



Wales Centre for Public Policy
Canolfan Polisi Cyhoeddus Cymru

Improving Race Equality in Crime and Justice

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Summary

- This report is one of a series of six that provides independent evidence to inform the development of the Welsh Government's Race Equality Action Plan.
- It focuses on the criminal justice system which is frequently identified as an area in which there has been manifest and increasing racial injustice.
- Whilst much of criminal justice policy is not devolved in Wales, there are actions that the Welsh Government can take to tackle/reduce crime and promote rehabilitation, which are summarised here. The Race Equality Action Plan should prioritise these.
- The police, Crown Prosecution Service (CPS), the judiciary and HM Prison and Probation Service should publish a strategy on Black, Asian and minority ethnic people in Wales and report annually to the Senedd.
- The Welsh Government should extend the 'explain or reform' principle into devolved policies that play a role in causing racial disparities in the criminal justice system.
- There are a range of existing studies and surveys that should be improved and/or added to in order to provide better data on racial disparities in the criminal justice system in Wales. This should include expanding the ACE prisoner survey to female prison populations and to include a breakdown of ethnic groups.
- Ethnicity data recording and monitoring across factors known to be associated with offending behaviour should also be improved e.g. school exclusions, opportunities for employment.
- Improvements to data on hate crime prevalence in Wales should be achieved through adding questions to the National Survey of Wales or funding a Welsh Crime and Justice Survey.
- Other recommendations relating to tackling hate crime in Wales include increasing funding for hate crime services, with the aim of expanding current provision; better signposting of legal and institutional responses to hate crime, including through awareness raising campaigns; and wider adoption of preventative approaches to hate crime.
- A multi-agency and holistic strategy to tackling hate crime should be adopted in Wales, which includes educational interventions that aim to reduce prejudice and raise cultural diversity awareness.

- The Welsh Government should safeguard funding for specialist VAWG services in Wales to adequately meet anticipated demand during and after the pandemic.
- There is also a need to increase the awareness of specific needs of different groups within existing perpetrator programmes via practitioner training, to enable effective cross-cultural working.
- The Welsh Government should dedicate greater priority and resource to researching the interrelated contributing factors to child offending as they relate to Black, Asian and minority ethnic children specifically; and how these break down across specific ethnic groups.
- Findings from this research should be used to inform the design of prevention and diversion interventions for Black, Asian and minority ethnic children who are first time offenders or at risk of offending, with the aim of stemming the flow into the formal youth and adult justice systems.
- The Welsh Government should encourage partnership working between police forces and Youth Offending Teams to increase take-up of diversionary practices which rely on more flexible criteria than mandatory admission, which is known to disproportionately affect Black, Asian and minority ethnic children.
- Rehabilitation programmes or interventions for those already formally involved with the youth justice system should also be tailored or specialised for Black, Asian and minority ethnic children, with the aim of increasing responsiveness.
- The Welsh Government, in partnership with Welsh Youth Offending Teams and agencies that work closely with them (e.g. children's services and schools), could aim to spearhead a distinctive and targeted approach to prioritising the needs of Black, Asian and minority ethnic children involved in, or at risk of involvement with, the youth justice system.
- The Welsh Government should take forward principles and strategies that have been shown to positively impact trust in criminal justice processes within areas of devolved competence, to improve access to justice for Black, Asian and minority ethnic groups.
- Overall, there is value in placing focus on recommendations which fall within the powers of Welsh Government, building on existing areas where Welsh justice approaches have diverged from other UK nations, or where there is possibility to do so in future.

Background

The Welsh Government has made a commitment to publish a Race Equality Action Plan designed to tackle structural racial inequalities in Wales (Welsh Government, 2020). This report is one of six produced by the Wales Centre for Public Policy to provide independent evidence to inform the development of the Action Plan (see Annex 1). It focuses on evidence and recommendations for action related to race equality in crime and justice.

Terminology

In writing our review we actively avoid using the acronyms/terms 'BAME' or 'BME', except where this describes the name of an organisation or network, as we recognise that these are contested terms and can be experienced as stigmatising, depersonalising and 'othering'. As such we seek to refer to specific people and communities of people wherever possible. Where this is not possible, and while any overarching category will be imperfect, we use the term 'Black, Asian and minority ethnic'.

Introduction

The criminal justice system is frequently identified as an area where racial injustices are manifest, and the evidence suggests the problem has been worsening year on year (Lammy, 2017; Jones, 2020). In Wales, Black, Asian and minority ethnic people are over-represented at every stage of the criminal justice system: as victims of crime, in stop and searches, within the prison population – which shows higher levels of racial disproportionality compared to England – and within the probation population (ONS, 2020; Home Office, 2019a; Jones, 2020).

