred to district judges with sufficient experience and who can be appropriately trained, rather than lay magistrates. This would help achieve the Government's objective to make remanding to custody a last resort.²⁴⁷

Data collection

- 4.34** In addition, we recommend that the MoJ centrally collates the reasons which courts give for bail and remand decisions, and make the information publicly available. This will allow for better scrutiny of

²⁴⁵ Criminal Procedure Rule 14.2(1)(d).

²⁴⁶ See the Sentencing Council, 'Sentencing Children and Young People', (June 2017), section 1.2:

"While the seriousness of the offence will be the starting point, the approach to sentencing should be individualistic and focused on the child or young person, as opposed to offence focused. For a child or young person the sentence should focus on rehabilitation where possible. A court should also consider the effect the sentence is likely to have on the child or young person (both positive and negative) as well as any underlying factors contributing to the offending behaviour."

²⁴⁷ See section 4 of the Bail Act 1976, Standing Committee for Youth Justice, "Ensuring custody is the last resort for children in England and Wales", May 2020 and Ministry of Justice, 'A Smarter Approach to Sentencing' September 2020, p.95.

decision-making processes, as well as identify, with the benefit of data, patterns in reasons given – aiding analysis for underlying systemic issues, such as racial disparity.

Holding the CJS to account

- 4.35 A perceived lack of accountability can foster the belief that there is “one rule for us and one rule for them”. As set out in **Chapter One**, BAME communities lack faith in accountability mechanisms within the CJS, especially the police. This is profoundly damaging to trust that criminal matters are handled fairly and impartially.
- 4.36 In this section, we focus primarily on how to improve oversight of the police for two reasons. The first is that the police act as gatekeepers to the rest of the CJS, and are therefore the most exposed to BAME communities on the ground. The second is that it is vital for children to avoid entering the CJS where possible. Police play an important role in this and accountability mechanisms that allow for the dissemination of best practice will ensure high standards when dealing with children.
- 4.37 Since 1969, there has not been a successful prosecution of a police officer for murder or manslaughter,²⁴⁸ despite there being 1774 deaths of individuals in custody since 1990.²⁴⁹ While 14% of these individuals were BAME, such deaths are twice as likely to occur following police restraint, where use of force is a feature, and where mental health issues existed.²⁵⁰ For BAME communities, these statistics strongly suggest that the police benefit from effective immunity from prosecution.
- 4.38 A further effect of poor accountability is the extent to which bad practices become embedded in the CJS. In order for standards to improve, the police must reform the entire culture within which so-called ‘bad apples’ have arisen.

²⁴⁸ Full Fact, ‘[We know of no successful convictions of a police officer for the killing of someone in police custody since 1971](#)’, July 2020.

²⁴⁹ INQUEST, ‘[Deaths in police custody](#)’, (14 January 2020).

²⁵⁰ *Ibid.*

Holding people to account for their actions creates an impetus to adhere to standards and avoid bias-informed actions.

Police accountability

- 4.39 The IOPC was founded in 2018, replacing the much-maligned Independent Police Complaints Commission. It is an investigative body with no power to decide outcomes. Once a decision is reached, it must refer the matter either back to the relevant police force (where misconduct is found) or to the CPS (where criminal conduct is found) for a final decision to be made. An investigation is prompted by either a self-referral by the police,²⁵¹ or from an individual raising a complaint. The IOPC assesses the issue, determining whether, *inter alia*, it is serious enough to warrant further action by the IOPC.²⁵² Where this threshold is not met, the IOPC passes the complaint onto the relevant police force to investigate itself, unless there are exceptional circumstances.²⁵³
- 4.40 We consider this process to be both weak and convoluted, and poorly understood by the public. As a result, the IOPC receives few complaints, with an even smaller number upheld. This may be because many people do not feel that it is worth making a complaint in the first place. For example, between 2010 and August 2020, 6,319 complaints were made against the TSG. Of these, only 27 were upheld by either the IOPC or MPS, as applicable. It is worth noting that these successful complaints all took place after 2018 suggesting potential improvement in IOPC procedures.²⁵⁴
- 4.41 The IOPC's 'lack of teeth' is a major barrier to improving police accountability.²⁵⁵ Once a complaint is referred back to the police, it falls to a

²⁵¹ There are circumstances where the police must make a referral, including where there has been a death or serious injury, or where certain criteria are met as set out in Chapter 9 of the IOPC statutory guidance. See IOPC, '[Statutory Guidance on the police complaints system](#)', (February 2020).

²⁵² For the IOPC's additional considerations, see IOPC, '[Core Indicator Guidance: Assessing IOPC referrals](#)', (February 2020).

²⁵³ IOPC, '[Statutory Guidance on the police complaints system](#)', (February 2020), para 2.7.

²⁵⁴ H. Dyer and D. Gayle, '[Revealed: fewer than one in 200 complaints against Met unit upheld](#)', *The Guardian*, 15 October 2020.

²⁵⁵ M. Busby, '[Fewer than one in 10 police officers fired after gross misconduct finding](#), *The Guardian*', 18 January 2021.

panel,²⁵⁶ to come to a decision about whether to agree with the IOPCs findings and whether any consequences should follow. No data is collected on how often these panels agree with the findings of the IOPC. **We therefore recommend that the IOPC should be empowered to collect data on the outcomes of police conduct panels and the consequences for officers.** This should include a breakdown of the complainants' ethnicity, as well as the police force (and subdivision, such as the TSG) to which the complaint relates.

