

## T2A response to The Lammy review of BAME representation in the Criminal Justice System

### 1 What is your name?

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### 3 Are you answering this survey regarding England or Wales?

Both

### 4 Please choose one option from the list below which best describes you or your organisation:

Voluntary

Community

Sector

The T2A programme produces and promotes evidence for effective ways of working with young adults who commit crime. T2A's principal aim is that the young adults (who T2A define as those aged 18-25) are subject to a distinct approach at all stages of the criminal justice system. T2A's evidence base is founded on three main bodies of research: Criminology, Neurology and Psychology. All three fields strongly support the T2A view that young adults are a distinct group with needs that are different both from children under 18 and older adults, underpinned by the unique developmental maturation process that takes place in this age group.

T2A's strategy and work is steered by the T2A Alliance, a coalition of 13 leading justice youth and health organisations, chaired by Joyce Moseley OBE and convened by the Barrow Cadbury Trust. Since its establishment in 2008, T2A has contributed to significant change in policy and practice locally, nationally and internationally. T2A has produced more than 40 reports and undertaken 12 projects across England demonstrating effective interventions for young adults. The framework for T2A's work is the "T2A Pathway", which identifies 10 points in the criminal justice system where a distinct approach to young adults can be delivered, from point of arrest and including prosecution, sentencing, probation and custody.

T2A welcomes the opportunity to respond to the Lammy review. The specific impact of racism, discrimination and other unequal outcomes and experiences of young BAME men and women in relation to the experiences of young adults more generally, requires further research. BTEG, as a member of the T2A Alliance is undertaking an analysis of T2A's work to date to draw out lessons from its existing research and publications with regard to young BAME adults.

The substance of this response is mainly drawn from the findings and recommendations of the Young review, which was funded by the Barrow Cadbury

Trust.<sup>1</sup> In addressing the review questions, we have focused our responses to those questions that are most pertinent to the focus and experience of the Young Review and the experience of BAME young adults.

**21 BAME offenders are more likely to face prison sentences than White offenders.(11) In your view, why is this? (Whenever possible please provide any evidence that informs your opinions, including links to publicly available content).**

BAME representation in the prison population is heavily influenced by age; there are many more young BAME male prisoners than older ones, with the numbers, in the adult estate, being highest for 18-20 year olds and 21-24 year olds.<sup>2</sup> In the youth estate, BAME disproportionality is starker still, with 43% of 15-17 year olds coming from BAME backgrounds.<sup>3</sup> While youth offending has dropped for the population as a whole it has increased for BAME young people. Unless these young people are diverted away from the criminal justice system (CJS), this rising disproportionality is likely to transfer into the adult system.

Young adult women in custody are a small but particularly vulnerable group. There are currently 471 young adult women aged 18-24 in prison, out of a population of 3,826.<sup>4</sup> While the Ministry of Justice does not disaggregate data according to age and ethnicity, we know that 19% of the women's prison population is from BAME groups, compared to 14% of the general women's population.<sup>5,6</sup> Black British women made up 10% of the women's prison population compared to only 3% of all the overall women's population.<sup>7,8</sup>

The reasons behind the disproportionate number of BAME men and women in prison are complex and not fully understood. In part it is likely to be a reflection of the overrepresentation of this group at earlier stages of the CJS. Black and mixed race people are over-represented at all stages of the CJS, from stop and search to imprisonment, while Asians are overrepresented in stop and search and in prisons and are under-represented at other stages.<sup>9</sup> This overrepresentation exists within a wider pattern of multiple disadvantage in other areas of social policy. For instance, the Bradley Commission has noted that BAME communities tend to follow unduly 'coercive pathways' into mental health services via a CJS gateway.<sup>10</sup> BAME young people, and those of mixed heritage in particular, are also over represented in the

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<sup>1</sup> Available at [http://www.t2a.org.uk/wp-content/uploads/2016/03/The\\_Young\\_review\\_report\\_forweb.pdf](http://www.t2a.org.uk/wp-content/uploads/2016/03/The_Young_review_report_forweb.pdf)

<sup>2</sup> Young review

<sup>3</sup> Ibid.