There is a distinct lack of evidence on the effective rehabilitation of Black, Asian and minority ethnic individuals, however there is evidence to suggest that culturally aware and sensitive treatment tends to result in more positive outcomes (Shingler and Pope, 2018). As a result, researchers have concluded that there is a need to increase the relevance of rehabilitative programmes and interventions to offenders from Black, Asian and minority ethnic backgrounds.

Criminal justice, namely the police, probation, prisons, the courts and 'most areas of substantive law', does not fall under the devolved powers of the Welsh Government

(Commission on Justice in Wales, 2019). As a result, Welsh Ministers have to operate across the 'jagged edge of intersecting competences and responsibilities' and work with and through other agencies to tackle race inequality in the criminal justice system (Jones and Jones, 2019, p.5).

However, the Welsh Government is responsible for key services that have a major impact on the lives of those who find themselves involved with the criminal justice system, including mental health and education of prisoners, police funding, domestic violence and community safety. It is also able to encourage holistic and preventative approaches to tackling and reducing crime and promoting rehabilitation through its direct control over and funding of a range of services, including health, education, children's social care, housing and homelessness, and youth and community services. Additionally, it can deploy a range of 'soft powers' (for example influence, education and sharing of good practice) to work pro-actively with Police and Crime Commissioners and other stakeholders to address racial injustices and ensure that public bodies in Wales comply with the duties placed on them to tackle inequality and discrimination through the Equality Act 2020 (Statutory Duties) (Wales) Regulations 2011.

This report presents the evidence relating to what works in reducing race disparities within the criminal justice system in relation to six key areas:

- 'Explain or reform';
- Data on racial disparities;
- Tackling hate crime;
- Reducing violence against women and girls;
- The youth justice system; and
- Access to justice.

These actions were identified through four phases of analysis:

- First, we analysed the best available evidence, policy reports and reviews which make recommendations for reducing race inequality in Wales and the UK to identify recurring recommendations or 'types' of interventions (see Annex 2).
- We then tested and refined these with academic experts.
- Next, we conducted a further review of academic and grey literature evidence related to each of these interventions with the aim of establishing which of these recommendations are likely to have the greatest impact if they are included in the Race Equality Action Plan.

- Finally, the report was peer reviewed by two experts in the field: Dr Roxanna Dehaghani (Cardiff University) and Dr Jason Arday (Durham University).

The causes, consequences and solutions to race inequality are interconnected and so require change across a range of policy areas and public services and beyond the public sector. So, this report should be read in conjunction with five related reports that focus on **leadership and representation, education, health and social care, employment and income, and housing and accommodation** (see Annex 1), and an overarching report (forthcoming) which pulls together cross-cutting findings and recommendations.

‘Explain or reform’

Recommendations

- The police, Crown Prosecution Service (CPS), the judiciary and HM Prison and Probation Service should publish a strategy on Black, Asian and minority ethnic people in Wales and report annually to the Senedd.
- The Welsh Government should extend the ‘explain or reform’ principle into devolved competencies that play a role in racial disparities in the criminal justice system.

The majority of the recommendations outlined in the 2017 Lammy review of the treatment of, and outcomes for, Black, Asian and minority ethnic individuals in the criminal justice system are being progressed by UK government, and are therefore not outlined in detail in this report. Nevertheless, the principle of ‘explain or reform’ to race disparities, which Lammy suggests should inform the work of every criminal justice agency, could be implemented in Wales. This principle stipulates that:

“If CJS [criminal justice system] agencies cannot provide an evidence-based explanation for apparent disparities between ethnic groups then reforms should be introduced to address those disparities.”

(Lammy Review, 2017)

In response to this recommendation, the Commission on Justice in Wales’s (2019) report recommended that the police, Crown Prosecution Service (CPS), the judiciary and HM Prison and Probation Service publish a strategy on Black, Asian and minority ethnic people in Wales (both in terms of the under-representation of those working in

the criminal justice system and the over-representation among those involved in the criminal justice system) and report annually to the Senedd. This could provide the Welsh Government with a way of more easily identifying trends in racial disproportionality within the workforce and throughout the criminal justice journey, and strategies to tackle disparities, as well as providing a vehicle for monitoring progress.

Many of the causes of overrepresentation of Black, Asian and minority ethnic people lie outside the criminal justice system – for example, experiences of poverty and permanent exclusions from school. Whilst the Welsh Government does not have direct control over many criminal justice agencies, and by extension the strategies they may or may not adopt to tackle racial disparities, it could apply the ‘explain or reform’ principle to those policies and services that are devolved, and thereby play an important role in influencing racial disparities in the criminal justice system. The Commission on Justice in Wales (2019) suggested this could include monitoring racial disparities in school exclusions and other adverse childhood experiences (ACEs), as well as opportunities for employment, and putting in place reforms where required to tackle these with a specific aim of preventing entry or re-entry into the criminal justice system.