4.42 In February 2020, the IOPC gained powers to commence an investigation of its own initiative.²⁵⁷ This is important as the ability for misconduct to come to their attention has increased with social media and the propensity for people to film police incidents. We hope this will help address the reticence of many children to raise a complaint in the first place.²⁵⁸ To strengthen the process, we consider that **all complaints relating to children should automatically meet the threshold for an IOPC investigation.** Adapting procedures in this way would not only mean children have an extra assurance that their complaints will be properly investigated but also that more evidence is collected as part of the IOPC's thematic focus on race discrimination investigations, given the wider scope of complaints captured.²⁵⁹

4.43 Super Complaints²⁶⁰ allow a designated body to bring a complaint where “a feature, or combination of features, of policing in England and Wales by one

²⁵⁶ This panel is comprised of one member of the relevant police force (or representative of Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services where the complaint concerns a senior officer), another person and chaired by an independent, legally qualified person, not selected from a pool held by the local police force.

²⁵⁷ “The IOPC may treat any complaint, conduct matter or DSI matter which comes to its attention otherwise than by being referred by the appropriate authority, as having been referred, whether or not that matter has been recorded.”, IOPC, ‘Statutory Guidance on the police complaints system’, (February 2020), para 9.36.

²⁵⁸ The lack of complaints is particularly apparent with BAME children. Release and Y-Stop developed an app that allows children and young people to make a complaint following being stopped and searched. The app also has a function that automatically sends the information to Release so that the complaint is not lost. Despite being download 30,000 times, only a tiny number of complaints have been made through the app. However, more children have sent details to Release, not wishing to start the formal complaints process, demonstrating a desire to at least document any alleged malpractice.

²⁵⁹ IOPC, ‘IOPC announces thematic focus on race discrimination investigations’, 10 July 2020.

²⁶⁰ A triage committee comprising of the IOPC, HMICFRS, and the College of Policing (COP) is responsible for assessing a super complaint and deciding what action, if any, will be taken in response, IOPC, ‘Super-complaints and working with other policing oversight bodies’.

or more than one police force is, or appears to be, significantly harming the interests of the public.”²⁶¹ This provides another avenue for the IOPC to investigate and make recommendations to police bodies.²⁶² Organisations should consider whether they may be well placed to raise a super complaint.²⁶³

- 4.44 Increased public understanding of the complaints process is vital, especially for children. To this end, the IOPC has convened a youth panel. The panel is comprised of children who have had experience of the justice system, with 68% being BAME.²⁶⁴ The panel forms part of the IOPC's wider work in engaging with local communities who have a strained relationship with the police. For instance, following the paralysis of a young man who was tasered by police as he jumped over a wall,²⁶⁵ the IOPC spoke with the affected community and established a community reference group to provide ongoing reassurance and engagement about how the complaints process and investigation would proceed. It is hoped the panel will improve the information that is disseminated and help the IOPC to understand what children and young adults would like to see change in policing.

Community Scrutiny Panels

- 4.45 In addition to the IOPC's formal complaints mechanism, regular scrutiny of police actions can also serve to improve performance. Under PACE Code A,²⁶⁶ community scrutiny is a requirement for stop and search, with the College of

²⁶¹ Section 29A, Police Reform Act 2002.

²⁶² See, for example, a super complaint by the Tees Valley Inclusion Project that directly relates to police investigations of sexual abuse affecting BAME complainants. See, Halo Project, '[Super complaint' launched against police by Teesside charity to combat 'systemic issue'](#)', (26 August 2020).

In addition to this, there was a complaint by Hestia about the police response to victims of modern slavery. See, Gov.uk, '[Police super-complaints: police response to victims of modern slavery: Super-complaint made by Hestia](#)', (2019).

²⁶³ "To be able to make a super-complaint, an organisation must apply to the Home Office to become a 'designated organisation'. Members of the public cannot submit a super-complaint.", IOPC, 'Super-complaints and working with other policing oversight bodies', see - Gov.uk, '[Police super-complaints: police response to victims of modern slavery: Super-complaint made by Hestia](#)', (2019).

²⁶⁴ IOPC, '[Independent Office for Police Conduct \(IOPC\) Youth Panel: Key findings and recommendations 2019](#)'.

²⁶⁵ J. Kelly, '[Man paralysed in taser fall says race made him a target](#)', *BBC News*, 24 June 2020.

²⁶⁶ PACE Code A, para 5.4.

Policing providing guidelines on such processes.²⁶⁷ This has led to the establishment of Community Scrutiny Panels (CSPs) in different force areas, albeit with inconsistencies in effectiveness from area to area.²⁶⁸

- 4.46 CSPs are made up of members of the public that meet regularly each year to scrutinise the police's use of stop and search powers. CSPs also have the ability to hold the police to account for their use of stop and search, for example,²⁶⁹ by reviewing incidents of stop and search after they have happened, giving each stop a rating. While we are concerned by overall inconsistencies across the country, we have equally seen many examples of good practice that show how effective CSPs can be when properly implemented. For example, in Bedfordshire the scrutiny panel has the opportunity to review an area's 'section 60' designation in advance of its application. Although they have no power to stop a section 60 notice, the process has led to some instances where the police have agreed that the power was not necessary.

Community Scrutiny Panels – Examples of Good Practice

Bedfordshire

The CSP uses a traffic light system to 'rate' officers' use of stop and search. Where a search is graded green, the officer is provided with positive feedback. If amber, the officer is given advice on how to improve. A red-graded search will be escalated to the Chief Inspector, the officer in question and the police force lead, in order to provide direct accountability and management action. Feedback is provided at the next panel meeting.

