

Restorative justice and black, Asian and minority ethnic children in the youth justice system

**A Restorative Justice Council
research report**



Dr Muna Sabbagh

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Foreword

Jon Collins
Chief Executive
Restorative Justice Council



On 13 July 2016, standing in Downing Street, Theresa May used her first speech as Prime Minister to highlight a “burning injustice”. “If you’re black,” she said, “you’re treated more harshly by the criminal justice system than if you’re white.” Her predecessor, David Cameron, had also recognised the importance of this issue and asked the MP David Lammy to conduct a review of black, Asian and minority ethnic (BAME) representation in the criminal justice system.

The decision to shine a spotlight on this complex issue is welcome. Fairness must be integral to every area of the justice system if it is to retain legitimacy. This is as true for the delivery of restorative justice as it is for any other criminal justice process or intervention. Yet little research has ever been completed on whether ethnicity has an impact on offenders being offered a chance to participate in restorative justice and, when they are, whether they choose to accept the offer. In addition, next to nothing is known about whether BAME offenders’ experiences of restorative justice, where they do access it, is better or worse than that of their white peers.

With this in mind, and with the generous support of Barrow Cadbury Trust, we have conducted a research project to explore BAME children’s access to and experiences of restorative justice. The research aimed to determine how we can best enable BAME children who have offended both to access restorative justice and to have a positive and impactful experience of the process when they do.

This report is the result of that research and sets out the key findings, exploring the views of both practitioners and BAME children with experience of the justice system. On behalf of the Restorative Justice Council (RJC), I would like to thank them all for agreeing to contribute to the project. I would also like to thank the advisory group for their contribution to this work – their advice and insight has been invaluable.

At the RJC, an important part of our role is to support our members – the individuals and organisations delivering restorative justice across England and Wales – by providing them with knowledge and information that improves their practice. We hope that the findings of this research will help them to do that. The research should not, however, only be of interest to frontline practitioners. There are also important recommendations for national stakeholders, including the Youth Justice Board (YJB).

I hope that this research contributes to the current focus on ensuring that the criminal justice system better meets the needs of BAME offenders. Restorative justice can make a significant difference to the lives of BAME children who offend and their victims. The findings of this research can help to ensure that more of them access restorative justice and to improve the experiences of those who do.

Executive summary



This report presents the findings of a research study conducted to develop a better understanding of the delivery of restorative justice with black, Asian and minority ethnic¹ (BAME) children who have offended. It is intended to help to increase the number of BAME children who access restorative justice and improve the experiences of those who do.

Restorative justice gives victims the chance to meet or communicate with their offender, to talk about the harm that has been caused and find a way to repair that harm. Restorative justice can be used to divert children before they enter the youth justice system (YJS) and can also be used as part of, or as a complement to, a formal youth justice disposal. Evidence shows that it is effective in reducing reoffending, while also helping victims to put the crime behind them and move on. Some restorative justice practitioners have, however, suggested that BAME children are less likely to access restorative justice than their white peers.

This study set out to explore the scale, nature and causes of this problem and to make recommendations for change. To do this, the RJC has conducted:

1. a review of the existing evidence base on BAME children within youth justice services and on children's access to and experience of restorative justice
2. interviews with practitioners working in the YJS and with BAME children who have offended, including those who had participated in a restorative justice intervention and those who had not

The findings have been used to develop recommendations for changes in both policy and practice. The project was assisted by an advisory group of experts in the field, who provided advice on the research design, the final report and the ensuing recommendations.

¹ Defined for the purposes of this report as black or black British, Asian or Asian British, or from mixed or multiple ethnic groups, as well as Gypsies and Irish Travellers and those categorised as of any other (ie non-British) white background.

Context and background

BAME children in the YJS

There are acknowledged problems in the way data about ethnicity is collected and reported within the YJS. Despite limitations in the available data, it is widely accepted that BAME children are over-represented in the YJS. BAME children are more likely to be arrested than their white peers, accounted for 18% of all first-time entrants into the YJS in the year ending March 2015 compared to 15% in the year ending March 2010, and are more likely to be tried at Crown Court rather than the Magistrates' Court. In the decade to 2015, the proportion of BAME children remanded or sentenced to custody rose from 25% to almost 45%. Research also suggests that BAME groups have poor experiences in the criminal justice system.

There are also differences in the types of offence that children enter the YJS for across ethnic groupings. Black boys and boys of mixed ethnicity are, for example, more likely to be arrested for robbery than white boys, while black girls are more likely to be detained for robbery than white girls. Black and mixed race children are more likely to receive a disposal for an offence of violence against the person compared to other groups. BAME children in the YJS may also have specific needs. A greater number of BAME children in the YJS come from a low-income family, live in poor housing and are disengaged from education, for example, while black children are more likely to have mental health issues than their white counterparts.

Treatment of BAME children by the YJS, or their perceived treatment, can lead to a mistrust of the police and the system as a whole. Mistrust of the justice system may contribute to the fact that BAME children who have offended are less likely to plead guilty than white children and are also more likely to give 'no comment' interviews when arrested. This may mean that BAME children are not offered diversionary opportunities.

Restorative justice in the YJS

Reluctance to admit guilt may also have an impact on participation in restorative justice, which requires the offender to admit guilt before they can participate. There are, however, a range of further issues that may impact on the extent to which children, and BAME children in particular, are able to access restorative justice. There is, for example, a lack of clarity within the YJS about what constitutes restorative justice. Parental attitudes towards restorative justice within BAME communities may also have an impact on whether children who have offended agree to take part, while the issue of shame may also be significant (particularly, potentially, for BAME girls from certain cultures).

This study, through interviews with practitioners and children who had offended, explored these issues in more depth and looked to ascertain the extent to which they impacted on BAME children's access to and experiences of restorative justice.

Findings: Practitioners' perspectives and experiences

Access to restorative justice for BAME children

The perception among most practitioners was that BAME children have the same opportunities to access restorative justice interventions as non-BAME children.

For those practitioners who did feel that there were particular issues in engaging BAME children in restorative justice, however, a number of issues were identified.

Mistrust of the YJS

The first was mistrust of the YJS as a whole and of the police in particular. Linked to this, practitioners also suggested that BAME children were being advised by their legal representatives not to comment during police interviews and not to plead guilty in court (an issue also raised in the report of Charlie Taylor's recent review of the YJS). This may be a barrier to accessing restorative justice.

Workforce composition and skills and confidence in working with BAME children

Potentially linked to the issue of trust is the under-representation of BAME people in the YJS workforce. The interviews with practitioners suggested that in areas where there is a high BAME demographic, this is reflected in the workforce but in areas with a lower proportion of BAME people in the population, this is also reflected in the composition of the workforce and leads to fewer BAME staff. In the latter areas, interviewees suggested that this might have a negative impact on their work with BAME children. All practitioners recognised the need for cultural awareness, however, and practitioners suggested that a lack of staff diversity could be addressed, at least in part, by providing staff with training to give them the skills and confidence to work with BAME children and their families.

Communication, terminology and who makes the offer

The use of the term 'restorative justice' was itself identified as a potential barrier, with children either not understanding it or associating it with punishment. In order to address this, practitioners reported that they are using alternative ways to describe the process. The person within the YJS who makes the offer of restorative justice is also significant. There may be particular issues with the police, and practitioners felt that restorative justice is better offered by YOT workers, as children are more likely to trust them. In addition, there may be benefits in YOTs and the police developing partnerships with non-statutory providers of restorative justice with links in local BAME communities to form an additional route for children who might otherwise fail to engage.

Timing of the offer and resources

In addition, the timing of the offer is important. Overall, practitioners suggested that restorative justice should be offered at the earliest possible opportunity, while retaining flexibility to ensure that it is not offered before the child who has offended and their victim are ready to take part. This flexibility requires sufficient resources, however, and some practitioners questioned whether all YOTs are dedicating sufficient resources to the provision of restorative justice.

Fear of participation, victim engagement and gangs

A further issue highlighted by the practitioners for children taking part in restorative justice is a fear of meeting their victim. If the practitioner cannot allay these fears, then restorative justice is unlikely to take place and where BAME children do not trust the system or the person making the offer, it may make it more difficult to do so. Victims may also be reluctant to engage in restorative justice. This may be in part because the majority of victims of children are also young and may know the perpetrator, potentially making them embarrassed about taking part or fearful of reprisals. These issues will be compounded where the victim or offender is involved in gang activity, which carries specific risks and can be a barrier to participation. Practitioners should be wary, however, of unfairly associating BAME children with gang membership.

Parental influence on take-up of restorative justice

Parents are also likely to play a significant role in whether children take part in restorative justice. Practitioners reported that some parents are positive about restorative justice and others discourage their children from taking part. Some thought that parents were reluctant to let their child take part because they were reluctant to accept that they had been responsible for causing harm, while others felt that they had already been punished by formal YJS measures. In some cases, parental shame was seen as a barrier to taking part but in others it was seen as a reason to do so.

Awareness and familiarity with restorative justice

In order to address misconceptions and concerns – of parents, children who had offended and victims – about the restorative justice process, some practitioners felt that there was a need for more effective promotion of the benefits of restorative justice. It was suggested that this should include work with specific minority communities, as well as the more widespread use of restorative approaches within schools and children's services.

Statistical data on the use of restorative justice

Practitioners also reported a lack of robust statistical data on the use of restorative justice in both pre-court and formal youth justice disposals. It was felt that it would be beneficial if this data was collated and analysed nationally in order to identify ways in which the use of restorative justice could be improved. The criticism of the current categorisations used by the YJB for recording ethnicity was also shared by practitioners and it was suggested that the collection and analysis of data be improved in order to effectively monitor the outcomes and impact of restorative justice used with BAME children in the YJS.

Findings: BAME children's perspectives and experiences

An important part of this study was interviewing BAME children who had offended about their views on restorative justice. This was frequently challenging but, as the interviews progressed, they expressed strong opinions, with most children feeling that every young person should be offered restorative justice.

Access to restorative justice

For many of the children interviewed, however, there were multiple obstacles to them taking restorative justice up, some but not all of which may have related to their ethnicity.

Understanding of restorative justice

Most of the children interviewed had some knowledge of restorative justice. Many did not feel, though, that they had a good understanding of what it entailed or its potential benefits. The majority felt that when restorative justice was offered to them, there was so much else going on that they could not take it in properly. If children are being offered restorative justice but do not understand what is involved or its benefits, this will clearly be a barrier to take-up.

This suggests that the offer of restorative justice needs to be made in a way that differentiates it from other interventions, while the children interviewed also felt that parents or carers need to be engaged so that they could talk it through together. This highlights a need for resources on restorative justice for children who have offended and their parents, with the specific needs of BAME children considered in their development.