<sup>4</sup> Table 1.3, Offender Management Statistics Quarterly (31 March 2016)

<sup>5</sup> Ibid

<sup>6</sup> NomisWeb, 2011 Census data, available at:

[http://www.nomisweb.co.uk/census/2011/DC2205EW/view/2092957703?rows=c\\_sex&cols=c\\_ethpuk](http://www.nomisweb.co.uk/census/2011/DC2205EW/view/2092957703?rows=c_sex&cols=c_ethpuk)

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<sup>7</sup> Women in Prison (2011), Breaking the Cycle for Women, London: Women in Prison

<sup>8</sup> NomisWeb, 2011 Census data, available at:

[http://www.nomisweb.co.uk/census/2011/DC2205EW/view/2092957703?rows=c\\_sex&cols=c\\_ethpuk](http://www.nomisweb.co.uk/census/2011/DC2205EW/view/2092957703?rows=c_sex&cols=c_ethpuk)

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<sup>9</sup> Webster in Sveinsson eds (2012), Criminal Justice v Racial Justice, London: Runnymede Trust

<sup>10</sup> Bradley Commission (2013) Black and Minority Ethnic communities, mental health and criminal justice

care system; and looked after children and care leavers are in turn over represented in prison, with a third of boys and 61% of girls in custody are, or have been, in care.<sup>11</sup> This therefore represents a further area of combined disadvantage and a potential factor in driving people from BAME backgrounds towards the CJS.

An area requiring further investigation is the potential role of unconscious bias and stereotyping in decision making by criminal justice agencies in the disproportionate outcomes for BAME offenders. For instance, Young Muslims on Trial – a scoping study on the impact of Islamophobia on criminal justice decision-making, suggests that distorted ideas about Islam may have an impact on criminal justice decision-making and have consequence for young Muslim defendants.<sup>12</sup> The report highlights concerns that a greater the emphasis on speed and cost cutting in the justice system could increase the likelihood that process-driven assessment practices will depend on stereotyping. We would welcome further research into the role of unconscious bias and stereotyping in criminal justice decision making.

**22 BAME prisoners report a worse experience of prison than White prisoners. For example, BAME prisoners are less likely to report feeling safe in prison and more likely to report victimisation by staff.(12) In your view, why is this? (Whenever possible please provide any evidence that informs your opinion, including links to publicly available content).**

HMIP inspection reports have consistently shown higher levels of dissatisfaction among black and minority men in prison.<sup>13</sup> Black women also reported more negatively about prison, with only 60% stating that they felt staff treated them with respect, compared with 75% of white women.<sup>14</sup> The reasons for these differential outcomes have not been sufficiently investigated or understood. Interviews with young male prisoners conducted by the Young review suggest that racial stereotyping, ignorance around faith and culture, a lack of diversity among prison staff and disciplinary systems that are perceived as unfair are factors which contribute to the more negative experiences of BAME prisoners. Academic research suggests that the way inmates define their relation with the prison as an institution rests heavily on the perceived quality of day-to-day interaction with staff.<sup>15</sup>

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

We agree with the recommendations of the Young Review that:

- NOMS publishes its Equality Strategy in order to a) provide transparency for all stakeholders and b) form the basis for action, to include a stringent overhaul of the approach to services for BAME men and women

<sup>11</sup> Laming, H (2016) In Care, Out of Trouble, London: Prison Reform Trust

<sup>12</sup> Maslaha (2016) Young Muslims on Trial – a scoping study on the impact of Islamophobia on criminal justice decision-making, London: T2A. Available at [http://www.t2a.org.uk/wp-content/uploads/2016/03/The\\_Young\\_review\\_report\\_forweb.pdf](http://www.t2a.org.uk/wp-content/uploads/2016/03/The_Young_review_report_forweb.pdf)

<sup>13</sup> HMIP annual report 2015

<sup>14</sup> Prison Reform Trust (2015), Bromley Briefings: Autumn 2015, London: PRT

<sup>15</sup> Young review

- Training for prison officers should be reviewed so that the perceived and actual problems associated with cultural competence of staff are overcome.
- Individuals who understand the lived experience of BAME offenders should play an integral part in the planning and delivery of programmes and interventions to support their desistance.

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

Black or mixed origin prisoners report a significantly more negative experience of decision making by prison authorities than their white and Asian counterparts; and are subject to higher rates of adjudication, spend more days than average in segregation and are more frequently subject to the use of force.