Data on racial disparities

Recommendations
<ul style="list-style-type: none">• Expand the ACE prisoner survey to female prison populations.• Include a breakdown of ethnic groups within the ACE survey.• Improve ethnicity data recording and monitoring across factors known to be associated with offending behaviour e.g. school exclusions, opportunities for employment.

In order for criminal justice and other agencies in Wales to identify racial disparities and interrogate and improve their practices, they need robust information and data about racial disparities across all stages of the criminal justice journey.

The Lammy review argued that improved data on ethnicity in the criminal justice system is key to effective scrutiny and reform, and identified numerous deficiencies in data availability, transparency and consistency. To quote just one example,

individuals who identify as Gypsies, Roma and Travellers, which estimates indicate are significantly over-represented within the prison population, are not included in the official criminal justice monitoring systems (Lammy, 2017).

Whilst the Welsh Government has limited powers to reform the data collection and monitoring practices of criminal justice agencies, it could expand and improve existing data collection programmes that are devolved; and provide robust, accurate ethnicity data relevant to the criminal justice system in Wales.

For example, the Prisoner ACE Survey, which aims to inform the implementation of appropriate and effective interventions for individuals requiring support (Ford et al., 2019), currently disaggregates data into 'white' and 'other' groups in its report, which does not allow for any form of in-depth scrutiny of racial disparities in the needs and outcomes of individuals within the criminal justice system. Taking into account the intersection between race and gender,¹ which results in significantly different causes of entry to and experiences of the criminal justice system between men and women offenders (Ministry of Justice, 2018), expanding the ACE prisoner survey to examine ACEs in female prison populations would be another positive step. In addition, given the considerable diversity in the experiences and outcomes between and within Black, Asian and minority ethnic populations in contact with the criminal justice system, a better understanding of the prevalence of ACEs across racial and ethnic groups in Wales would allow for more targeted and effective preventative and rehabilitative interventions – for example, by contributing an improved evidence base to inform existing joint working between the police and Public Health Wales, to address the consequences of ACEs.²

The ACE prisoner survey is just one example of existing data collection exercises which could and should be strengthened to provide data that can inform future policies, to improve outcomes for Black, Asian and minority ethnic men and women involved in, or at risk of involvement with, the criminal justice system in Wales. The same principle applies for improved ethnicity data recording and monitoring across other factors known to be associated with offending behaviour, such as school exclusions and opportunities for employment.

¹ Intersectionality refers to how the joint experience of different social identities (e.g. race, gender, age, disability, sexual orientation, religion) combine to influence experiences of privilege or discrimination.

² The Early Action Together ACEs programme supports and provides training to frontline staff in the police, prison and probation services to work collaboratively with other agencies (e.g. social services, schools, housing, third sector etc.) across Wales so they can identify vulnerable people, intervene early and keep them out of the criminal justice system. See: <https://phw.nhs.wales/services-and-teams/early-action-together/>

Tackling hate crime

Recommendations

- Increase funding for hate crime services, with the aim of expanding current provision.
- Better signposting of legal and institutional responses to hate crime, including through awareness raising campaigns.
- Wider adoption of preventative approaches to hate crime.
- Adopt a multi-agency and holistic strategy to tackling hate crime in Wales, which includes educational interventions that aim to reduce prejudice and raise cultural diversity awareness.
- Improve data on hate crime prevalence in Wales through a Welsh Crime and Justice Survey, or by adding questions about hate crime to the National Survey for Wales.

A hate crime is defined as:

“Any hate incident, which constitutes a criminal offence, perceived by the victim or any other person, as being motivated by prejudice or hate.” (Association of Chief Police Officers [APCO], 2005)

The number of police recorded hate crimes in Wales has increased substantially over the past seven years, reaching 2,634 offences in 2019/20 – double the number in 2012/13 (Home Office, 2013; 2020a). The majority (65%) of offences in 2019/20 were race hate crimes, meaning Black, Asian and minority ethnic groups and minority faith communities are disproportionately affected. Whilst the year-on-year increases can be largely accounted for by improvements in reporting and recording,³ marked short-term rises in racially or religiously aggravated hate crime were observed in England and Wales following the 2016 EU referendum and 2017 terrorist attacks, including within Welsh police forces (Home Office, 2020b).

³ The Crime Survey for England and Wales (CSEW), which relies on survey respondents' self-reported victimisation, shows a fall in hate crime over the last decade. Whilst estimates from the Crime Survey for England and Wales (CSEW) are unaffected by changes in recording practice or police activity, the sampling method and the number of respondents mean that the estimates are too small to robustly report Wales-specific trends. Consequently, there is a lack of knowledge around the prevalence, nature and trends of hate crimes in Wales.