In addition, some children suggested that restorative justice should be promoted by people who had already participated and that someone from a similar background would be best placed to explain restorative justice to them.

Nature and circumstances of the offence and victim engagement

Some children felt that access to restorative justice should depend on the seriousness of the offence committed, although there was not a consensus on which types of offence are best suited to participation. Misconceptions about the use of restorative justice in response to different types of offence therefore clearly need to be addressed. As discussed previously, victim engagement is a barrier to participation, although many of the children interviewed saw participation primarily as for the victim's benefit.

Who should offer restorative justice?

As with the practitioners, a theme throughout the interviews with children was who is best placed to make the offer of restorative justice. Only one of the 25 children said they would have preferred their YOT worker or restorative justice practitioner to be of a particular ethnicity, or the same ethnicity as them, reflecting that in general the children did not cite their ethnicity as having a bearing on their opinions. There was, however, a general mistrust of, and hostility towards, the police and the majority felt the offer should be made by their YOT caseworker. This reflected the fact that in general it was clear from interviews that the children had a strong, trusting relationship with their caseworker.

Timing of the offer

Overall, the children interviewed agreed with practitioners that restorative justice should be made available as early as possible, and preferably during the court proceedings. The tendency for BAME children to be less likely to plead guilty may, however, make this more difficult to achieve. Some of the older children interviewed also suggested that restorative justice may be more effective with younger people as they were still more easily influenced.

Motivation for taking part in restorative justice

Among the children interviewed the main motivation for taking part was to make amends to the victim. Others wanted to use it as a way of moving forward from the offence they had committed. Some boys also mentioned the impact of their offending behaviour on their mothers and how restorative justice was also a way for them to make their mothers happy. Some children who had not taken up restorative justice, however, felt that it was 'weird' and not for them, while others felt they had already been punished enough. These perceptions indicate a lack of understanding of the purpose and benefits of restorative justice.

Influence of family members

Many of the children interviewed felt that their parents had encouraged them to take part. This highlights a need to ensure that parents have a clear understanding of restorative justice in order to encourage more children to take up the opportunity when offered. It is also important, however, for practitioners to ensure that children are not being coerced into taking part when they do not genuinely want to do so.

Experience and impact of restorative justice

For those children interviewed who had taken part in restorative justice, all had found the experience to be positive. They had felt well-supported by the practitioners involved, and this was a significant factor in making the experience a positive one.

The benefits of participating in restorative justice, from their perspective, included not only the opportunity to be diverted from the YJS, but also emotional and psychological benefits, including feeling relief and increased feelings of empathy for their victim.

Conclusion and recommendations

All the practitioners and all the children who had taken part in restorative justice who were interviewed for this study felt that restorative justice has significant benefits. Some of the children who had not participated had wanted to and felt that it would have helped them. Children's awareness of restorative justice was, however, often very limited and practitioners recognised that not enough BAME children are currently participating.

Specific barriers to accessing restorative justice identified by this research are, in line with the findings of previous work, multiple and complex. Some do not relate specifically to the child who has offended and of those that do many impact on all children who have offended, regardless of ethnicity. But some have particular implications for BAME children, such as cultural attitudes towards shame or relationships with the police.

It is essential that practitioners are equipped to recognise and respond to these additional layers of complexity so that they can provide a differentiated response and thus increase engagement. With this in mind, the findings suggest that more needs to be done to ensure that the needs of BAME children are met when offering and facilitating restorative justice. The findings from this study highlight areas that need consideration by policy makers and practitioners.

National recommendations

1. The YJB should clarify with all YOTs the definition of restorative justice that they should use, that being the definition set out by the Ministry of Justice.²
2. All YOTs should be required to offer restorative justice, in line with the agreed definition, to any child who has offended (and admitted the harm caused) and their victim, as required by the Code of Practice for Victims of Crime.
3. Specific training should be developed by the YJB to provide YJS practitioners with the knowledge they need to enable them to engage effectively with BAME children from different cultural and faith backgrounds. YOTs should be required to demonstrate that their staff have completed the training. This should be supplemented by the provision of online resources that provide accurate, relevant information on different cultures and faiths.
4. The YJB should work with the RJC to develop and disseminate resources on restorative justice for children who have offended and their parents. These resources should be inclusive and the specific needs of BAME children should be considered in their development.
5. Training should be developed with the support of the YJB to enable practitioners to use restorative justice safely in cases involving gangs. Examples of good practice should also be collected and disseminated by the YJB.

² The Ministry of Justice's definition of restorative justice is: "The process that brings those harmed by crime, and those responsible for the harm, into communication, enabling everyone affected by a particular incident to play a part in repairing the harm and finding a positive way forward."

6. Further work should be done by the Ministry of Justice to raise awareness among magistrates and district judges sitting in youth courts of restorative justice, and how it can be incorporated into their work.
7. The YJB should develop resources to support YOTs in work to increase awareness of restorative justice within BAME communities, to ensure both parents and children in those communities have a clear understanding of its benefits.
8. The YJB should develop resources to support YOTs in visiting schools and other relevant children's services to promote restorative justice to children.
9. The YJB should support YOTs to accurately record the ethnicity of those offered restorative justice (in line with the agreed definition) and of those taking it up and to investigate any differential take-up rates.
10. The YJB should publish the data collected from the YOTs broken down by ethnicity and gender.
11. The categories used in the national data to identify BAME children in the YJS need to be more precise in relation to culture and faith, in contrast to ethnic appearance alone.

Recommendations for YOTs and youth justice agencies

12. Restorative justice should routinely be made available to all children who have offended as part of diversionary measures and at every stage of the justice process, including pre-sentence for those cases that go to court.
13. Restorative justice should be offered to children who have offended as early as possible in their time in contact with the YJS, but flexibility must be retained to ensure that both the offender and their victim are ready to take part.
14. Where restorative justice has been offered early in the justice process it should be discussed again at a later point, to ensure the offer has been understood and properly considered.
15. Wherever possible, restorative justice should be offered to BAME children who have offended by practitioners from agencies other than the police.
16. YOTs and the police should consider developing partnerships with non-statutory providers of restorative justice with links in local BAME communities and support them to manage suitable cases involving BAME children on their behalf and to provide additional support to BAME children participating in restorative justice.
17. All YOT staff, not just restorative justice practitioners, should undergo restorative justice awareness training to encourage them to recognise the benefits of restorative justice and support its potential use with children who have offended, even where they have complex needs or challenging backgrounds.
18. Specific training on effective engagement with BAME children should be provided to all practitioners, and particularly to those from areas that have few or no BAME staff.

19. YOTs should recruit former participants in restorative justice from BAME communities to act as mentors to children who are or are considering taking part in restorative justice, including those who are still under the supervision of the YOTs.
20. YOTs should build relationships with influential figures in their local communities, and particularly BAME communities, to gain their support in promoting the benefits of restorative justice.
21. YOTs should build links with schools and other children's services in their area and hold sessions with children attending them to raise awareness of restorative justice.

Recommendations for practitioners

22. Practitioners should consider the terminology used when discussing the opportunity for restorative justice with children who have offended and potentially find alternatives to the word 'justice'.
23. Practitioners should recognise higher levels of mistrust of the justice system among BAME children and consider how to overcome them in the offer of restorative justice.
24. Practitioners should recognise that not guilty pleas are more common among BAME children and take that into account when deciding whether and when to offer restorative justice.
25. Practitioners should build relationships with the parents of BAME children to ensure they have a clear understanding of restorative justice and that their influence over their child's participation, if any, is a positive one.

1.

Context and background



1.1 Project aims

The purpose of this report is to develop a better understanding of the delivery of restorative justice with black, Asian and minority ethnic³ (BAME) children who have offended, with a view to improving practice and thereby increasing the number who access restorative justice services and improving the experiences of those who do. The awareness that such a project was needed arose from work conducted in early 2016 by the RJC, which highlighted that many restorative practitioners were struggling to effectively engage and deliver restorative interventions with BAME children who had offended, and that this was limiting their access to restorative justice. Failing to engage BAME children in restorative justice is not only unfair, it also contributes to a justice system that currently does not appropriately meet their needs.

The project focused on children between the ages of 10 and 18. While many 16 to 18 year olds may not self-identify as ‘children’, the term has been used throughout to acknowledge their status within the justice system. Eighteen year olds were included on the basis that their experience of the youth justice system (YJS) took place while they were still under 18.

The term ‘restorative justice’ is often misused. It is defined by the Ministry of Justice as “the process that brings those harmed by crime, and those responsible for the harm, into communication, enabling everyone affected by a particular incident to play a part in repairing the harm and finding a positive way forward” (Ministry of Justice, 2014). This form of communication can be direct, through a face to face meeting, or indirect, through letters or messages being passed between the victim and the offender by a trained facilitator. It should, however, be a two-way process between parties involved in the same offence.

Genuine restorative justice therefore requires the active consent and engagement of both offender and an identified victim, or victims. This distinguishes it from other interventions which may involve the offender making reparation for the harm they have caused but without communication with the victim. Such measures may include making financial recompense, or undertaking unpaid work in the community (see, for example, the Ministry of Justice’s Referral Order Guidance (Ministry of Justice, 2015a)).

³ Defined for the purposes of this report as black or black British, Asian or Asian British, or from mixed or multiple ethnic groups, as well as Gypsies and Irish Travellers and those categorised as of any other (ie non-British) white background.

These interventions are sometimes referred to as ‘restorative approaches’ but should not be confused with restorative justice itself.

Although restorative justice is believed to be used to a greater extent in the YJS than with adults, some restorative justice practitioners have expressed a view to the RJC that certain groups of children appear not to be participating, including BAME children in some parts of the country. This suggests that there may be inequalities in the way children are being offered the opportunity to take part in restorative justice, or that the service is not suitable for the range of needs that BAME children within the YJS may present.

In order to better understand the scale, nature and causes of the problem and to make recommendations for change, the following methodology was adopted:

1. a review of the existing evidence base, including both the literature on BAME children within youth justice services and on children’s access to and experience of restorative justice
2. interviews with practitioners, including an exploration of the drivers and barriers to participation in restorative justice for BAME children who have offended, and how to improve their engagement
3. interviews with BAME children in contact with the YJS, to include a sample who had participated in a restorative justice intervention and a sample who had not

The findings have been used to develop recommendations for changes in both policy and practice for a range of stakeholders.