Northamptonshire

Each month, stop and search records are sifted by a Sergeant and grounds which are not clearly and immediately identifiable as reasonable are presented to the Reasonable Grounds Panel. If the Panel finds there were no reasonable grounds for the search, the officer in question is informed and a process of

²⁶⁷ College of Policing, Authorised Professional Practice, '[Stop and Search: Transparent](#)'.

²⁶⁸ K. Kaylan and P. Keeling, '[Stop & Scrutinise: How to improve community policing of stop and search](#)' Criminal Justice Alliance, 2019. Key principles from this report were taken onboard and incorporated in updated College on Policing App on community scrutiny and engagement - Transparent see College of Policing, '[Stop and Search: Transparent](#)'.

²⁶⁹ K. Kalyan and P. Keeling, '[Stop & Search: how to improve community scrutiny of stop and search](#)', 2019, p.6.

escalating support and consequences ensues. In the first instance, the officer and their supervisor are offered training. In the second instance, this training becomes mandatory. In the third instance, the officer and the supervisor are suspended from using stop and search until a specific development plan has been completed.

Cheshire

Panel members can challenge where the quality of a stop and search is questionable and the police provide an update at the next meeting. Cheshire Police has also commissioned academic research to gather views from people subjected to stop and search in Cheshire, prioritising ‘call-backs’ to BAME people who have been stopped and searched.

London Borough of Croydon

Another Night of Sisterhood (ANOS) is a grassroots community organisation in Croydon. ANOS works with the police and local CSP to deliver unconscious bias training and organise community meetings with adults and children/young adults on the issue of stop and search. They encourage open and honest dialogue with the police about the historical and current relationship between the police and BAME communities and how to rebuild trust.

- 4.47 However, we are aware of concerns that CSP members may, in some cases, be more punitive than the police forces, meaning opportunities for learning may be lost. This could be exacerbated where scrutiny panels do not reflect the full diversity of their community, especially those groups that are stopped and searched the most. For instance, on the Edgware Road in London, Kurdish boys form a large number of those stopped and searched, with the relevant CSP lacking a single Kurdish member. We have seen that CSP members tend to be older and White, possibly due to having increased availability in retirement to take on a voluntary role.
- 4.48 These concerns highlight the importance of consistent practice with strong community input to mitigate any biased outcomes. For this to happen, **we recommend that the College of Policing’s guidance on CSPs should become mandatory, combined with the establishment of a national oversight body for CSPs.** This would monitor CSPs and ensure they are adhering to guidance and best practice. **This guidance should require that CSPs:**

- a) meet regularly;
- b) receive comprehensive training on what constitutes an appropriate stop and search, with particular attention given to the concerns of BAME communities;
- c) reflect their local community through proactive recruitment efforts; and
- d) have a prior review power of section 60 notices.

4.49 For CSPs to be effective, it is important that they have access to all available evidence. Body Worn Video (BWV)²⁷⁰ has the potential to provide objective evidence of an incident.²⁷¹ As such, we consider that **all CSPs should be given access to BWV footage**. This would require the MPS to reinstate the ability to share such footage externally and change the current practice of destroying BWV after thirty days, given that most CSPs meet once a quarter.

4.50 Unfortunately, we understand that the recording of incidents is often inconsistent, with allegations of police officers not turning on their BWV during whole or part of an incident. This could be resolved by requiring that **BWVs be turned on prior to an officer leaving their car, or, when on foot, where they have a suspicion that their coercive powers might be exercised, or prior to direct contact with members of the public.**²⁷² In order to ensure that the cameras do not run out of battery, it should be made possible to charge the cameras in police vehicles. **Should a camera not be switched on or be switched off during an interaction, the reasons should be recorded and provided to the CSP for review.**

²⁷⁰ Cameras police officers wear that capture video and audio during interactions with the public.

²⁷¹ For example, the Met have suspended CSPs from reviewing BWV since January 2020. This is highly concerning given the large volumes of stop and search the Met conduct. See, Independent Office for Police Conduct, ‘Review identifies eleven opportunities for the Met to improve on stop and search’, October 2020. The IOPC review into the Met’s use of stop and search found ‘failure to use body-worn video from the outset of contact’. While we understand that some CSPs are not given BWV footage for data protection reasons, we consider these concerns can be addressed. For example, footage can be uploaded onto a web platform, with a unique code provided to the CSP to access the footage and review it, following which access can be restricted.

²⁷² At present, there are no clear rules on when an officer should begin recording. Current guidance states that “a decision to record or not to record an incident rests with the user”, but that it is recommended that they should “record incidents whenever they invoke police power”. See College of Policing, ‘Body-Worn Video’, 2014, p.23.

4.51 We recognise that in addition to CSPs, police forces have internal review mechanisms to investigate allegations of wrongdoing. The College of Policing’s Authorised Professional Practice recommends that supervising officers examine emerging trends. However, these scrutiny mechanisms vary from force to force. In the BTP, for example, a sergeant assesses every stop and search undertaken, and conducts randomised reviews of historic searches on a regular basis. Moreover, all stop forms include details on ethnicity. Internal scrutiny should identify whether an officer is regularly stopping people without reasonable grounds, and prompt further action in the form of training to improve their use of the power.

Bias in decision-making

4.52 After a case is determined at court, if the defendant is unhappy with their conviction, or the length of their sentence, they can, under certain circumstances, lodge an appeal. This process helps to ensure the decisions of judges are scrutinised and held to account through a forensic analysis of the law and facts.