A range of agencies – including the Equality and Human Rights Commission (2020), Race Alliance Wales (2020), EYST Cymru (Wiegand and Cifuentes, 2019), and Race Equality First (Williams and Tregidga, 2013) – have made recommendations designed to tackle the rise in hate crime in Wales. Some focus on improving services and support for victims of hate crime. Others advocate better signposting of legal and institutional responses to address victims’ uncertainty over whether their experiences represent hate crimes; a fear that their experiences might be too trivial to warrant reporting; a perception that the police are not able to act; and a lack of formal or meaningful support (Williams and Tregidga, 2013). Other recommendations seek to promote preventative approaches that address the root causes of hate crime.

The Welsh Government’s ‘Tackling Hate Crimes and Incidents: A Framework for Action’ (Welsh Government, 2014) outlines three strategic objectives:

- A focus on prevention;
- Support for victims; and
- Improved multi-agency responses.

It also lists specific actions to improve leadership and partnership working across Wales to challenge and tackle hate crime. However, it aims to tackle hate crimes across **all** protected characteristics (Equality Act, 2010), rather than focusing specifically on victims of race hate crime, which is the most prevalent type of hate crime in Wales.

Race Equality First’s survey and interviews of hate crime victims in Wales (across all protected characteristic groups – further detail provided below) found that significant triggers to hate crime perpetration include:

- Ignorance;
- Hostility towards minority groups; and
- Negative and stereotyped media portrayals of minority groups (Williams and Tregidga, 2013).

It concluded that cultural change relating to race equality in Wales could potentially be driven by education and awareness raising campaigns in schools, higher education institutions, and media providers, through partnership working with Welsh Government, local authorities, third sector partners, and key organisations that represent minority groups.

However, there is limited evidence on the effectiveness of educational interventions that aim to reduce prejudice and raise cultural and diversity awareness, and their impact on reducing offending behaviour (Abrams, Swift and Mahmood, 2016). A

review of such interventions in England and Wales concluded that ‘it is unlikely that these programmes alone can drastically reduce the number of hate crimes that are committed each year’ (Walters, Brown and Wiedlitzka, 2016a, p.38). Consequently, adopting a multi-agency and holistic strategy will be particularly important in aiming to facilitate the cultural and systemic change necessary to prevent race hate crime in the long-term in Wales, due to hate crime being a complex phenomenon driven by various structural, socio-economic, situational, and social factors (Walters, Brown and Wiedlitzka, 2016a; 2016b).

The All Wales Hate Crime Research Project carried out by Race Equality First aimed to address the gap in knowledge and evidence on hate crime in Wales through a victim survey and in-depth interviews, providing a more comprehensive view of hate crime in Wales compared to that available from police or Home Office data (Williams and Tregidga, 2013). The report highlighted age as an important factor that influences victims’ feelings and experiences of vulnerability in response to racially aggravated hate crime. Religion was also shown to be a factor that often intersects with race as a motivating factor for hate crime, supported by further research suggesting that in 50% of cases, hate crime victims are targeted due to more than one identity characteristic (Chakraborti et al., 2014).

However, the report was not specifically focused on race-related hate crime, and has not been updated since 2013, which preceded the spikes observed in racially and religiously aggravated hate crimes in recent years. A report commissioned by EYST Cymru explored experiences of hate crime within the Black, Asian and ethnic minority community in Wales in the context of the Coronavirus pandemic through a series of fora, which provides valuable up-to-date qualitative insights (Saltus, 2020). There is, however, a lack of longitudinal evidence about the experiences of Black, Asian and minority ethnic groups in relation to hate crime, and this is an area where much better and more detailed data is needed. This could be gathered by establishing a Welsh Crime and Justice Survey (similar to the Scottish Crime and Justice Survey), or the addition of a question about hate crime to the National Survey for Wales.

Reducing violence against women and girls

Recommendations

- The Welsh Government to safeguard funding for specialist VAWG services in Wales to adequately meet anticipated demand during and after the pandemic.
- There is a need to increase the awareness of specific needs of different groups within existing perpetrator programmes via practitioner training, to enable effective cross-cultural working.

Services for women and girls facing violence and domestic abuse are under increasing pressure due to funding cuts, which have had a disproportionate impact on specialist services for Black, Asian and minority ethnic women and girls. A key concern amongst specialist services in Wales is losing out on funding via tendering going to larger, generic providers who have more capacity and time to write bids (Welsh Women's Aid, 2018). These providers often have less specialist knowledge and expertise in relation to the needs of specific communities, which is particularly important for services that tackle violence against women and girls (VAWG) in marginalised communities, the members of which may be less likely to engage with non-specialist organisations (Home Office, 2016).