1.2 BAME children in the YJS

There are acknowledged problems in the way data about ethnicity is collected and reported within the YJS. YOTs submit information about the ethnicity of the children referred to them by the YJB, based on 16 categories. The YJB then collates this into five main categories – White, Black, Asian, mixed and Chinese or other (YJB, 2000). The categories are limited to five because of concerns about the reliability of the more detailed data, which is not therefore published. This significantly limits the extent to which detailed analysis of ethnicity within the YJS is possible. Ethnicity is also recorded by the police but they use just four categories – White, Black, Asian and other (Ministry of Justice, 2015b). These descriptions are based primarily on self-identification, where the child describes their own ethnicity, or on the way they appear to the practitioner concerned.

Parekh (2008) suggests that this does not provide an accurate record. The categories are too broad to reflect children’s true cultural identity. For example, while the London regional statistics show an over-representation of black children in the YJS, it is unclear what specific background they come from, such as Somalian or Caribbean. There are also weaknesses in the number of diverse groups that may be concealed within the ‘White’ category, as this will include both Travellers and children from white immigrant communities. The problem was described in the Young Review:

“The coding ... has limitations in its ability to reflect new and changing ethnicities and their experiences. For instance a number of inner-city boroughs and community groups have raised concerns about increasing disproportionate entry into the criminal justice system for young Somali men and for young men from Traveller communities, but these significant demographic developments are not reflected in the data as they are ‘hidden’ in the black African/BAME categories respectively and therefore their specific needs may be missed.” (BTEG and Clinks, 2014)

This way of collecting data on ethnicity may not comply with the regulatory code of practice (EHRC, 2016; UKSA, 2014) but, more importantly, it makes it difficult to be confident about the full ethnic profile of the youth justice population and therefore to develop culturally sensitive services.

Nonetheless, the available data strongly indicates that, even if the precise nature of the issue may be unknown, there is sufficient information to be confident that BAME children are over-represented in the YJS. They may also be experiencing differential treatment once within the system when compared with their peers. Unfortunately there is, however, insufficient data to be able to identify the extent to which children of different ethnicities are diverted from entering the system through preventative or diversionary services.

May et al (2010a: p4) suggest four possible reasons for the over-representation of BAME groups within the YJS:

- demographic factors
- differential involvement in crime
- social exclusion and involvement in offending
- differential policing

The following section will explore the representation of BAME groups both at the point of entry and as they proceed through the YJS.

1.2.1 Representation of BAME children in the YJS

There has been an overall decline in children entering the YJS in recent years, with an 82% reduction in first time entrants between 2007 and 2015. Although it is important to note that the majority of children entering the YJS are white, BAME children are over-represented in relation to the general population. The available data also shows that while overall numbers may be going down the proportion of first-time entrants who are from a BAME background is increasing. BAME children accounted for 18% of all first-time entrants in the year ending March 2015, compared to 15% in the year ending March 2010. By comparison, the proportion of first-time entrants who were white fell from 82% to 75% in the same period, although it must be noted that the ‘white’ category will include minorities such as Irish/Irish Travellers, Roma, and Eastern European children.

Within the overall picture there are differences between BAME groups. Black children account for 9% of first-time entrants, while 5% were Asian, 5% were of mixed ethnicity and 1% Chinese and other. This means that Asian and Chinese or other ethnic groups are under-represented in the YJS compared to the overall population, even though they are likely to experience similar forms of socio-economic disadvantage to those faced by their black and mixed race counterparts.

Concern about the over-representation of BAME communities within the criminal justice system led the government to ask David Lammy MP to review the treatment and outcomes for both BAME adults and children (Lammy, 2016). His interim findings show that disproportionality is even worse for BAME children than for adults.

The Lammy review included a statistical analysis that adopted a 'relative rate index model' which measures the representation of different ethnic groups at various stages of the criminal justice process rather than just at a single point (Uhrig, 2016). This enables a more sophisticated analysis of whether disproportionality increases or decreases at each decision making stage, providing important information that will enable interventions to be developed that will reduce inequality. Overall, the analysis found that BAME children aged 10-17 were more likely to be arrested than their white peers. There were differences, however, in relation to different ethnic groups. For example, the analysis found that the arrest rate for Asian children of both genders is lower than that of white children but that black boys are just under three times more likely than white boys to be arrested.

Uhrig notes the importance of this disproportionate gateway into the criminal justice system, even if it were not influenced by any further differential treatment as children progress through the system. In fact, analysis suggests that there are also elements of disproportionality at subsequent stages, albeit less marked than the disparity of arrest rates. For example, Crown Prosecution Service decisions to charge BAME girls were at the same or even lower levels than those for white girls. Conversely, black and Asian boys were more likely to be tried in the Crown Court than their white counterparts and black boys or those of mixed ethnicity to be given custodial sentences (Uhrig, 2016). Furthermore, there is a difference in sentencing for indictable offences, with more BAME children receiving custodial sentences compared to white children (Ministry of Justice, 2016).

The disproportionate use of custody for BAME children is particularly concerning in the context of the overall decline in the custodial population. In May 2005, BAME children accounted for 25% of children remanded or sentenced to custody but by May 2016, this had risen to almost 45%. The measures that have been taken to reduce the use of custody have clearly not benefited BAME children as much as their white peers (Bateman, 2016). This appears to apply to both remand and custodial sentencing:

“The rate of BAME young people remanded to custody who are subsequently found not guilty, is disproportionately higher than white children and young people.” (Ministry of Justice, 2016).

To summarise the areas in the YJS where the analysis found an element of negative disproportionality for BAME children (Uhrig, 2016):

- being tried at Crown Court rather than Magistrates' Court
- custodial remand and plea at Crown Court
- custodial sentencing
- adjudications of prison discipline

Uhrig suggests that the reason for disparities occurring at these particular stages in the process may be that they are where individual practitioners can exercise most discretion:

“One overarching hypothesis worth investigating may be that established principles of oversight, guidance and collective decision making reduce the effects of any unconscious racial bias that play out in areas of the system where decision makers exercise a higher degree of individual discretion.” (p29-30)

1.2.2 Offence types for children in the YJS

Uhrig (2016) found differences in the types of offence that children were arrested for across ethnic groupings. Black boys were, for example, 10.5 times as likely, and boys of mixed ethnicity 4.2 times as likely, to be arrested for robbery than white boys. The pattern for girls was also different, with black girls being five times as likely to be detained for robbery as white girls. These patterns are likely to have an effect on subsequent ethnic proportionality within the system. This is reflected in data on proven offences, defined as an offence which “results in the offender receiving a reprimand, warning, caution or conviction” (Ministry of Justice, 2016). The most recent YJB data shows the highest proven offence in the YJS for all children is ‘violence against the person’ (24%), followed by ‘theft and handling stolen goods’ (17%), then ‘criminal damage’ (12%). There are differences, however, according to ethnicity. Black and mixed race children were more likely to receive a disposal for an offence of violence against the person compared to other groups. White children were more likely to have received a disposal for theft, handling stolen goods and criminal damage in comparison to other groups.

1.2.3 Needs of BAME children in the YJS

Each ethnic group within the YJS will have specific and individual needs. Although the way in which socio-economic disadvantage is experienced is similar for all children, research does show that a greater number of BAME children in the YJS come from a low-income family, live in poor housing and are disengaged from education (May et al, 2010b). Furthermore, BAME children have been identified as having more mental health issues. Research by YoungMinds shows the following needs among BAME children and young people:

- A recent study of young people of Asian origin in the UK found that the suicide rate of 16-24 year old women was three times that of 16-24 year old women of white British origin.
- Among 11-15 year old boys, white, black and Indian adolescents showed very similar prevalence rates for emotional disorders (around 5% in each group), whereas Pakistani and Bangladeshi adolescents had a prevalence rate of over 12%. (YoungMinds, undated).

The issue of gangs also needs to be considered. Pitts argues that gangs have become ‘embedded’ into some black communities and that the victims are also young black men (Pitts, 2015). This issue is expanded on by the Young report, which expresses concern that the police may see BAME young men as potential gang members rather than victims (BTEG and Clinks, 2014).

These factors and others have been highlighted by current research into the experiences of BAME children in the YJS, indicating the need for tailored, interventions and multi-agency working to ensure that BAME children receive the help they need (Lammy, 2016; Taylor, 2016).

1.2.4 Experiences of BAME children in the YJS

As well as their over-representation and high levels of need, research suggests that some BAME groups in the criminal justice system have had poor experiences. For example, some BAME groups have described negative stereotyping during their time in the justice system (BTEG and Clinks, 2014), while BTEG has noted that BAME offenders in the criminal justice system report poorer experiences within the prison system and have poorer rehabilitative outcomes (BTEG, 2013).

BTEG's report suggests that one reason for this is that "BAME people are under-represented within the criminal justice system workforce" (BTEG, 2013). This view was supported by Lin Hinnigan, then chief executive of the YJB, who argued that there may be an unconscious bias that exists through the under-representation of BAME staff within the youth justice workforce (Hinnigan, 2016). This is a complex issue. A YJB study, carried out in 2010, shows that a high percentage of BAME children in the YJS were not concerned whether or not their key worker was from the same ethnic group (May et al, 2010a). Children would not be in a position, however, to fully assess the implications of this.

BTEG's report also suggests that poor experiences were due to a lack of "appropriate strategies and interventions" being offered to BAME offenders and highlights the need for specific approaches and interventions aimed at the needs of the BAME population in the criminal justice system. For example, it proposes the "segmentation" of BAME offenders into specific ethnic groups in order to focus on their specific rehabilitative needs and to reduce reoffending (BTEG, 2013). There are concerns, however, that due to funding cuts, the lack of specific, targeted services will only worsen (Pitts, 2015).

1.2.5 BAME children who offend and mistrust of the justice system

The treatment of BAME children by the police, or their perceived treatment, can lead to a mistrust of the YJS as a whole. This is also an inter-generational issue, with today's BAME children influenced by older generations' views of the police. Barrett et al (2014) discuss the "historic and deep rooted racial issues underlying tensions between BME communities and the police". They go on to suggest that this leads to low levels of 'trust and faith' with the police generally (Barrett, 2014). Furthermore, Bowling and Phillips (2006) highlight that young black men are less likely to report being a victim of crime due to their experiences with the police, specifically in relation to the use of stop and search:

"Several respondents emphasised the difficulty in overcoming historical mistrust for the police. The 'sus' laws – under which the police could arrest someone if they suspected they might be about to commit a crime – had led to 'cross-generational mistrust of the police'." (Bowling and Phillips, 2006)

The lack of trust towards the police by some BAME children may lead them to carry out their own form of 'street justice', which might involve friends and relatives (Bowling and Phillips, 2006). It should also be noted that victims and perpetrators in the poorest neighbourhoods tend to know one another and the threat of reprisal or local loyalties often prevent them from reporting victimisation (Pitts, 2015). Mistrust of the justice system may also affect whether BAME children who offend choose to plead guilty:

"...data for the Crown Courts suggests that black children and young people have a 10% higher not guilty plea rate than for white children and young people." (Ministry of Justice, 2016)

BAME children are also reported to be more likely to give ‘no comment’ interviews when arrested (Taylor, 2016). The then chief executive of the YJB, Lin Hinnigan, (2016) acknowledged this mistrust of the justice system as a whole by some BAME children and argued that it begins with the disproportionate use of stop and search and higher arrest rates.