4.53 Appeals are an essential part of the CJS. However, they require legal representation (with costs or Legal Aid), time and energy. They also mean that the fate of the individual appealing remains uncertain until the appeal is concluded. Where the sentence is short or where someone is a repeat offender, the value of an appeal reduces, regardless of the strength of the case. In turn, judicial accountability (and the development of best practice) fades away. Moreover, even where a defendant is successful in their appeal, it is rare that issues of racial bias are ventilated.

4.54 Another block to accountability is the discretionary nature of many judicial decisions. For example, provided that a judge or magistrate makes a decision that is within the range of sentencing guidelines and is not explicitly racist, it is unlikely that an appeal based on bias will be successful. Although the research is patchy, there have been worrying reports and anecdotal examples of racial bias.²⁷³ We heard one striking example from a child, who a judge referred to as a “*strapping Black lad*.” Such language is clearly alienating,

²⁷³ O. Bowcott, ‘Judges told they should consider previous racial bias before sentencing’ The Guardian, 9 December 2021.

inappropriate, and exacerbates BAME individuals' frequent experiences of bias.

- 4.55 In 2019, the average sentence length for a BAME individual was 27.1 months, compared to 19.5 for their White counterpart. While the reasons for this disparity are complex,²⁷⁴ it indicates that greater scrutiny must be afforded to how sentences are determined. Indeed, the Lammy Review found that juries, by contrast, “*deliver equitable results, regardless of the ethnic make-up of the jury, or of the defendant in question*”, pursuant to “successive studies”.²⁷⁵ While we welcome initiatives such as the Equal Treatment Bench Book,²⁷⁶ we remain concerned that such bias may continue to affect decision-making when it comes to BAME children.
- 4.56 Unfortunately, we lack the data to understand biased decision-making in greater depth. With better data, we would be able to understand whether, and how, bias permeates decisions in all court centres, or whether it is located in specific court centres, or even with specific judges or magistrates. This knowledge is vital in order to understand and develop ways to ensure judicial decisions are not biased. We understand that the data which academics require to better understand bias in decision-making does exist but the MoJ is reluctant to share it either publicly or with researchers, citing concerns about being able to track data to specific sentencers. This reasoning is maintained, even where researchers undertake to keep confidential and anonymised the data. This is disappointing. While the independence of the judiciary is critical, it should not inhibit scrutiny of potential bias in decision making. It is baffling that the MoJ does not itself want to understand this data. **We therefore recommend that**

²⁷⁴ “The higher conviction ratio might be partly explained by the higher rate of ‘guilty’ pleading among White defendants. If we look at defendants in Crown Court trials in 2019, 37% of defendants from BAME groups pleaded ‘not guilty’ compared with 27% of White defendants. The Lammy Review explained that willingness to plead guilty is linked to trust in the fairness of the legal system.” – See also B. Yasin and G. Sturge, *Ethnicity and the criminal justice system: What does recent data say on over-representation?*, House of Commons Library, (October 2020).

²⁷⁵ See the Lammy Review, page 6, and Thomas, C. Ministry of Justice Research Series. *Are Juries Fair?* (2010), and Thomas, C. Criminal Law Review, number 9. ‘Ethnicity and the Fairness of Jury Trials in England and Wales 2006-2014’, (2017).

²⁷⁶ “The Equal Treatment Bench Book aims to increase awareness and understanding of the different circumstances of people appearing in courts and tribunals. It helps enable effective communication and suggests steps which should increase participation by all parties.” – see *Equal Treatment Bench Book*, March 2020.

the MoJ engages with academics who research sentencing data and share the necessary data with researchers to measure bias within judicial decision-making.

- 4.57 We understand that the Magistrates' Association has set racial disproportionality in the YJS as a policy priority,²⁷⁷ and intends to introduce training on this issue, as well as to continue to provide resources to its members to raise awareness of the issue.
- 4.58 The initiatives we propose in **Chapter 3** would aim to reduce such bias in decision making. Moreover, evidence shows that peer-review encourages individuals to check their own work and decision-making.²⁷⁸ This is the approach that the courts in the State of New York have taken. The courts commissioned an internal review and allowed judges, clerks, court watchers, court officers and lawyers to be interviewed on the topic and for recommendations to be made.²⁷⁹ We see no reason why such a review could not take place within our own court estate, and **the Courts of England and Wales should establish internal peer-review initiatives to increase scrutiny of judicial decisions.**
- 4.59 The CPS has also established good practice in both internal and external scrutiny, as highlighted by the *Lammy Review*. Internal scrutiny includes a systematic review of charging decisions, with each prosecutor also having at least one randomly selected case reviewed each month. These reviews are undertaken by the prosecutor's line manager. Despite this practice, we note that improvements can still be made, particularly in the YJS. In a recent inspection, HM Crown Prosecution Inspectorate found that the CPS's youth charging policy was fully or partially applied in only 68% of cases, and not applied at all in 32% of cases.²⁸⁰ Moreover, the CPS's internal scrutiny

²⁷⁷ M. Gammon and J. Easton, 'Disproportionality in the Youth Justice System' Magistrates Association, 2019.

²⁷⁸ H. Park and J. Blenkinsopp, 'The roles of transparency and trust in the relationship between corruption and citizen satisfaction', *International Review of Administrative Sciences* 77(2) 254-274, (2011).