At the same time, there is evidence that the Coronavirus pandemic has increased the prevalence and severity of violence and domestic abuse against women and girls – leading some to refer to VAWG and Coronavirus as a 'dual pandemic' in the UK (Banga and Roy, 2020). This has resulted in a significant increase in the demand on specialist services, whilst the restrictions on movement put in place in response to the pandemic have made it much more difficult for women to leave abusive situations (Davidge, 2020). For Black, Asian and minority ethnic women, 'the risk of violence is also racialised' (Banga and Roy, 2020, p.4), meaning the risks and impacts of violence and domestic abuse interact with and are compounded by existing inequalities driven by institutional and systemic discrimination. Put simply, women from Black, Asian and minority ethnic backgrounds face risk as a result of both their gender and their race.

Although the available data do not indicate that Black, Asian and minority ethnic women and girls are at greater risk of violence in aggregate,⁴ the forms of abuse and experiences in accessing support differ in key ways, necessitating the option of tailored support services. For example, Black, Asian and minority ethnic women are more likely than White women to be victims of domestic abuse perpetrated by family members (ONS, 2019). Data from England and Wales suggest female genital mutilation is more prevalent within migrant communities (Macfarlane and Dorkenoo, 2015), and honour-based abuse and forced marriage are more prevalent within Black, Asian and minority ethnic communities (Bates, 2020). In terms of accessing support, research has shown that Black, Asian and minority ethnic women face additional barriers compared to White British women in exiting violent relationships and accessing safe accommodation, and are likely to be trapped in violent relationships for longer compared to White women (Thiara and Roy, 2012).

Factors that may act as barriers to escaping abusive relationships include immigration status and language ability (Heimer, 2019). Cultural and religious factors may also intersect with race to prevent women from accessing support. For example, it may be more difficult for women from Black, Asian and minority ethnic backgrounds to leave religious marriages because relationship breakdown is looked down upon, or they may risk being ostracised by their communities for reporting abuse (Siddiqui and Patel, 2011). Race-based discrimination presents a further potential barrier, as experiences or perceptions of institutional racism may deter victims from reporting their abusers to the police (Heimer, 2019; Women's Aid, 2009).

There is evidence to suggest that specialist services for Black, Asian and minority ethnic victims of VAWG provide more effective support than generic support services (Larasi, 2013; Thiara and Roy, 2012). Whilst support services in Wales include some 'by and for' specialist services for Black, Asian and minority ethnic women (e.g. BAWSO⁵), these are particularly under threat, due to a lack of funding; the additional costs inherent in specialised services (e.g. interpreting services and supporting migrant women with no recourse to public funds); and funding mechanisms favouring larger, generic services. Looking beyond the pandemic, consideration needs to be given to how specialist VAWG services in Wales can meet increased demand, given predictions that levels of need will remain high following the pandemic due to the

⁴ ONS data show from the year ending March 2015 to year ending March 2017 showed that 7.8% of women aged 16 to 59 experienced domestic abuse in the last year. This broke down as White: 8.1%; Mixed/Multiple ethnicities: 13.9%; Asian/Asian British: 3.6%; Black/African/Caribbean/Black British: 7.4%; Other ethnic group: 7.8%. Source: ONS (2018). Women most at risk of partner abuse. Retrieved from: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/womenmostatriskofpartnerabuse>

⁵ See: <https://bawso.org.uk/>

cumulative effects of VAWG (Banga and Roy, 2020). The pandemic has had a greater impact on some groups because of underlying structural inequalities (e.g. in relation to health, employment and housing), in addition to its impact on the risk of violence for Black, Asian and minority ethnic women and girls. In response to this, the Welsh Government could utilise the underscoring of existing inequalities presented by the pandemic to shape funding structures so that specialist services receive adequate funding and address these inequalities.

There is also a need for specialist perpetrator programmes or interventions that are tailored towards individual cultural or ethnic groups. However, this need sits within broader, significant gaps in the provision of perpetrator programmes. Analysis by the charity Respect, which works with perpetrators of domestic violence, showed that national provision only meets 10% of demand from agency referrals for non-criminally convicted perpetrators (Respect, 2013). This demonstrates a requirement to increase awareness of specific needs within existing perpetrator programme delivery via practitioner training, to enable effective cross-cultural working. The training should cover practical considerations such as language needs, as well as cultural competence and understanding around issues such as masculinity (i.e. the understanding of gender roles, particularly in an intimate partner relationship), which is key to many domestic abuse perpetrator interventions (Debbonaire, 2015).