The consequences of this mistrust may mean that BAME children are not offered diversionary opportunities, either before or on entry to the YJS. For example, there are a number of measures which can be taken to respond to low-level offending that mean the child does not enter the YJS at all, from various informal strategies used by the police, through to Triage schemes operated by YOTs. Once in the system, post-arrest, there are also ways in which children can be given additional chances to avoid appearing in court, such as youth conditional cautions. However, all of these measures require the child to accept responsibility for what they have done and contain elements of a restorative approach. Research by Soppitt and Irving shows that the use of restorative approaches in the Triage process was part of its success in preventing reoffending:

“Reoffending data suggested that Triage is more effective in reducing re-offending than conventional justice practices, due to the restorative nature of the scheme.” (Soppitt and Irving, 2011)

1.3 Restorative justice in the YJS

As previously stated, restorative justice brings those harmed by crime or conflict and those responsible for the harm into communication, enabling everyone affected by a particular incident to play a part in repairing the harm and finding a positive way forward (RJC, 2016). It does not provide the fundamental basis for the YJS in England and Wales as in Northern Ireland, where there is an expectation that most children will be involved in a restorative conference, but there are several points at which restorative justice can be used with children who have committed offences.

Restorative justice has been shown to be an effective approach for both victims and offenders. As Professor Littlechild highlights in his evidence to the Justice Committee on factors that help children in the YJS to gain positive social relationships:

“The benefits of restorative justice have been shown to be improved sense of feeling that the young people and the victims were part of the process; an understanding that actions have consequences; improved skills for managing conflict; greater empathy towards others; increased mutual respect; and improved feeling of community.” (Littlechild, 2013)

1.3.1 The operation of restorative justice in the YJS

There is a great deal of confusion regarding what constitutes restorative justice, as discussed further in section 1.3.3. It is important to clarify that both the Ministry of Justice and the RJC state that in order to constitute restorative justice a process must involve communication between a victim (or victims) and offender who were involved in the same offence.

Restorative justice can be delivered through a range of processes (RJC, 2015):

- A victim/offender conference – this involves a formal face to face meeting between victim and offender, led by a trained facilitator. Supporters for both parties can also attend, usually family members.
- A community conference – This is similar to a victim offender conference but involves members of the community who have been affected by a crime.
- Indirect communication – Sometimes referred to as ‘shuttle’ restorative justice, this involves messages being passed back and forth between victim and offender by a trained facilitator. The participants do not meet and messages can be passed via letter, video or audio recordings.

Restorative justice can be used to divert children before they enter the YJS. Some children may have the opportunity to take part in a restorative intervention even before coming to police attention, with some schools and settings such as residential care homes using restorative approaches to resolve conflicts and to allow perpetrators to make good the harm they have caused to their victim or victims without escalating the problem into a more formal arena. Even where the police do become involved, there are opportunities for diversion (Ministry of Justice and YJB, 2013). These include:

- A community resolution, whereby the police decide to resolve the matter through informal agreement with the people concerned.
- A youth caution can be given with voluntary rehabilitative measures attached, which could include a restorative justice component.
- A youth conditional caution can be given, whereby the YOT is required to undertake an assessment and impose certain conditions that the child must comply with if they are to avoid prosecution. Restorative justice can be one of the conditions attached.

Once a decision has been made to bring charges, there may be further opportunities to take part in restorative justice, as part of, or as a complement to, a formal youth justice disposal:

- Referral orders – restorative justice can form part of a referral order. Referral order guidance from the Ministry of Justice and YJB states that referral order panels should be based on restorative principles. It also states that it is essential that referral order panels allow victims the chance to become involved in the process. The best way to do this is by offering them the chance to take part in a face to face restorative justice conference (RJC, 2015).
- Pre-sentence – legislation was introduced in 2013 to allow courts to defer sentencing after a guilty plea for restorative justice to take place. Potentially suitable cases can be recommended by YOT staff and they may deliver the process.
- Youth rehabilitation orders – restorative justice can be used to support the rehabilitation of a child who has offended as part of a community sentence.
- Custodial sentences – restorative justice can also take place when a child is given a custodial sentence, either while they are incarcerated or after they have left custody, at the discretion of the youth justice practitioners working with them.

1.3.2 Facilitating restorative justice for children who have offended

Decisions that are made regarding the involvement of children in the restorative process must take account of their wellbeing in line with international obligations (UNCRC, 1989). This accords with recent recommendations made to reform the YJS, based on a child first, offender second, approach (Taylor, 2016). The RJC highlights the need for facilitators to be aware of the different dynamics in ensuring access to restorative practice (RJC, 2016) and this should include a recognition of the factors or circumstances that may have contributed to the child's offending behaviour, including their ethnicity and cultural and religious values. This information should be elicited by the YOT when they undertake the Asset assessment for all children within the YJS.

1.3.3 Understanding of restorative justice

There are a number of barriers to accessing restorative justice in the YJS. Underpinning many of them is a lack of clarity about what constitutes restorative justice as opposed to victim awareness work or reparation. For example, a recent report on the operation of referral orders (HMIP, 2016) states that:

“We found confusion about what constitutes restorative justice.”

“We found a common belief that writing a letter of apology is automatically a good thing to do and is restorative. That is incorrect.”

“There was confusion as to whether reparation is restorative.”

This demonstrates a potential lack of clarity among youth justice practitioners as to what constitutes restorative justice. This echoes confusion among some criminal justice practitioners, who feel there is an overlap with restorative approaches already used in their work, which can lead to confusion when using restorative justice (Kuppuswamy et al, 2015).

The HMIP review reported that:

“Not enough victims became involved in restorative justice, or benefited from referral order work. When the voice of the victim was clearly heard in panels we found it had impact, but this did not happen often enough. Underlying this, we found inconsistencies in the extent to which victims were engaged, with those YOTs trying hardest to engage victims noticeably more successful than others. Initial contacts with victims needed to be more effective, to make sure victims understand the potential benefits for them, and so be more likely to take part.” (HMIP, 2016)

This tends to suggest that, with regards to referral orders at least, the claim that restorative justice is too victim-focused (Haines and Case, 2015), is inaccurate. While restorative justice may have its roots in the victims' movement, in the YJS it would appear that its use is, if anything, insufficiently victim-focused. In fact, more needs to be done to engage with victims, and the HMIP review suggests that this is achievable if sufficient effort is made.

1.3.4 Parental and cultural attitudes towards restorative justice within BAME communities

The views on restorative justice held by parents may also have an impact on whether children who have offended, including BAME children, agree to take part. There is very little research on this issue, but there would be value in investigating whether parental influence, or wider cultural attitudes, are a driver or a barrier for BAME children participating in restorative justice.

A particular issue for some BAME communities may be the shame that a child brings onto their family by committing an offence and, particularly, coming into contact with the YJS. This issue has been described in the Young Review (BTEG and Clinks, 2014) and in a Transition to Adulthood Alliance report on young Muslim men in the justice system (Transition to Adulthood Alliance, 2016). The extent to which issues of shame in some cultures influence interest in, and take-up of, restorative justice among children who have offended is, however, largely unknown.

1.3.5 Gender and restorative justice

The issue of shame may be particularly important with BAME girls from certain cultures who have committed an offence. For example, Toor (2009) has argued that honour and shame are deeply embedded within Asian communities in Britain and play a central role in how these communities respond to girls' offending behaviour. As a result, British Asian girls who offend may suffer from 'double punishment', experiencing censure from both their families and communities and from the formal justice system.

Toor then explores the interaction between shame and restorative justice, and argues that "the moral imperative of restorative justice is not compatible with the cultural context within which Asian girls' lives are determined" (p249). This is because, she argues, the onus on reintegrative shaming and rehabilitation in restorative justice is incompatible with the stigmatisation and vilification of Asian girls who have offended by their families and communities.

More generally, there is limited research on gender, children and restorative justice. Research in Australia, however, revealed differing perceptions about restorative justice among girls. In a study conducted of assault between girls, it was found that they were not remorseful and the assault was seen as a response to having been a victim. This lack of remorse goes further in that there was a perception by adults in authority that some of the girls were being 'difficult' and that carrying out a restorative approach to their offending was therefore not suitable (Daly, 2008).

1.3.6 Best practice in restorative justice for children in the YJS

The International Juvenile Justice Observatory (IJJO) found that member states' use of restorative justice took into account both the "children's rights, including the best interest of the child, and victims' rights". The IJJO report showed that most children who had offended came from adverse backgrounds. Therefore, using a restorative approach to their offending behaviour meant a shift away from a retributive form of punishment to one that addressed the underlying causes and consequences of their offending behaviour.

The provision of restorative practice should always be of a high standard and one that the parties involved in are confident about. Twenty-four YOTs now hold the RJC's Restorative Service Quality Mark (RSQM). The RSQM is an independent assessment of an organisation's restorative service and demonstrates that services are delivering good quality, safe and sustainable restorative services that meet the Restorative Service Standards.

A specific example of best practice using restorative justice in the YJS can be found in Surrey. The Youth Restorative Intervention (YRI) is a pre-court disposal and an alternative to more formal disposals given to children. The aim of the YRI is to bring victims and the children responsible for the harm together. The initiative "has delivered a 91% victim satisfaction rate and an 18% reduction in reoffending" (OPCC for Surrey, undated). A positive aspect of the initiative is that it accommodates the needs of various parties involved in the child's offending behaviour such as the victim, the offender, their families and the wider community. An evaluation of the intervention (Mackie et al, 2014) found that there were several factors which contributed to the successful outcomes:

- The process was voluntary.
- Offenders acknowledged responsibility and were held accountable throughout the process.
- Face to face communication with the offender increased victim satisfaction.
- The restorative outcomes were fair, realistic, achievable and credible.
- Offenders felt they had a good relationship with their YRI key workers.
- The YRI helped both to reduce first-time entrants to the YJS and to reduce reoffending.

Furthermore, using the YRI meant that costs were less than would have been incurred by the police in processing the offender through more formal measures, such as youth cautions, youth conditional cautions and prosecution (Mackie et al, 2014).

2.

Methodology



In order to build on the available evidence on BAME children in the YJS and their engagement in restorative justice, a qualitative empirical study was undertaken. This took the form of semi-structured interviews with practitioners and BAME children who are currently, or have recently been, in the YJS.