A disproportionate number of BAME men are on the basic regime (as part of the Incentives and Earned Privilege scheme [IEP]) compared to white prisoners. BAME prisoners interviewed by the Young review reported that their statuses were often downgraded for trivial issues. The Criminal Justice Board has found that BAME prisoners perceive they are more likely to receive warnings and adjudications than their white counterparts, more likely to be found guilty than white prisoners even when they had been involved in the same incident, and that opportunities for purposeful activity that would allow them to work towards enhanced status were not equally distributed across prisoners of different ethnicities, with white prisoners being favoured.<sup>16</sup>

NOMS data shows that these perceptions are borne out in reality; BAME prisoners' outcomes with regards to adjudications and IEP are poorer than those of white prisoners. In addition, BAME prisoners reported to the Criminal Justice Board that they more regularly came under suspicion and that because downgrading takes place while an incident is under investigation, many of them no longer saw the point in pursuing enhanced status.<sup>17</sup>

Poor procedures for administering the IEP and prison adjudications process may contribute to the perception of unfairness and disproportionate outcomes. The Prison Reform Trust's report on IEP points to the fact that status reviews can be conducted by a single member of staff, with an automatic review for single incidents of bad behaviour and a presumption of downgrading in such situations.<sup>18</sup> The Howard League for Penal Reform has highlighted concerns that the prison adjudication system has expanded beyond its original purpose of punishing unacceptable

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<sup>16</sup> Young review

<sup>17</sup> Ibid.

<sup>18</sup> PRT (2015) Punishment without purpose, London: PRT

<http://www.prisonreformtrust.org.uk/Portals/0/Documents/punishment%20without%20purpose%20FINAL2941007.pdf>

behaviour; and is increasingly being used, in the context of overcrowded and understaffed prisons, as a behaviour management technique.<sup>19</sup>

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

We agree with the recommendations of the Young review that

- The process for downgrading prisoners' IEP status, particularly while an incident is under investigation, should be reviewed.
- Checks and balances are needed to ensure that status reviews are conducted that are fair for all prisoners and are seen to be fair, but specifically for BAME prisoners in the context of continued discrimination and unequal outcomes for black and/or Muslim men.

The Inspectorate of Prisons and NOMS should consider a cycle of review and comparison and learning between prisons to reduce disparities between one establishment and another.

## **26 On average, Black offenders are more likely to reoffend than other ethnic groups.(15) White offenders are the group second-most likely to reoffend. In your view, what explains this? (Whenever possible please provide any evidence informing your opinion, including links to publicly available content).**

The causes of reoffending are complex and a range of factors are likely to be involved in the differential rates observed for black offenders and other ethnic groups. BAME young adults face higher levels of deprivation and disadvantage which may make their offending and reoffending more likely. For example, young black men have the highest unemployment rate amongst young adults in the UK, with just under 50% being unemployed. BAME children are over-represented in the care system and are also more likely to be permanently excluded from school. Black people are also more likely to be diagnosed with a severe mental health condition, to access mental health services via the CJS and less likely to be supported through primary care and early interventions.

The impact of decision making by statutory agencies including police, the Crown Prosecution Service, and courts is also likely to be a significant factor. While black people appear to present a higher rate of reoffending, this partly reflects the fact that they are more likely to be arrested and more likely to be prosecuted. Reoffending statistics by ethnicity are influenced by the disproportionate treatment of black people. Hence, these statistics 'hard-wire' discrimination into the reporting of official data, understating the likelihood of offending post-sentence by people from a white ethnic background.

## **28What action do you believe should be taken in response to these different reoffending rates?**

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<sup>19</sup> Howard League (2016) Punishment in prison, London: HLPR. <http://howardleague.org/wp-content/uploads/2016/03/Punishment-in-Prison-briefing.pdf>

Given the range and complexity of factors involved, an effective response will require a coordinated approach involving a range of policy areas across government.