The youth justice system

Recommendations

- The Welsh Government should dedicate greater priority and resource to researching the interrelated contributing factors to child offending as they relate to Black, Asian and minority ethnic children specifically; and how these break down across specific ethnic groups.
- Findings from this research should be used to inform the design of prevention and diversion interventions for Black, Asian and minority ethnic children who are first time offenders, or at risk of offending, with the aim of stemming the flow into the formal youth and adult justice systems. Tailored diversion models might include those which do not require admission of the offence as a mandatory element for diversion.
- The Welsh Government should encourage greater partnership working between police forces and YOTs in Wales to increase take-up of diversionary

practices which rely on more flexible criteria than mandatory admission (e.g. accepting responsibility).

- Rehabilitation programmes or interventions for those already formally involved with the youth justice system should also be tailored or specialised for Black, Asian and minority ethnic children with the aim of increasing responsivity.
- The Welsh Government, in partnership with Welsh YOTs and agencies that work closely with them (e.g. children's services and schools), could aim to spearhead a distinctive and targeted approach to prioritising the needs of Black, Asian and minority ethnic children involved in, or at risk of involvement with, the youth justice system.

Racial disparities have increased in the youth justice system as well as in the criminal justice system as a whole, particularly in the case of more severe sentencing options such as custodial sentences. In 2019, 49% of those in youth custody across England and Wales were from a Black, Asian or Ethnic Minority background, compared to 18% of the population (10-17 years) as a whole.⁶ More granular data held at Youth Offending Team (YOT) level suggests that some ethnic groups are overrepresented in different offence or sentence types (Roberts, Buckland and Redgrave, 2019). However, ethnicity data beyond broad ethnic groups (i.e. Black/Asian/Mixed/Other/White) is not centrally recorded by the Youth Justice Board (YJB), meaning its collection and use varies across YOTs, which causes difficulties in identifying patterns or trends.

The evidence points to a number of factors that contribute to racial disproportionality in the youth justice system, including the victim-offender overlap and socioeconomic status⁷ (Roberts, Buckland and Redgrave, 2019; Home Office, 2019b). Black, Asian and minority ethnic children in the youth justice system are more likely to come from a low-income family; live in poor quality housing; and be disengaged from education compared to their White counterparts (Restorative Justice Council, 2017). This highlights the importance of tackling racial injustice across these policy areas in addition to the criminal justice system, a conclusion similarly drawn for the adult criminal justice system.

⁶ Breakdown: 9% Asian and Other, 28% Black and 12% Mixed. The 10-17 general population ethnicity comparison is taken from the 2011 census, so should be treated as an estimate. Source: Youth Justice Statistics: 2018 to 2019 supplementary tables. Chapter 7 - Children in youth custody, Table 7.11.

⁷ Some evidence suggests that socioeconomic status is a predictor of certain behaviours associated with serious violence, such as gang membership, but not for weapon carrying/use (Home Office, 2019b).

Further research is required to understand the interrelated contributing factors (such as those listed above) as they relate to Black, Asian and minority ethnic children specifically, and how these break down across specific ethnic groups. The Welsh Government should dedicate greater priority and resource to understanding this, making use of available data from relevant public service agencies that could shed further light on these trends e.g. school exclusions data, social services data and YOT data on ethnicity, vulnerabilities, and needs. There is a strong evidence base on the correlation between formal contact with criminal justice agencies (such as the police) in childhood and further offending in adulthood, with children more likely to desist from offending if they are diverted from the formal justice system (McAra, and McVie, 2007). Consequently, targeting prevention and diversion efforts at those who are first time offenders or at risk of offending, taking into account the specific needs of Black, Asian and minority ethnic children, may have positive impacts on racial disparities in the youth justice system, and in the longer-term, adult justice system, by reducing the flow of first-time entrants.

Tailored diversionary models might include those which do not require admission of the offence as a mandatory element for diversion. Evidence suggests that the way in which diversion is only offered to children who admit offences disproportionately impacts Black, Asian and minority ethnic children due to their lower trust in the justice system, thus increasing the likelihood of formal criminal justice outcomes (Centre for Justice Innovation, 2019). Such models were recommended by the Lammy review and taken forward in the form of pilots in London and Yorkshire, as well as a new police outcome (Outcome 22)⁸ which involves diversionary, educational or intervention activity. The Welsh Government could encourage greater partnership working between police forces and YOTs in Wales to encourage take-up of diversionary practices which rely on more flexible criteria than mandatory admission (e.g. accepting responsibility).

Rehabilitation programmes or interventions for those already formally involved with the youth justice system could also be tailored or specialised for Black, Asian and minority ethnic children with the aim of increasing responsibility. For example, evidence from the US indicates that culturally adapted programmes that aim to encourage a strong sense of cultural identity and pride in child offenders significantly reduces substance misuse post-intervention (Gil, Wagner and Tubman, 2004).