2.1 Data collection and participant recruitment

The process of data collection took the form of semi-structured interviews, focus groups and telephone interviews conducted over a period of six weeks. In order to ensure maximum impact of the research project within the timeframe, recruitment of participants was informed by quantitative analysis of YJB statistics. The analysis identified the regions where there was a large proportion of BAME children who had offended and a few with a small proportion in order to ensure a range of experiences (YJB, 2016). The areas selected were Essex, Hertfordshire, London, Luton, Manchester, Nottingham (county and city), Sheffield and Surrey. Because of the difficulties envisaged in recruiting children, charities across England working with children who have offended were also contacted. Practitioners were contacted who might be suitable interviewees themselves, but also with a view to identifying children to take part.

2.2 Data summary

The initial anticipated size of the sample group for interview was to be between 30-40 participants – approximately 15 practitioners and 25 BAME children who have offended. This total was exceeded and a total of 44 participants were interviewed – 19 practitioners and 25 children.

2.2.1 Practitioner data

Initial contact was made with restorative justice practitioners working in YOTs and from the RJC's existing network. The interviews were held at their workplaces, homes and, in one case, at Kingston University.

Nineteen practitioners were interviewed but many others were spoken to with regard to their roles as caseworkers when interviewing the children under their supervision or in their care.

These included victim liaison officers, restorative justice practitioners, YOT caseworkers and managers, secure children's home residential workers, referral panel volunteers and police community support officers (PCSOs). The practitioners were predominantly female, with a smaller representation of men. They were from a variety of ethnic backgrounds including white British (for the majority), black, mixed race and Asian.

2.2.2 BAME children data

Out of a total of 25 interviews with children, 17 were face to face, seven were telephone interviews and one child provided written answers to the questions. Four of the children were in a secure children's home, three on an Intensive Supervision and Surveillance order (ISS), four on Youth Rehabilitation Orders (YRO) and 14 on referral orders. One of the aims of the research was to gain views on restorative justice from BAME children at different stages of their pathway through the YJS. It should be noted that the secure children's home used restorative practice routinely to deal with conflicts within the home. As a result these interviewees had a different perspective on its use and a greater understanding of restorative processes.

The majority of the known offences committed were theft, burglary, sexual assault and violent assault. Only five of the participants had experienced any form of direct or indirect restorative justice, which may reflect reports of the low take-up nationally.

Thirteen of the young participants were black or black British, four were South Asian, one was Roma, three were Irish Travellers, one was Eastern European, one was Somalian and two were Mediterranean/British. Three of the young participants were female. The face to face interviews were held at the premises of the YOT working with the child or in the secure children's home. All the children and young people interviewed were between 10 and 18 years old, to include the views not only of children currently within the system but those who had left and could reflect on their experiences. The interviewer conducting the interviews with the BAME children was of White/mixed ethnicity.⁴

2.3 Analysis and outputs

The general themes for the study and the topic guides for the interviews were agreed with the advisory group. The topic guides differed slightly for the practitioner and child participants.

For example, the core topics discussed with the practitioners were:

- Access to restorative justice through referral, self-referral and case extractions.⁵
- What drivers exist that encourage BAME children in the YJS to participate in restorative justice?
- What barriers to participation are there for BAME children who have offended?
- How could these barriers be addressed?
- Particular training requirements for practitioners.

⁴ Research suggests that the ethnicity of the interviewer may affect the responses from the interviewees (May et al, 2010b: p25)

⁵ Case extraction involves the screening of cases to identify suitable cases that have not already been referred.

An example of the core topics for the BAME children were:

- awareness of restorative justice
- what participants understood restorative justice to mean
- access to restorative justice, through referral, self-referral and case extractions
- motivation for taking part in restorative justice
- experience of the restorative justice process
- impact of restorative justice

It is important to note, however, that as the interviews were semi-structured these topics were only a guide and the practitioners and children expanded on points that were important to them.

All the interviews were recorded except for those with three of the children, who requested instead that their answers be written down.

The data was analysed thematically through a process of reading transcripts twice, coding relating to key themes within individual interviews and cross referencing of the identified codes against all the interviews in order to show existing and emerging themes. A quantitative analysis of the data was also carried out to establish similarities in the views across the sample.

2.4 Ethical considerations

Ethical considerations for the research were developed in line with the RJC's ethical standards and regulations and agreed with the advisory group. An information sheet describing the study and the use of the data was emailed to each participant prior to the interview along with a consent form. This allowed any issues of confidentiality and anonymity to be addressed and made it clear that respondents would only be required to discuss issues that they felt comfortable with. All the participants have been numbered, with the letters PR for practitioners and CH for children preceding the number when cited in the report.

Throughout the project, consideration was given to the vulnerability of the young participants, all of whom were told they could terminate the interview at any stage or decline to answer a question without giving a reason.

2.5 Limitations of data

The study was of a small scale and an exploratory nature but it is hoped that it will contribute valuable knowledge regarding BAME children in the YJS, specifically in relation to restorative justice. The sense among practitioners that BAME children are unlikely to participate is reflected in the fact that only five out of the 25 young participants in the study had received a restorative justice intervention, but there is insufficient national data to contextualise this.

A comparative study between the white and BAME groups was considered but it was apparent that this would need to be done as a separate project given the timescales and funding available.

Furthermore, the process of identifying the number of young participants needed was already challenging, in that many of the children approached initially did not want to talk about or re-live their experiences in the YJS. This challenge was alleviated to an extent by the exceptional support provided by YJS practitioners, who understood the significance of increasing understanding of the needs of BAME children in the YJS.

Despite the limitations of a small-scale qualitative study, in that it can never claim to be fully representative of the range of practice across the system, there are also advantages. There is a wealth of statistical data available about the operation of the YJS, and the disproportionality of BAME children at its various stages. Less well-understood are the stories behind the statistics. If it is true that BAME children are less likely to participate in restorative justice, what are the reasons for this, and how can engagement be improved? The evidence base described earlier suggests some hypotheses for why this might be, but the strength of a qualitative study is that it can draw on the views and experiences of those directly involved. BAME children and those working with them are the real experts in the topic and are best placed to identify the changes that are needed.

3.

Findings: Practitioners’ perspectives and experiences



Overall, the findings from the qualitative study confirm the themes from the available literature described previously.

All practitioners were positive about the benefits of restorative justice and described a variety of situations when it had been helpful in achieving good outcomes for children they had worked with. For example, one practitioner said that:

“The way we work, because we work with both sides [victim and offender] during the process, I certainly see it as an opportunity to prevent that young person from reoffending, and at a young age where developmentally they may not have an understanding or ability of consequential thinking, we’ll assist that process. So I think it can be very offender-focused as well, and be of great benefit.” (PR5)

They did not, however, think it was suitable for everyone, even if the child wanted to take part – for example, if they did not consider the child’s motivation or attitudes to be appropriate. While the aim of this project is to maximise opportunities for children to participate in restorative justice, professional judgement may lead practitioners to conclude that it is not appropriate in some cases because of the child’s or victim’s individual circumstances.

3.1 Access to restorative justice for BAME children

The perception among practitioners was that BAME children have the same opportunities to access restorative justice interventions as non-BAME children, either directly or indirectly. Restorative approaches (approaches that are based on a restorative ethos but do not meet the formal definition of restorative justice whereby the offender and victim are in a two-way communication), however, were more widely used than true restorative justice. These approaches include victim awareness courses and writing letters to a victim which are not sent. Participants acknowledged that it could sometimes be difficult to engage children in restorative justice, regardless of ethnicity. There were some differences, however.

Despite their perception that BAME children are offered the same opportunities, some participants suggested that BAME young people are more reluctant to take part in a face to face conference than their white peers and more likely to undertake an indirect form of restorative justice:

“I would say the white British kids are probably more inclined to meet face to face whereas I suppose the BAME kids are not, they're willing to do letters but they're not willing to meet face to face. So why that is I'm not sure.” (PR4)

This view was, however, from a practitioner who worked in an area where there were few BAME children in the YJS. This perception was not recognised by the practitioners working in the areas with a significant proportion of BAME children, where it was felt that lack of engagement in restorative justice was a generic issue and not BAME specific.

Interviewees said it could be complicated to separate out the impact of ethnicity from other associated factors. Some practitioners said that a broader recognition of different faiths and cultures was more important than a focus on ethnicity alone:

“It wasn't because it was separate ethnicities, it was almost to do with religious [issues] ... Everything is so cultural ... Yes, it's just cultural, there isn't colour.” (PR13)

In relation to their experience of working with BAME children who had offended, two PCSOs felt that the level of engagement for BAME children was the same as that of non-BAME children. The only factors they felt had an impact on engagement were the developmental stage of the child and their social environment.

For those practitioners who did feel that there were particular issues in engaging BAME children in restorative justice, they suggested the following factors needed to be considered.

3.1.1 Mistrust of the YJS

The research suggested that there is a need to take into account BAME children's perception of adults in the YJS when offering restorative justice. This was endorsed by practitioners:

“I think it's cultural, I think they're more distrusting of the system. I think it's the system, if we're going to be honest. I really do believe that they can prejudge a person's colour or their culture with whatever the topic or the news is of the time I think the system can be, or come across, as quite prejudiced. Therefore, why's someone going to trust in you to put you in such a position?” (PR4)

Another practitioner expressed similar views:

“I think there are a whole range of other issues rather than thinking is it just about restorative approaches. I just think the whole system is against BME young people really. They're on the back foot, that's my personal opinion, from the minute they're stopped and searched.” (PR7)

This may be a particularly significant issue when it comes to the police:

“I think it might be because of their cultures, that it's more difficult for them to trust that it's all going to be okay. I'm a white worker so therefore working with a white kid the kid might trust me a bit more.”

Their experiences are, 'Are we going to be judged for this?' especially the Travelling community. They always feel that society and [the] public are always putting them down, they'll never go to the police because they feel the police don't believe them and take their cases seriously. So they're very distrusting and I would probably say in my experience I find that a lot more where the BAME kids are not against the system but don't trust the system." (PR4)

This issue of mistrust of the police was seen as BAME specific rather than a generic problem and was confirmed by the children's interviews, as described in the next chapter. Practitioners also suggested that BAME children were being advised by their legal representatives not to comment during police interviews, and/or not to plead guilty in court, limiting access to diversionary schemes and leading to higher tariff sentencing.

Mistrust of the YJS among BAME children may be a factor in the lack of take-up of restorative justice because where they do not plead guilty and accept their guilt, that may be a barrier to accessing restorative justice. In addition, if they are treated more harshly by the system, or perceive that they have been, they may be more likely to resent the system and therefore be less likely to agree to take part in a voluntary process such as restorative justice.