²⁷⁹ J. Johnson, *Report from the Special Adviser on Equal Justice in the New York State Courts*, October 2020.

²⁸⁰ HM Crown Prosecution Service Inspectorate, *2020 Charging Inspection: a thematic review of the quality and timeliness of charging decisions*, (September 2020), p. 14.

mechanisms do not have a specific focus on race. As such, **we recommend that the CPS should place a specific focus on decisions concerning BAME suspects within its internal scrutiny mechanism, particularly with regard to charging decisions where evidence from the GVM is considered.**

KEY RECOMMENDATIONS

- The police should embed independent navigators in custody suites which receive high numbers of BAME children;
- Barristers and solicitors who represent children and young adults should be recognised for their specialism, and required to undertake training. The Legal Aid Agency must better remunerate such lawyers to reflect the specialist expertise required for competent practice;
- If bail is refused at the first hearing, a child should be remanded to local authority accommodation (rather than youth detention accommodation), and the court should be provided with a refined and bespoke bail package within 14 days. Where a bail package fails to provide secure accommodation, magistrates should require social services to attend court to explain why;
- All complaints relating to children should automatically meet the threshold for an Independent Office for Police Conduct investigation; and
- The College of Policing's Guidance on Community Scrutiny Panels should become mandatory, combined with the establishment of a national oversight body for Community Scrutiny Panels.

V. CONCLUSION AND RECOMMENDATIONS

Demands for equality need to be as complicated as the inequalities they attempt to address. — Reni Eddo-Lodge, *Why I'm No Longer Talking to White People About Race*

- 5.1 This report stands in a long line of reviews and inquiries that have interrogated racial disparities in the criminal justice system. The issues are undoubtedly broad and complex, involving many interconnecting parts, different actors, and multiple agencies. Nevertheless, at the root remains bias and prejudice; either on the part of decision-makers, or the processes within which they work. In many cases, these have become firmly embedded in the institutional culture of the organisations themselves. The sad result is the failure of the criminal justice system to meet the legitimate expectations of BAME communities that they, and their children, should be treated fairly with dignity and respect; as is more freely afforded to their White counterparts. This Working Party was convened on the basis that current progress is not keeping pace with the urgent demands for equal, and thereby, fair justice
- 5.2 Despite their complexity, the problems are well known. BAME children continue to be more likely than their White counterparts to be stopped and searched, less likely to benefit from diversion, and are at greater risk of spending lengthy periods in custody on remand, sometimes locked in their cells for up to 23 hours with no family visits resulting from COVID-19 related restrictions. These issues are supported by decades of evidence. We add our voices to those who have, for years, demonstrated and articulated, the problem. It is understandable that many are fatigued with repeated reviews, and promises of action that are yet to be fulfilled. Change is urgently needed to review, abolish, or amend the offending policy decisions and practices that enable ever greater discrimination of BAME children to persist.
- 5.3 That said, we remain hopeful that change can happen and, more, that those who work within the justice system are driven to make it happen. Our report has shown that good practices do exist; albeit too often in an *ad hoc*, piecemeal fashion, with the main beneficiaries being White, as opposed to BAME, children. We now have an opportunity to be world-leading in how we deal with race and children within our justice system.

- 5.4 We acknowledge that criminal justice agencies do a difficult job, not least in a context of regular cuts to their budgets and personnel. In this context, we have seen how staff in such agencies take pride in rising to these challenges. We consider that the perceptions of bias that they face should be met with a similar pride in wanting to convince BAME communities, and their children, that they can be treated with the dignity and respect they deserve. Rather than closing ranks and becoming defensive, the best responses to tackling racial injustice have arisen from a culture of transparency, openness, and a willingness to take ownership of the issue. We have seen this philosophy underpinning much of the Crown Prosecution Service's work, as well as promising initiatives from the Metropolitan Police Service with respect to child custody. There is no reason why a similar spirit cannot be invoked widely across the criminal justice system.
- 5.5 At the same time, this report finds that procedural changes, while necessary, cannot be sufficient to fully address some of the most egregious examples of racial injustice. A system is only as strong as the individuals within it. A cultural shift is therefore vital in this effort. Children must first and foremost be seen as children, with their unique vulnerabilities and needs fully appreciated. A failure to do so fully can only lead to the future compounding of issues.
- 5.6 This means ensuring that the justice system, in its entirety, works specifically for BAME children, and refrains from applying adult standards and expectations to those who are growing up and maturing, both in their sense of self and their behaviours. It means understanding why BAME children might be afraid of the police, and see the system as working against, rather than for, them. It means, in sum, that agencies within the system must earn the confidence of those communities, and not take it for granted.
- 5.7 This report calls for all parts of the criminal justice system to embed an understanding that it is their duty to meet the needs of BAME individuals, and their responsibility to directly address the circumstances in which discrimination and bias arise. BAME children have a right to expect proper treatment. They are in no way obliged to trust a system where they see and experience its evident failures on a daily basis.
- 5.8 For this reason, our report's recommendations seek to take best practices from across the criminal justice system and ensure they are disseminated widely.

Cultural shifts can be engendered through better data collection, ensuring proper records are collected at every stage of a child's interaction with the youth justice system, mandating that its agencies always prioritise the welfare of a child over any punitive response, and implementing effective training programmes. Where we have seen policies that are fundamentally discriminatory, we have called for their abolition or review, from the Gangs Violence Matrix to the regrettable use (and expansion) of stop and search powers under section 60 of the Criminal Justice and Public Order Act 1994. These recommendations are not made lightly, and are firmly grounded in evidence, analysis, and BAME communities' lived experiences.