The Young review has made a number of recommendations, which we endorse, to improve outcomes for BAME groups for agencies and providers working in the criminal justice system:

- Independent providers should be incentivised beyond the scope of Transforming Rehabilitation contracts to address disproportionate outcomes for BAME men and women
- The emphasis should be on dedicated resources for community engagement and partnership working models in prisons, rather than commissioning frameworks and supply chains:
  - Independent providers should work in partnership with and grant fund community led organisations that are able to build social capital within communities and support families experiencing the stigma of offending to facilitate successful resettlement of offenders, and provide through the gate support to offenders themselves
  - This should ensure effective engagement, at strategic and delivery levels, of voluntary sector organisations with relevant cultural knowledge that can demonstrably meet the needs of BAME men and women in prison and the community
  - There should be a concerted effort to establish partnerships with employers across all sectors to set up employment schemes for ex-offenders

**34 To what extent do you believe the ethnic diversity of staff working in the CJS, including lawyers, judges, and professionals working in prisons and offender management services, has a bearing on outcomes for BAME defendants/offenders? (Whenever possible please provide any evidence that informs your opinion, including links to publicly available content).**

We believe the ethnic diversity of staff working in the CJS has a significant bearing on outcomes for BAME people. It is important that staff in prisons and other criminal justice agencies reflect the people they work with and understand the experiences and cultures of BAME people. Voluntary sector organisations that work with BAME prisoners have told Clinks that some non-BAME staff in prisons are perceived as being significantly more likely to hold negative attitudes towards BAME people; and are less willing to engage positively with equality and diversity training.<sup>20</sup> Participants with first hand and professional experience of prison have said that prisons with higher proportions of BAME staff had more positive staff engagement with BAME prisoners; as these prisons are invariably located in cities.<sup>21</sup> The 2008 NOMS Race review recognised the importance of increasing the diversity of prison staff and made recommendations to achieve this, including improvements to the processes of selection, monitoring, leadership, staff training and support.<sup>22</sup>

<sup>20</sup> Clinks (2016) Submission to the Lammy review

<sup>21</sup> Ibid.

<sup>22</sup> NOMS (2018) Race Review

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/294157/1000439crace\\_review\\_part\\_1.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/294157/1000439crace_review_part_1.pdf)

Muslim chaplains have an important role to play in improving outcomes for Muslim prisoners. A HMIP thematic on the experience of Muslim prisoners found that most prisoners valued Muslim chaplains and wanted better access to them.<sup>23</sup> Muslim chaplains were often found to be fundamental to increasing the understanding of prisoners and staff about the issues facing the Muslim prisoner population.

**35 If you regard the ethnic diversity of staff working in the CJS as important to outcomes for BAME defendants/offenders, what more could be done on this issue?**

We agree with the recommendations of the Young review that

- Independent providers under Transforming Rehabilitation should examine the diversity of their staff and supply chain, and evaluate how their own policies reflect previous learning
- Given that the criminal justice workforce does not reflect the diverse backgrounds of offenders, there are important benefits to involving service users to plan and deliver interventions informed by individuals with similar lived experiences to those that need support ... the involvement of organisations and representatives from offenders' own communities and faiths can play a substantial role in improving experiences and confidence in decision making processes and other procedures.

**36 In your view, is the collection of data on BAME outcomes in the CJS sufficient and consistent? If not, what are the principle gaps? What might be done differently?**

We agree with the recommendations of the Young review that:

- Data collection and monitoring should be standardised across the whole CJS, governed by a minimum set of data which includes not just ethnicity but also faith, language and age
- There should be rigorous scrutiny of the actions taken in response to monitoring data collected that reveals disparities in outcomes for young black and/or Muslim men

**39 Is there anything else that you regard as important to the over-representation of BAME groups in the CJS that has not been covered in your answers so far? (Whenever possible please provide evidence, including links to publicly available content).**

With the support of Leaders Unlocked, T2A has established a young adult advisory group which allows young adults to get involved and have their say about policing and criminal justice at the national level. The advisory group enables young adults to support, challenge and inform the work of the T2A .T2A Young Adult Advisory Group is comprised of young adults aged 17-25 years from across the country. The main focus will be on individuals who are 'experts through experience' with personal

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<sup>23</sup> HMIP (2010) Muslim prisoners' experiences: A thematic review  
[https://www.justiceinspectors.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/04/Muslim\\_prisoners\\_2010\\_rps.pdf](https://www.justiceinspectors.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/04/Muslim_prisoners_2010_rps.pdf)

experience of policing or criminal justice. The advisory group has agreed to make the Lammy review a significant focus of their work for the coming year. T2A would be pleased to share of findings of the work of the group with the review.