3.1.2 Lack of BAME professionals within the youth justice workforce

Potentially linked to the issue of trust, the under-representation of BAME people in the YJS workforce was described in the literature review (BTEG, 2013; YJB, 2016).

The findings from the interviews with practitioners suggest that in the areas where there is a high BAME demographic, this is reflected in the workforce. Similarly, however, in areas with a lower proportion of BAME people in the population, this is also reflected in the composition of the workforce. Two of the practitioners who worked in more rural areas felt there were too few BAME staff and that this had a negative impact on their work with BAME children:

"A case manager will say, 'Right we're going to focus on this, this and this...' I think what I have heard personally from young BAME people is that they sometimes struggle with their case managers." (PR11)

One practitioner who worked in an area with a high BAME demographic felt that under-representation was more of an issue in relation to gender and age than ethnicity – specifically, that there are not enough young men in the workforce. Others suggested that the lack of BAME staff was more relevant in the courts than in YOTs. This could lead to negative stereotyping of BAME children during their time in the justice system (BTEG and Clinks, 2014):

"Now, you walk into any of the youth court settings in [city name] you might see maybe one black face, or Asian face so it's representation. The Magistrates' [Court] is, for me, the starting point, under-represented. If you walk around the Magistrates' Court, which obviously [is where] some of our young people get dealt with, certainly if you walk into Crown Court you're going to see a mismatch between the client group and the professionals dealing. Not so much the professional criminal justice service because I think we've got a very good representation." (PR10)

This could exacerbate the lack of trust discussed above and can be addressed by ensuring that relevant communities are represented across the youth justice workforce – including within courts. For example, in an area where there is a large Travelling community:

“I know for sure, that one of the staff is a Romany. And she liaises with the Travellers’ groups.” (PR12)

This practitioner added:

“I think that you have to take note of someone’s culture. And from my experience – and I think, probably, most people would back me up on it – is that Traveller children will respond to a genuine interest in their culture.” (PR12)

A team approach can also be used. Some YOTs had a diverse workforce which meant that if the caseworker for any BAME child needed support in relation to that child’s religious, cultural or ethnic needs, a colleague was able to assist. Furthermore, if the child is aware that the YOT has staff from a range of cultures, this may make them more comfortable having a caseworker who is not of their own ethnicity.

3.1.3 Skills and confidence in working with BAME children

A lack of diversity in the staff team could be addressed, at least in part, by providing staff with training to give them the skills and confidence to deal with BAME children and their families. A YJB report shows, however, that only 11 out of 25 YOT interviewees felt they had adequate training in this area and they wanted more input on cultural issues and the differences between BAME groups (May et al, 2010b).

A particular issue in areas with fewer BAME staff was the need for practitioners to have the confidence to differentiate between being ‘politically correct’ with the child and genuinely responding to their cultural needs:

“I think it’s about staff being confident to understand different cultures and traditions. I think it’s just generally knowing how to approach. We have to have really difficult conversations with a lot of our young people. A lot of it is about how we engage and create a conversation with a young person where they’re ... comfortable and the young person will go, ‘Do you know what, I would like to know a bit more about what this restorative justice thing is and I’ll be willing to have a meeting with the restorative justice worker’.” (PR7)

This lack of confidence in knowing how best to communicate was not limited to BAME children. One interviewee expressed strong views about the quality of the interaction between some colleagues and the children they were responsible for, which meant they missed out on opportunities for support:

“Most Travellers are Roman Catholic. I’m not scared to use the word God or Jesus whereas a lot of workers don’t even believe in it so therefore won’t even use it which beggars belief that what are you doing here? Are you here for yourself or are you here for the person you’re working for?” (PR4)

The overall view among the practitioners was that training in this area was a fundamental aspect of improving restorative justice take-up for BAME children.

3.1.4 Cultural awareness among practitioners

In spite of the difficulties, all practitioners recognised the need for cultural awareness and described approaches that they used. This included developing an understanding of the children's family backgrounds and building trust:

“With every young person you work with, you’re mindful of the family and family practices, family beliefs, religion etc. So there’s certain questions we have to ask about, alcohol consumption and things, and obviously that could be with certain religions who don’t drink alcohol. But the question still may need to be asked because of safeguarding, but you need to have an understanding of the question that you’re asking and what that would mean to the family.” (PR5)

Some practitioners described researching cultural differences using online resources or meeting with local faith groups or religious establishments to ensure they had an accurate understanding of a child's family and cultural beliefs:

“What I was thinking of in terms of here is we have had a couple of people where incidents have happened and people go to the same mosque. We thought the best way that we could see to actually get to engage with these people would actually be to do it through the leadership of the mosque or the community links at the mosque. We have had a couple like that through churches around more recently although I am not entirely sure I agree with the solution they came up with. But still it is their solution. But just recognising actually who are the influential people in your life? How they can help and support you through that. It might be through a culture group or faith group.” (PR17)

Building relationships is key to working with all children:

“So a lot of times when you get a, say, 12-month order, at the beginning of the order quite often you’re not being told the whole truth by the young person. As you build that relationship and get to know them, three months into the order they might turn around and say, ‘You know what, actually I did it.’ You can then start the restorative justice process.” (PR9)

If the practitioner does not understand the child's cultural background, however, then the task of relationship building will be harder. They need to be equipped with theoretical understanding in order to recognise potential sensitivities:

“One that I had to do when I was over in [inner-city borough] where they have the big Jewish community. I didn’t actually understand the Jewish community so I then had to make myself aware of certain cultures that they have. I didn’t want to go in there and upset anybody so you need to make yourself aware of people’s culture. Otherwise straight away if you’re not you’ll go in and upset them, it’s over, it’s finished. So it’s about us being aware of that. You can’t take anything for granted.” (PR9)

This then needs to be supplemented by specific knowledge gleaned from the people most influential in the child's life. Not all members of a particular minority group will share the same values, and there is a risk of stereotyping.

The systems used for recording ethnicity do not support practitioners in preparing to work with children and families. For example, the two PCSOs who used restorative justice as part of community resolutions said that while the police only use four categories, their service had developed a system that broke this down into 17 categories, including white, Irish Traveller, Roma Traveller, African, Caribbean, Indian, Bangladeshi and Pakistani. This meant they could be more precise in assessing the child's needs in order to enable them to progress with the child's community resolution.

3.1.5 Who should make the offer?

A further potential barrier to BAME children accessing restorative justice – closely linked to the issue of trust – is the 'wrong' person making the offer.

This could be a particular issue with the police, and in general practitioners felt that there is a more positive outcome when restorative justice is offered by YOT workers, as children are more likely to trust them. The issue of mistrust towards the police may be cross-generational (Bowling and Phillips, 2006) and parental attitudes are therefore also significant.

Although interviewees were aware of police officers making good use of restorative justice approaches in their everyday work, they felt that there was inconsistency across different police regions in terms of training and practice. Where the police did use restorative justice successfully, it was felt that this was due to the support given to them by the restorative justice practitioners within the YOTs:

“It's happened so many times now, there's not one actual authority saying, 'Okay, we're going to start the training from scratch, you will all need this, and then every police officer will use it.' If I speak to a police officer down in [name of police region], they know about restorative justice. I've spoken to someone recently and they know about restorative justice and they'll tell you exactly what offences they'll use it for, but at least they're using it and they've heard it, where if I speak to a police officer here, [they say] 'What's that about?'” (PR15)

Overall, the practitioners felt that given the lack of understanding of restorative justice among many police officers and the lack of trust in them from BAME children, police officers may not be best placed to provide restorative justice to BAME children who have offended.

The way forward may be to establish processes for joint working, as in the Youth Restorative Interventions (YRI) being used in Surrey. The success of this initiative has already been described in section 1.3.6 but what is more noteworthy here is the actual process, which begins with the police officer identifying the possibility of using a YRI and referring the case to a decision making panel. This is used as a first step in all offences by children under the age of 18 with the exception of indictable-only offences and means that “from the outset decision making has been based on restorative principles” (Surrey and Sussex Criminal Justice Partnerships, undated). This process ensures that police officers are involved in decision making as part of a multi-agency team and skilled facilitators or practitioners are then responsible for offering the service to the child.

There may also be real benefits in YOTs and the police developing formal partnerships with non-statutory providers of restorative justice with links in local BAME communities.

This would not be as an alternative to providing restorative justice themselves, but could form an additional route for children who might otherwise fail to engage. Non-statutory providers could include third sector organisations and community groups for children and young people. YOTs would need to ensure that standards in restorative justice delivery were met, and the details of children who had offended could only be passed on with their consent. These partnerships could increase the numbers of BAME children agreeing to participate in restorative justice but should be seen as additional to, rather than a replacement for, the YOTs developing their own competence in working with BAME children.

3.1.6 Communication and terminology

The use of the term 'restorative justice' was identified as a potential barrier in itself. For example, a charity group leader expressed how she had never witnessed such a hostile reaction to the term as she did from the group of young BAME men she worked with. Children either do not understand it or associate it with punishment. In response, some practitioners were using different terminology:

"I've stopped using the word 'justice'. I talk about 'restorative approaches' because it [restorative justice] just puts labels on people, so let's think about restorative approaches. What that basically means is accepting responsibility for a piece of harm. It could be crime, it could be conflict. Once they've accepted responsibility for the actual incident, we then start and look at who's been affected." (PR10)

Many of the practitioners were focusing on an explanation of what restorative justice is to make sure people understand what it entails rather than what it is called:

"When I do a training delivery, I always describe it as restorative justice being an overriding umbrella, and then underneath the umbrella you have mediation, victim/offender mediation, you have shuttle mediation, restorative conferences, restorative circles, restorative inquiries and conversations that you do just on a level one type thing. You're just having this whole ethos of being restorative and what that means by giving people the opportunity to talk about what's happened." (PR15)

The effect of adopting a change in language was also noted by a member of staff from the secure children's home, who said that since they had started using the term 'restorative approach' rather than 'restorative justice' they had noticed the children were engaging better in the process. The member of staff thought that the word 'justice' was interpreted by the children as another form of punishment, which scared them. By using the term 'restorative approach', even to describe interventions that met the definition of restorative justice, the children reacted more positively.

The secure children's home had adopted restorative practice to respond to a wide range of incidents. As a result, the children were familiar with it as a mechanism to resolve conflicts with their peers, and in some cases between children and staff. Out of all 25 children interviewed, three of the four participants in the secure children's home had by far the greatest understanding of the term and its benefits. Staff believed that by using restorative approaches routinely, the children would be more likely to take up restorative justice should it be offered in the future.