- 5.9** It is clear that a number of our recommendations may have some modest, up-front cost implications. For instance, the establishment of a National Diversion Framework, piloting of restorative practice circles or the expansion of welfare hubs at police custody suites. However, we cannot shy away from investing in children's futures. It is our considered view that each proposal would more than pay for itself, both in terms of reducing the pressures on the criminal justice system by improving community relations, fairly identifying and investigating crime, decreasing levels of crime, keeping children out of custody and most importantly by helping children grow up to fulfil their potential, removed from endless cycles of criminalisation. A failure to make such investments will reap more significant costs in future, at both a financial and human level.
- 5.10** The ongoing COVID-19 pandemic has provided a devastating context in which much of this report was written and published. During the first lockdown in March – June 2020, the use of stop and search rose by 40% in London alone, with the tactic used roughly 1100 times a day, mainly against BAME individuals, many of whom were key workers or those otherwise unable to work from home. With the issue of racial disparity all the more apparent in this light, we hope this report can do justice to those who risk their lives, and ensure that the full attention of the State is directed to righting the manifest wrong that is continued racial discrimination in the criminal justice system.
- 5.11** Finally, we fully recognise that it is impossible to capture all voices, thoughts, and proposals in one report. Rather, we wish to highlight what we see as a way forward, an outline toward a system that can work better for each child. While this report is written with the experiences of BAME children and young adults at its heart, we expect its recommendations to have wider resonance. For

everyone to be treated fairly, everyone must be seen, heard, and understood. This is true regardless of background, and is what we continue to work toward.

Recommendations

1. The Ministry of Justice should both collect and make available all data that is necessary to fully assess disproportionality in the criminal justice systems **(para 1.15)**.

Suspicion of BAME children

Stop and Search

2. All police forces should take steps to implement the 11 recommendations made by the Independent Office for Police Conduct to the Metropolitan Police Service on how to improve stop and search **(para 2.13)**.
3. The Home Office should launch a review on the use of force, and specifically tasers, on children, BAME people and those with mental health difficulties **(para 2.18)**.
4. Police forces must prioritise a return toward neighbourhood policing **(para 2.19)**.
5. Territorial Support Group officers should undergo specific de-escalation training **(para 2.20)**.
6. Police officers, as a matter of course, should thank individuals stopped for their cooperation and acknowledge the inconvenience caused, where such stop resulted in no further action. To instil self-reflection, and ensure that the police act in accordance with the law, stop records should include what activity was suspected, what was found, what the outcome was, and most importantly, both the ‘perceived’ and self-defined ethnicities, where possible **(para 2.20 and 2.23)**.
7. PACE Codes should be amended to clarify what a genuine suspicion entails, including that the smell of cannabis alone cannot be grounds for suspicion **(para 2.26)**.
8. Police officers should always prioritise the welfare of the child (such as utilising diversion and deferred-prosecution schemes) over punitive responses through the criminal justice system **(para 2.28)**.

9. The Home Office should immediately suspend any further section 60 authorisations until it has undertaken an independent evaluation of the impact and effectiveness of these searches, supported by a public consultation. In the meantime, while section 60 authorisations continue, we recommend that the changes made under the pilot scheme be immediately reversed, and be subject to the prior review of Community Scrutiny Panels **(para 2.33)**.

Gangs

10. The police should automatically consider the possession of a knife by a child as a safeguarding concern rather than as an indicator of potential violence **(para 2.37)**.
11. The Gangs Violence Matrix should be abolished. Until the Gangs Violence Matrix is abolished it should primarily serve as a safeguarding tool, with respect to children, young, and vulnerable adults **(para 2.43 and 2.44)**.
12. When provided with evidence of an individual's inclusion on the Gangs Violence Matrix, prosecutors should ask to review the underlying data that triggered the inclusion. Further, if adduced in court (including for bail applications and injunctions), this information should be disclosed as a matter of course. The Crown Prosecution Service must ensure that it reviews every decision to adduce gang association for accuracy and racial bias and explore different ways of prosecuting crimes perpetrated by groups of children and young adults **(para 2.48 and 2.49)**.
13. Evidence of producing Drill music or appearing in Drill videos should not be used as bad character evidence unless it can be shown to be relevant to the specific crime. Moreover, we consider that courts should apply more rigour in determining the relevance and admissibility of Drill due to the corrosive effect of portraying a genre of music so closely connected to Black communities as innately illegal, dangerous and problematic **(para 2.53)**.
14. Joint experts should genuinely understand Drill and its cultural context. Any report on the content should, where possible, be agreed by both the defence and prosecution. This would allow for a more objective assessment of the relevance of the evidence, and safeguard against inappropriate extensions of what might be viewed as opinion evidence. **(para 2.54)**.

The Prevent Programme

15. The government must urgently re-start the inquiry into PREVENT, in a form that will secure the confidence of Muslim communities. It is vital that this review fully assess the drivers for the disproportionate way in which referrals are made (**para 2.59**).

Overlooked Groups

16. Criminal justice agencies must proactively improve their relationship with the GRT community or take steps to better understand through a GRT community engagement strategy. The Traveller Movement has produced recommendations on how to do this and we fully endorse them (**para 2.65**).
17. Where indicators of vulnerability and exploitation of BAME girls and young women are identified, the proper procedures – whether for forced marriage or modern slavery – must be followed (**para 2.71**).