Though youth justice is not a devolved policy area, a distinctive 'Welsh' approach to elements of youth justice has been carved out within existing legislation (Haines and

⁸ See: <https://yjlc.uk/deferred-prosecution-outcome-22/>

Case, 2013). Since it was first outlined in 2004 in the Welsh Bureau Model,⁹ official youth justice policy in Wales has adopted a ‘child first, offenders second’ approach, which balances the needs of the child against the risk to community safety – in contrast with offence or offender-based practice – which has been characterised by a strong focus on preventative and diversionary practices.¹⁰

The Welsh Government, in partnership with Welsh YOTs and agencies that work closely with them (e.g. children’s services and schools), could aim to spearhead a similarly distinctive and targeted approach to prioritising the specific needs of Black, Asian and minority ethnic children involved in, or at risk of involvement with, the youth justice system, building on more generalised positive previous work to improve children’s outcomes. Research conducted for the YJB concluded that diversity and cultural awareness training is needed to equip practitioners, and that this, as well as the issue of providing specialised or tailored interventions, should be developed and decided at a local level, in consultation with practitioners and service users (May, Gyateng and Bateman, 2010).

Access to justice

Recommendations

- The Welsh Government should take forward principles and strategies that have been shown to positively impact trust in criminal justice processes within areas of devolved competence.
- The Welsh Government should explore ways of mitigating the impact of cuts to legal aid funding on access to justice for Black, Asian and minority ethnic groups.

⁹ The Bureau Model was established in 2009 with the aim of diverting children out of the formal youth justice system. The model was established as a partnership between Swansea Youth Offending Service and South Wales Police and is supported by the wider Community Safety Partnership. The initiative embodied the ‘children first, offenders second’ in its practice, which involved a multi-agency response to address the underlying causes of youth crime, taking a child-centred and holistic response to offending (Haines et al., 2013).

¹⁰ The ‘child first’ approach was later adopted nationally within the National Police Chiefs’ Council (NPCC) strategy for the policing of children and young people (NPCC, 2015) and was later further formalised by the YJB in their 2018 strategic plan and 2019 standards.

Access to justice for Black, Asian and minority ethnic individuals is inextricably linked to levels of trust in the criminal justice system, which are in turn, linked to racial disparities in the courts system and preceding police contact. Whilst around a third (35%) of British-born White people believe the criminal justice system discriminates against particular groups, over half (51%) of British-born Black, Asian and minority ethnic people believe the same (Bowen, 2017). This 'trust deficit' is in part driven by racial disparities at court, displayed by statistics such as Black men being 40% more likely than White adults to be committed to the Crown Court for trial, and 12% more likely to receive a prison sentence at Crown Court than similar White defendants (Uhrig, 2016).

Lower average trust in the criminal justice system reduces access to justice for Black, Asian and minority ethnic communities in two main ways (Bowen 2017):

1. Male Black, Asian and minority ethnic defendants are 52% less likely to plead guilty in Crown court cases than White counterparts;¹¹ and
2. Black, Asian and minority ethnic defendants' perceptions of unfair treatment and lower levels of trust in the court increase the likelihood of reoffending.

A review of evidence on building trust within and therefore increasing access to justice for Black, Asian and minority ethnic communities from Australia, Canada, New Zealand and the USA grouped strategies into seven main types (Bowen, 2017). Whilst the Welsh Government is not able to apply these principles directly to criminal justice bodies such as HMCTS, they may be relevant and impactful if taken forward in services or agencies that sit within devolved responsibilities, due to the interconnectedness of issues of race inequality across policy areas:

¹¹ Early guilty pleas result in a one-third reduction in the sentence given, meaning being less likely to plead guilty may increase the likelihood of more severe sentences. Further to whether the defendant committed the offence or not, defendants' plea decisions are themselves thought to be influenced by a number of factors relating to access to justice, including the legal advice received, trust in sentencing reductions received as a result of an early guilty plea, and self-assessments of changes with a jury (Uhrig, 2016)

A typology of strategies for building trust

Transparency strategies: making issues of racial disparity more open and understandable can lead to increased accountability for and action to address racial disparity problems and help build trust.

Access to justice strategies: improving access to legal advice and representation for ethnic minority individuals in the criminal court system is likely to reduce racial disparity and build trust.

Bias strategies: removing the bias, be it conscious or unconscious, in court decision-making should reduce racial disparity and build trust.

Workforce diversity strategies: increasing the diversity and awareness of diversity issues amongst the workforces of the adult criminal courts should reduce racial disparity and build trust.