The way restorative justice is described is crucial if children are going to agree to participate and may explain differential rates of take-up:

“I think it is a challenge trying to help people understand that is what we are trying to do. But what I do know is it is not about saying sorry or forgiving but that may come out ... Actually by using that phrase [restorative justice] are we scaring people and making it appear, ‘Oh it is a legal thing?’ I am always quite conscious of that.” (PR17)

3.1.7 Timing

Another factor to consider if children are to agree to participate in restorative justice is timing. This issue was highlighted by the BAME children and the practitioners interviewed for this study. Getting the timing ‘right’ is a difficult balance to strike because the victim and child who has offended must feel ready, and their needs may not coincide. There has to be some flexibility to allow for this. As one practitioner put it:

“It’s about timing it right for that young person as well. You’ve got to give them time to digest what’s happened and come to terms with it and then say, ‘Actually yes I am sorry for it.’ So sometimes you do need to have that work beforehand so you might then miss the victim. Timing is so important, I think if you leave it too long it’s something they’ve filed away. They’ve done their victim awareness pack but they didn’t want to meet the victim. They’ve done the bits that they need to do and that’s in the past.” (PR9)

As this quote illustrates, some practitioners thought that, where a child was on an order, once that order was over or midway through the child felt there was no benefit to them in engaging in restorative justice. Overall, therefore, many practitioners felt that restorative justice should be offered as early as possible in the child’s time in the YJS.

“What they do [New Zealand and Canada] is they do restorative justice before the person goes to court. They’re miles ahead of us and as I said I’m quite jealous. Just try to really break down their fears.” (PR4)

Some practitioners thought that this should involve embedding restorative justice into the court process, including enabling it to take place pre-sentence, as they felt that this would increase children’s motivation to engage.

However, one practitioner emphasised that there should be careful consideration when offering restorative justice at a very early stage, when the child might not yet be ready to consider it:

“We have to ask the young person if they’d be willing to engage in restorative justice within three weeks or before the point of sentence when we’re assessing them. We need to ask that question at that point when it’s very raw.” (PR7)

The findings in this section are consistent with those from the interviews with BAME children. Many of the children felt restorative justice should have been offered to them at the earliest possible stage and that they would have been more likely to take it up then, in conjunction with the start of their order, rather than be halfway through it or near its end.

Overall, this suggests that restorative justice should be offered at the earliest possible opportunity, while retaining flexibility to ensure that it is not offered before the child who has offended and their victim are ready to take part.

3.1.8 Resources

The issue of resources was raised by some practitioners as being a barrier to engaging children in restorative justice, although this was seen as a general issue rather than BAME specific. A 'postcode lottery' in restorative justice was identified in a recent Justice Committee report (Justice Committee, 2016). This perception was confirmed by the interviewees, many of whom were critical of the lack of investment and time given to increasing children's awareness of, and engagement with, restorative justice in some YOTs. As one practitioner said:

"I think part of the YOT culture, and where they place restorative justice, and how much they push it and promote it. I mean, some [case managers] are more pro than others here, so some may not necessarily have that conversation. I think here [restorative justice is] more embedded, rather than just lip service. Where I think at my previous place it was more lip service than making true enquiries. So, when I start, it's not totally the first time you're sitting down and you're hearing it, as a young person." (PR3)

Other gaps in resources were described, including some specifically for BAME children, which reduced their ability to engage in interventions. YOTs were sometimes dependent on other agencies to meet children's needs and the services were not always available. One example was that of the undiagnosed mental health conditions that may be present among young black men (Mental Health Foundation, 2016).

3.1.9 Fear

A major barrier to take-up highlighted by the practitioners was that the children had a fear of meeting their victim:

"They are scared to do it either because they think there will be some retribution or they will lose face for doing it. That to me seems to be the most defining differential between why people will engage and won't engage. There is a level of fear and misunderstanding of what it is going to be about. Because if someone has planted the seed that, 'You are going to have to apologise to the person' that is not what it is about." (PR17).

Clearly, if the practitioner cannot allay these fears, then restorative justice is unlikely to take place. This may be linked to mistrust. Where BAME children do not trust the system or the person making the offer, it may make it more difficult to address fear and concerns. Many children may also be reluctant to admit to fear of meeting their victim, which may mean that it is difficult for the practitioner to address it.

3.1.10 Victim engagement

Victims may also be reluctant to engage in restorative justice, which is, inevitably, a barrier for children who have offended and want to take part. As one practitioner pointed out, this may be in part because the majority of victims of children are also young and may know the perpetrator, potentially making them embarrassed about taking part or fearful of reprisals.

The issue of victim engagement was considered particularly important in referral orders. A referral order is a court disposal given to a child who pleads guilty to a relatively minor or first offence. The child is referred to a panel of two trained community volunteers and a YOT caseworker and victims are invited to attend. The term of the order can be between three to 12 months, and the child is expected to agree a contract including two core elements:

- reparation or restoration to the victim or wider community
- a programme of interventions/activities to address reoffending risk

As described in section 1.3.3, a recent HMIP report criticised the lack of restorative justice interventions that were delivered during referral orders, with forms of reparation being used instead. It was felt that more effort was needed by YOTs to involve victims in referral orders (HMIP, 2016). Practitioners interviewed for this study did not necessarily agree with this. One practitioner said that even though the victims were contacted to take part in the referral order panel very few actually did:

“I mean the big criticism of referral orders and restorative justice within YOTs has always been there’s so few victims come forward. You can’t criticise the YOTs for not making the effort.” (PR10)

Victim engagement is a difficult issue, particularly in youth justice where there may be considerable overlap between victims and perpetrators. Many victims within the YJS will be children themselves, and known to the perpetrator. The purpose of involving victims is to support them, and to help them to move on and recover from the harm that has been done to them. They must feel safe during the process, and are not expected to take part purely to benefit the offender. If they are to participate, they must be confident that they will be properly supported through the process. If these requirements are to be met, the conditions need to be right. This can be a challenge in particularly deprived communities, where children may be living chaotic lives. HMIP has identified that effective victim contact was dependent on individual YOTs but they needed to monitor and evaluate any lack of victim engagement (HMIP, 2016: p40). A focus on this would help to ensure both victim contact and that monitoring was not a ‘tick box’ exercise.

Some practitioners had concerns about victims being re-victimised by taking part in restorative justice – for example, the child who has offended might see it as an opportunity to express a grievance towards the victim, or the victim may simply be unable to cope with the meeting. These possibilities should be considered during a risk assessment when restorative justice is being considered, and solutions found wherever possible. It might, however, be easier to take the risk-averse option and decide that it is not possible to proceed.

Some practitioners also questioned the benefits for victims in some cases, suggesting many did not feel a need to take up the offer of restorative justice:

“Also for the snatch thefts a lot of victims are just like, ‘Well you stole my phone, I’ve got a new one.’ Their buy-in and what they will get out of taking time out of their personal life to come to a meeting about a phone that they’ve forgotten. It’s quite difficult.” (PR7)

In these cases the practitioners offered alternative approaches to restorative justice:

“Sometimes it’s as simple as me saying to the victim ‘You can speak to me, I can feed that back to the case manager and then the case manager will do some work with the young person about restorative justice.’” (PR11)

3.1.11 Gangs

The difficulties in victim engagement will be compounded where the victim or offender are involved in gang activity, which carries specific risks and can be a barrier to participation:

“It’s very difficult to get two kids from opposing gangs to come to a meeting, that’s not really appropriate in many cases.” (PR7)

The risk of criminal justice system professionals and the police stereotyping BAME children as potential gang members is raised in section 1.2.3 and needs to be addressed. Conversely, however, it is equally important that restorative justice practitioners are able to recognise where children might be involved in gang-related incidents. Where this is the case, restorative justice should be approached with caution, and only with the input of professionals with specialist knowledge in the area of gang-related crime.

In the first instance, children who have offended or been victims in such cases may be justifiably afraid of reprisals if they agree to take part in a restorative justice process. For the practitioner, carrying out a risk assessment around the safety of a restorative intervention may well prove problematic without an in-depth knowledge of the complex network of relationships and loyalties surrounding either participant.

While gang membership may be considered a barrier to accessing restorative justice for some BAME children, it does present genuine risks. As such, it is one area in which restorative justice may only be appropriate in a small number of cases and children should not be encouraged to take part unless the practitioner has the relevant skills, experience and support to ensure that it is completely safe to do so.

Merton Youth Justice Team, which covers an area with a high BAME demographic, provides an example of how restorative practice can be used with gangs. The team identified an increase of serious violent incidents between local gangs. In response, they provided children from various parts of the borough with a chance to take part in a project using restorative approaches, which since its start in 2015 has contributed to a steady decline in the frequency of violent incidents. Due to the sensitivity of the victims being from opposing gangs, restorative practice has proved effective where a pure restorative justice approach may not have been appropriate.

3.1.12 Parental influence on BAME children’s take-up of restorative justice

The issue of whether parental influence provides a driver or a barrier to restorative justice was raised in the literature review, and is touched upon in section 1.3.4. Practitioners reported a range of experiences, with some parents being positive about restorative justice and others discouraging their child from taking part. One reason for a negative response could be defensiveness on the part of parents, who might not want to accept that their child was responsible for causing harm – possibly because of the feelings of guilt or failure that this might prompt in them:

“I don't know if it's BME specific but you've got some parents that are really defensive or try to minimise the responsibility of what their child has done, quite often because it's a deep-rooted issue. They feel it might be something that they have or haven't done that's led to their child committing some horrible crime. I think a lot of parents you do get completely minimising the offence and blaming everybody else for it which makes it very difficult even if the young person does accept that they've done something.” (PR17)

Another practitioner argued that some of the parents of BAME children felt their child had already been punished enough by the YJS:

“Parents can be a real barrier, they can be the ones that say, ‘Enough, we've had enough. They're doing this, they're doing that, they don't need to be involved any more. We want to put this behind us’.” (PR14)

Others identified differences between parental engagement across BAME groups. For example, some felt it could be particularly difficult to engage with parents from the Travelling community.

“The other thing with Travellers is, when engaging the parents – and again, it really, really is the mothers that we see – I've made an extra note about it being a patriarchal group. The men are in charge. The men close ranks, and they are very difficult to engage. Not all, but as a group, they're very closed. It's a closed community.” (PR12)

Cottrell-Boyce (2014) also recognised this problem and suggested that an intermediary from the same background may be needed.