Treating children as children

18. All those under 18 to be referred to as children in all future legislation and policies (**para 3.5(d)**).

Restorative Practice

19. Criminal justice agencies should pilot and evaluate the use of restorative practice circles (**para 3.15**).

Cultural competency initiatives

20. A comprehensive diversity training programme is required that is fit for purpose, encompassing written guidance, cultural competency and bias training, and reverse mentoring. Anti-racism training programmes should incorporate ‘in the field’ community engagement, to supplement high-quality desktop based exercises. It should be an entry level requirement for Territorial Support Group officers to spend time in the communities within which they are likely to be active. Diversity training programmes should be supplemented with reading and watching lists, which employees and practitioners can use to enhance their learning experience. The relevant HM Inspectorates for each agency should form specialist teams to evaluate the diversity training

programmes. The Judicial College, the Inns of Court College of Advocacy and the Law Society should set out a clear plan to implement similar training, which must be evaluated and measured (**paras 3.17, 3.19 and 3.21**).

Problem-solving approaches

21. A national framework for diversion schemes should be developed and implemented to strengthen the existing presumption in favour of diversion for children and for this presumption to be properly embedded and consistently applied in all criminal allegations involving children. (**para 3.34**).
22. The Ministry of Justice and Youth Justice Board should work together to collect accurate and consistent data on the impact and effectiveness of out of court disposals, as recommended by the Justice Select Committee (**para 3.35**).
23. Should an evaluation demonstrate positive results, we recommend that problem-solving sentencing hearings be rolled-out to every Youth Court, with clear guidance on its suitable use (**para 3.39**).
24. Should an evaluation demonstrate that Youth Order Review Panels have a positive impact, we recommend that they take place at every Youth Court, with a particular emphasis on ensuring access for BAME children. Should evaluation of Youth Order Review Panels prove positive, they should be made available for young adults (**para 3.42**).

Enhancing Children's Voices

25. A service should be established that supports disempowered parents through to court. It is vital that interpreters are available for parents as well as children at every stage of the justice system (**para 3.46 and 3.48**).
26. Innovative methods aimed at exploring a child's experiences, and the impact they may have, would be useful throughout the Youth Justice System (**para 3.52**).

Building BAME Children's Confidence in the YJS

Ensuring specialists make decisions about children

27. The police should embed independent navigators in custody suites which receive high numbers of BAME children (**para 4.6**).

28. In order for children to understand what is happening, all information provided to them should be child friendly and culturally competent (**para 4.12**).
29. The Bar Standards' Board's Youth proceedings competency requirement should be extended to all pupils and barristers representing and prosecuting children in the Crown Court. The Solicitors Regulation Authority should make foundation training with ongoing child-specific continuing professional development training mandatory for all solicitors who provide representation for children and young adults. In respect of both barristers and solicitors, the Legal Aid Agency must better remunerate such work to reflect the specialist expertise required for competent practice (**para 4.15 and 4.16**).

Making Consistent Decisions

30. Voluntary or where that is not possible, planned interviews should be used where there is no immediate risk of harm to other people or no history of the child absconding (**para 4.22**).
31. Should a bail package fail to identify secure accommodation, magistrates should require social services to attend court to explain why (**para 4.23**).
32. There should be a duty of candour evidenced by a statement of truth, for example in a witness statement, which must accompany the police intelligence provided for a remand hearing (**para 4.25**).
33. Checklists should be introduced for diversion, remand and sentencing decisions (**para 4.27**).
34. Should a magistrate not follow the recommendation within the pre-sentence reports, they should explain and formally record in writing, why they have deviated from the Pre-sentence report. Youth Offending Teams should regularly scrutinise pre-sentence reports for any bias (**para 4.29**).
35. Where bail is refused at the first hearing, a child should be remanded to local authority accommodation (rather than youth detention accommodation), and the court should be provided with a refined and bespoke bail package within 14 days (**para 4.32**).

36. Decisions regarding remand should be determined with the same seriousness care and consideration as sentencing, supported by a commensurate breadth and quality of information, and possibly referred to district judges with sufficient experience and who can be appropriately trained, rather than lay magistrates **(para 4.33)**.
37. The Ministry of Justice should centrally collate the reasons which courts give for bail and remand decisions, and make the information publicly available **(para 4.34)**.

Holding the CJS to account

38. The Independent Office for Police Conduct should be empowered to collect data on the outcomes of police conduct panels and the consequences for officers **(para 4.41)**.
39. All complaints relating to children should automatically meet the threshold for an Independent Office for Police Conduct investigation **(para 4.42)**.
40. The College of Policing's Guidance on Community Scrutiny Panels should become mandatory, combined with the establishment of a national oversight body for Community Scrutiny Panels. This guidance should require that Community Scrutiny Panels:
 - a. meet regularly;
 - b. receive comprehensive training on what constitutes an appropriate stop and search, with particular attention to the concerns of BAME communities;
 - c. represent their local community through proactive recruitment efforts; and
 - d. have a prior review power of section 60 notices. **(para 4.48)**.
41. All Community Scrutiny Panels should be given access to Body Worn Video footage **(para 4.49)**.
42. Body Worn Video should be turned on prior to an officer leaving their car, or, when on foot, where they have a suspicion that their coercive powers might be exercised, or prior to direct contact with members of the public. Should a camera not be switched on or be switched off during an interaction, the reasons

should be recorded and provided to the Community Scrutiny Panel for review **(para 4.50)**.