Procedural fairness strategies: providing a court process marked by respect, understanding, neutrality, and a voice for all, this should build trust in the fairness of the law.

Alternative dispute resolution strategies: Putting defendants into alternative forums and decision-making processes, away from traditional court processes, can reduce racial disparity and build trust.

Community justice strategies: Giving communities a role in decision making and the co-production of services, and setting the enhancement of the local communities 'quality of life' as a symbolic goal for the justice system can reduce racial disparity and build trust.

Reproduced from Bowen, P. (2017). **Building Trust: how our courts can improve the criminal court experience for Black, Asian and minority ethnic defendants**. London: Centre for Justice Innovation.

Specific actions aimed at increasing access to justice for Black, Asian and minority ethnic people should take into account the broader barrier to justice presented by significant cuts to legal aid made by the UK Government since 2012. Total legal aid expenditure saw a real terms reduction of 37% in Wales between 2011/12 to 2018/19, from £114m (£128m at 2018-19 prices) to £80m, compared to a 28% reduction in England (Commission on Justice in Wales, 2019). Welsh Government funding for voluntary and third sector organisations has facilitated access to justice in

response to this, including over £8m in funding over the course of 2020 for advice service providers, despite legal aid not being a devolved responsibility. However, the Commission asserts that this will not be sufficient to bridge the gap caused by legal aid cuts (Commission on Justice in Wales, 2019).

Welsh Government powers and policy levers

As most areas relating to crime and justice policy are not devolved to the Welsh Government, the majority of recommendations in existing reports and inquiries have been aimed at a UK-level. Although crime and justice policy is not currently devolved, potential actions in the previous sections could be enacted by Welsh Ministers using either their soft powers or through their influence over policy areas which have an impact on crime rates. For example, the Welsh Government can take action to make better use of existing datasets that could shed further light on the drivers of increasing racial disproportionality in the justice system in Wales. It could also build on existing areas where Welsh approaches to crime and justice have diverged from the other UK nations, e.g. in adopting a 'child first' approach to youth justice, or where there is possibility to do so in future e.g. through the Welsh Government's relationship with Police and Crime Commissioners.

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Annex 1:

References to the report series

This is one report of six, each focusing on a particular policy area to inform the Race Equality Action Plan. The series of report includes:

Arday, J. (2020). **Improving Race Equality in Education**. Cardiff: Wales Centre for Public Policy.

Hatch, S., Woodhead, C., Moriarty, J., Rhead, R., and Connor, L. (2020). **Improving Race Equality in Health and Social Care**. Cardiff: Wales Centre for Public Policy.

Hatch, S., Woodhead, C., Rhead, R., and Connor, L. (2020). **Improving Race Equality in Employment and Income**. Cardiff: Wales Centre for Public Policy.

Price, J. (2020). **Improving Race Equality in Housing and Accommodation**. Cardiff: Wales Centre for Public Policy.

Roberts, M. (2020). **Improving Race Equality in Crime and Justice**. Cardiff: Wales Centre for Public Policy.

Showunmi, V., and Price, J. (2020). **Improving Race Equality in Leadership and Representation**. Cardiff: Wales Centre for Public Policy.

Annex 2:

Recurring recommendations

Recurring recommendation	Area of focus
Increase and target funding for VAWDASV services following the Coronavirus pandemic.	How can VAWDASV services be put on a sustainable footing to meet demand after the Coronavirus pandemic?
Improve support for victims of hate crime and better signpost legal and institutional remedies, including through awareness raising campaigns.	What support is currently available to ensure victims of hate crime are supported to achieve justice?
Work to further establish preventative approaches to hate crime.	How can current preventative approaches, inform wider anti-hate crime work? What role does Welsh Government have in supporting this?
Maintain or increase current funding for hate crime services, aiming to expand current provision.	What resource is required for an effective hate crime response?
More and better research into hate crime prevalence across Wales.	Who is a victim of hate crime in Wales? How prevalent is hate crime across Wales?
Better collection of ethnicity data in the criminal justice system.	How can Welsh Government support the collection of robust, accurate ethnicity data in the criminal justice system in Wales?
An 'explain or reform' approach to race disparities in the criminal justice system.	How can Welsh Government support 'explain or reform'? Are there other areas this principle could be extended to?
Increasing access to justice for Black, Asian and minority ethnic communities through a variety of means, including	How can Black, Asian, and minority ethnic communities be supported to access justice? What cultural,

Recurring recommendation**Area of focus**

signposting, awareness raising and funding of services including legal aid.

institutional, or distributional barriers are currently in place to prevent access to justice for certain communities?

Welsh Government powers and policy levers

How can Welsh Government use its convening power and informal policy levers to support race equality in the criminal justice system?

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