43. The Ministry of Justice should engage with academics who research sentencing data and share the necessary data with researchers to measure bias within judicial decision-making **(para 4.56)**.
44. The Courts of England and Wales should establish internal peer-review initiatives to increase scrutiny of judicial decisions **(para 4.58)**.
45. The Crown Prosecution Service should place a specific focus on decisions concerning BAME suspects within its internal scrutiny mechanism, particularly with regard to charging decisions where evidence from the Gang Violence Matrix is considered **(para 4.59)**.

VI. ACKNOWLEDGMENTS

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Deji Adeosun, Hackney CVS

Stephen Akinsanya, Great James Street Chambers

Hervé Almenoar-Webster, Associate Lecturer and PhD Candidate, University of West London

Maria Atanasiu, Youth Justice Policy Adviser, Youth Justice Policy, Ministry of Justice

Uzma Babb, Senior Stakeholder Engagement Officer, Independent Office for Police Conduct

Andrea Banham, Independent Office for Police Conduct

Dr Tim Bateman, University of Bedfordshire

Chris Bath, Chief Executive, the National Appropriate Adult Network

T/Inspector Anna Beaver, Staff Officer to DCC Adrian Hanstock

Dr Jonathan Bild, Director of Operations, Sentencing Academy

Luke Billingham, Hackney Wick Youth Voice Project Lead, Hackney Quest

Dr Crofton Black, The Bureau of Investigative Journalism

Dr Ben Bradfrod, Director of the Jill Dando Institute for Global Policing

Kayleigh Broughton, Consultant Social Worker and Magistrate

Sofia Buncy, National Coordinator, Khidmat Centres

Charlotte Calkin, Director, Restorative Engagement Forum

Jon Collins, Chief Executive, Magistrates Association

Dr Alexandra Cox, University of Essex

Jeremy Crook, Chief Executive, Black Training and Enterprise Group

Shadae Cuzeau, Head of Policy, EQUAL

Viviane da Silva, New Horizons Youth Centre

Richard Doolan, Head of Policy – prosecution policy and inclusion, Crown Prosecution Service

Rose Dowling, CEO and Founder Leaders Unlocked

Dr Jo Easton, Deputy Chief Executive, Magistrates Association

Niamh Eastwood, Executive Director, Release

Jessica Edwards, Youth Offending Team Worker

Claire Ely, Head of Innovation Practice, Centre for Justice Innovation

Francesca Fadda-Archibald, Practice Development Manager, Young Hackney

Kirsten Foster, Senior Policy Adviser, Crown Prosecution Service

Oliver Foxwell, Operational Manager, Buckinghamshire Youth Offending Service

Dr Roger Grimshaw, Research Director, Centre for Crime and Justice Studies

Dr Anthony Gunter, The Open University

Nicola Hall, Robert Lizar Solicitors

Professor Nick Hardwick, Royal Holloway

Anthony Hill, Crown Prosecution Service

Ahmed Ibrahim, Youth Panel Member, Independent Office for Police Conduct

Dr Keir Irwin-Rogers, The Open University

Fats Jah, Young CJS Advisor, Leaders Unlocked

Peter Jamieson, Youth Justice Social Worker, Hackney Youth Justice Unit

Bami Jolaoso, Innovative Practice Office, Centre for Justice Innovation

Paul Jones, Head of Sentencing and Courts, Youth Justice Policy, Ministry of Justice

Dr Vicky Kemp, University of Nottingham

Daryl Laycock, Crime Prevention Consultant and Mentor

Duncan Lugton, Head of Policy and Public Affairs, Centre for Justice Innovation

Ceryl Marsh, Senior YOT Officer, Thurrock

Raheel Mohammed, Director, Maslaha

Thomas Naden, Speech and Language Therapist, Young Hackney

Sal Naseem, Regional Director for London, Independent Office for Police Conduct

Dr Alpa Parmar, University of Oxford

Dr Jose Pina-Sánchez, University of Leeds

Dr Eithne Quinn, University of Manchester

Latoya Reisner, Research Associate, Manchester University

Professor Julian Roberts, Executive Director, Sentencing Academy

Carmen Robin-D'Cruz, Research Officer, Centre for Justice Innovation

Chief Inspector Russell Hughes, Metropolitan Police Service

Kamila Rymajdo, Journalist and Researcher, University of Manchester

Naima Sakande, Women's Justice Advocate, APPEAL

Stafford Scott

Satvinder Singh Hundle, Revolving Doors

Suzanne Smith, Innovation Practice Officer, Centre for Justice Innovation

Dr Jack Spicer, University of the West of England

Greg Stewart, GT Stewarts Solicitors

Fitzroy Taylor, Youth Justice Practitioner, Hackney IGU

Sheldon Thomas, Founder and CEO, Gangsline

Ife Thompson, Founder, BLAM UK

Leanne Tomlinson, Operations Manager North Team, Northamptonshire Youth Offending Service

Rachel Tribe, Clinical Psychologist, MAC UK

Rochelle Watkins, Senior Youth Justice Practitioner (YOT Gangs), Hackney Youth Offending Team

Kieran Watt, Improving Prospects Delivery Manager, Leap Confronting Conflict

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Finally, we thank all the children and young adults who took the time to share their experiences and stories with the Working Party. This report is for them, with the hope that they will benefit from a criminal justice system that acts fairly and impartially, free from racial and ethnic prejudice.

A handwritten signature in black ink, appearing to read 'Sandra Paul', with a stylized, flowing script.

Sandra Paul



59 Carter Lane, London, EC4V 5AQ
www.justice.org.uk