Another practitioner talked about a particular BAME family's refusal to engage with restorative justice on the basis of their faith:

“We have had an incident where a family didn't want to engage in restorative justice because they felt that they would deal with it within their church. Their church was a big thing for them. That was their background. I think the dad was a priest within the church. They were quite heavily involved and quite religious. I suppose with the parents you use a tailored approach again.” (PR18)

The issue of parental shame, also raised in the literature review and discussed in section 1.3.4, was raised by some, particularly in relation to South Asian and Muslim families:

“...the dad said, ‘This is going to be too shameful, I can't do this,’ but then we explained the benefit for both sides and he wasn't happy but he goes, ‘It's going to be so shameful’.”(PR13)

Another practitioner, however, said that the idea of shame being brought onto the family worked in their favour when arranging a restorative justice conference:

“I've done a couple of meetings with boys who are black British but their mothers had African heritage, particularly Nigerian and Congolese. Those two mothers were very traditional, disciplined, structured and rigid, they have to take responsibility – quite forceful I guess. The young person didn't really get a choice, he had to do what his mum said. He brought the family into shame and he had to rectify it so it was almost a restorative justice conference for his mother rather than for the victim.” (PR7)

The issue of the family feeling shame about their child's actions was identified specifically among practitioners working in the inner-city areas where there are large numbers of BAME children in the YJS. Again, practitioners identified the benefits of the restorative process to the parents:

“I've had two experiences where there has been a lot of shame with the families and they have engaged ... We've brought the parents who have felt that feeling and benefitted from it ... But the process helps that, it addresses it, and it helps the parent to witness some reparation, their child is repairing something ... It's an existing shame culture within the family ... and that can get healed by the very presence of them being there.” (PR15)

It was apparent that an understanding of a family's culture and faith was essential when discussing the possibility of restorative justice.

3.1.13 Awareness of and familiarity with restorative justice

Some practitioners felt that there was a need for more effective promotion of the benefits of restorative justice to all concerned, including parents and different faith groups in the community. This could potentially engage influential adults who would then encourage children to take part.

There were also some ideas about how to raise awareness and allay fears among children who have offended, such as short video stories that could inform the child before they were asked directly whether they would be interested in taking part:

“Get it out there more so that the young people are seeing it maybe in adverts and videos and stuff like this. Do you know what I mean? Get an advert, put it on the TV and put on it 'This is what you can achieve'.” (PR2)

Other practitioners suggested that the work should start even earlier, with restorative approaches being embedded into schools and children's services from a young age. This would make it more likely that children who subsequently offended would be willing to take part in restorative justice:

“I think the other thing that I would like to see is a greater push of restorative approaches in schools, especially academies.” (PR3)

This suggestion was expanded on to include youth clubs or sports clubs, or any setting where children meet. Staff in these facilities are often influential in shaping children's attitudes and could usefully use restorative approaches to resolve conflicts.

3.2 Statistical data on the use of restorative justice

There is a lack of robust statistical data on the use of restorative justice in both pre-court and formal youth justice disposals. All but one of the practitioners, however, stated that part of their role was to record this data, which is submitted to the YJB. Some said they would find it helpful if this data was collated and analysed nationally in order to identify ways in which the use of restorative justice could be improved.

The criticism of the current categorisations used by the YJB for recording ethnicity was also shared by practitioners. They said that it did not help them to identify the different needs of ethnic groups, including their culture or faith:

“...with the Somalian or Sudanese some of them link themselves to Arabs who migrated to those countries ... they don't identify themselves as Africans.” (PR8).

There was, therefore, a clear suggestion that the collection and analysis of data be improved in order to effectively monitor the outcomes and impact of restorative justice used with BAME children in the YJS.

4.

Findings: BAME children's perspectives and experiences



Getting the children's views on restorative justice was difficult. As several practitioners pointed out, they had discussed their offence and various interventions with many individuals by this point and may have been sensitive to a feeling that they were being judged. Other children did not understand what restorative justice was. As the interviews progressed, however, and they became more comfortable with the concept, they expressed strong opinions. Most children felt every young person should be offered restorative justice as it was a good alternative or supplement to an order.

4.1 Access to restorative justice

A primary purpose of the study was to explore BAME children's access to restorative justice within the YJS. Most of the children interviewed eventually recalled being offered restorative justice. Practitioners reported that it would, in fact, have been discussed with all of them at some point, but for many there were multiple obstacles to them taking it up, some but not all of which may relate to ethnicity. These are discussed in the following sections.

4.1.1 Understanding of restorative justice

Although some children's initial reaction might be to say that they were not aware of restorative justice, subsequent discussion revealed that most had some knowledge. Many did not feel, however, that they had a good understanding of what it entailed or its potential benefits. For example, one child said:

“My understanding? I don't really know what it is. Restorative – the word itself – is it a referral order basically?” (CH8)

Where children had a better understanding, this had usually come from their caseworker. If children are being offered restorative justice but do not understand what is involved or its benefits, this will clearly be a barrier to take-up.

The exceptions to this general lack of knowledge were the children in the secure children's home. The interviews with them were notably different from those with other participants in that they were very comfortable in using and hearing the term 'restorative justice' and had a good understanding of it. This demonstrates that when a restorative approach is embedded within an organisation's culture and environment, children become familiar with it.

However, this was a residential setting and replicating the same familiarity in the community would require a different approach.

The reason why some children did not recall being offered restorative justice or had only a limited understanding of it could be because the offer was lost within multiple discussions of interventions. The majority of children felt that when restorative justice was offered to them, there was so much else going on that they could not take in its potential benefits. This suggests that the offer of restorative justice needs to be made in a way that differentiates it from other interventions. Some children also said that their parents or carers needed to be made aware of restorative justice so that they had a clearer understanding of its benefits and they could talk it through together.

This general lack of understanding and lack of clarity around the offer highlights a need for resources on restorative justice for children who have offended and their parents. These resources should be inclusive and the specific needs of BAME children should be considered in their development.

Additionally, many children said that restorative justice should be used in other settings so that children coming into contact with the justice system would already be familiar with it. This, they felt, would make them more likely to participate. They suggested that a good place to start was in schools:

“I’m not sure if they do but schools should take part in restorative justice. Young people should know about restorative justice so if they are fighting there is another way, a legal side, a legit way of dealing with things. I’m sure there would be less fighting, killing, stabbing. I don’t know if schools do restorative justice?” (CH3)

They said that introducing this to children in the early years of secondary school would help them grow up seeing restorative justice as a way of solving problems. There are many schools that use restorative approaches in their everyday work but it is not used consistently.

In addition, some children suggested that restorative justice should be promoted by people who had already participated. They said that if an adult offender or victim who had experienced restorative justice came and spoke to them they were far more likely to listen than if it was a teacher or other adult in authority:

“Ask the older ones to chat to the younger ones – ‘Been there done that’. They would listen up to people [that have done it].” (CH14)

Additionally, they said that someone from their own background would get the benefits across to them far more than anyone else. This point highlights a need to get people from BAME communities to talk to children about the benefits of restorative justice.

4.1.2 Nature and circumstances of offence

Some children felt that access to restorative justice should depend on the seriousness of the offence committed. They did not necessarily agree on how, with some saying it should be restricted to less serious offences while others suggested it was better used for those that were more serious:

“Yeah they should only be offered for things that aren’t serious – burglary is as far as it should go.” (CH9)

The perception of whether an offence was serious or not seemed to depend partly on the nature of the victim, with theft against a business, for example, not thought to warrant a face to face meeting. However, a more serious offence of burglary or assault might do:

“But say I did something really bad and it was all my fault and that then maybe I would like to sort it out just to let them know I didn’t, you sort it out depending what sort of case.” (CH1)

Many of the children said that the benefit of taking part in restorative justice would be to the victim and that this was fair in certain circumstances. However, it cannot be assumed that children's views on offending and victimisation are the same as adults'. For example, there were a few children who felt that if the offence against the victim was intentional rather than opportunistic then the option of restorative justice was not appropriate for either party:

“If it was something really bad that I regret doing then I would want to see them and apologise to them ‘cos I am not like that sort of person but if it was something that I didn’t mean to happen, I don’t want to be judged for something that I didn’t really mean to happen.” (CH1)

“It depends on the crime, if it is intentional then the victim would not be relevant but if someone was apologetic then it is a good thing.” (CH25)

Again, this shows the importance of the practitioner unpicking the child's – and victim's – attitude towards the offence. They may see it very differently from those in authority.

4.1.3 No direct victim or lack of victim participation

Where the child felt that their version of the incident needed to be put across, they were willing to meet with the victim at the outset. Some children, however, did not have access to this direct form of restorative justice as there was no identifiable victim, or the victim was an organisation rather than an individual. In these cases, the children would usually participate in victim awareness courses or undertake some form of restorative activity such as writing a letter of apology or explanation to those affected by the offence. Where possible, practitioners might try to arrange a meeting with the owner or representative of a business or organisation that had been affected.

In some cases, even where there was an identified victim, they declined an opportunity to participate. Some of the offences had been carried out by other children in the same community, so the thought of meeting that child was a frightening one for the victim. Sometimes the practitioner felt that restorative justice was not appropriate for the victim because of the type of offence, such as a sexual assault, or a risk that the victim would be revictimised.

The few children who had wanted to meet their victim but not been able to felt that the victim needed to be given more encouragement:

“I think speak to the victim and tell them the benefits of restorative justice, speak to them and convince them more and if they want to do it and the young person wants to chat they can let some steam off their heads and clear the air.” (CH23)

4.1.4 Who should offer restorative justice?

As with the practitioners, a theme throughout the interviews with children was who is best placed to make the offer of restorative justice to children who have offended.

In spite of practitioners' concerns about the lack of BAME people in the YJS workforce, only one of the 25 children said they would have preferred their YOT worker or restorative justice practitioner to be of a particular ethnicity, or the same ethnicity as them. This reflects an overriding theme – in general, the children did not cite their ethnicity as having a bearing on their opinions.

There was, however, a prevalent mistrust of, and hostility towards, the police, although none of the children stated explicitly that this related to their ethnicity. Below are some of the reactions from the children when they were asked if they would take up restorative justice if offered it by a police offer:

“Police, no, no, no, I don’t even like the police. Police don’t know ‘cos they don’t work on a one to one basis.” (CH25)

The particular role of a practitioner was important to the children:

“If the police did it, it wouldn’t work properly in that way, because not a lot of people like or trust the police as much as you think. So you’d have to probably get someone like a social worker. Someone that’s trained to speak to kids, if that makes sense, or speak to young people or speak to people.” (CH20)

Some children felt the intervention should be done by someone who was not in an enforcement role:

“The police are here to do a job that means locking people up. That’s what they are there for, to protect people. Say if you did something wrong they are not there to give you another chance, they are there to lock you up.” (CH12)

The children who expressed this view of the police were all from inner-city areas where there are greater numbers of BAME children in the YJS. While there were some children who would have been interested in an offer of restorative justice from the police, the majority felt the offer should be made by their YOT worker:

“I think YOT workers should be there [in the court] – they know who they are supervising and whether they are ready or not.” (CH25)

The preference of the BAME children, therefore, is for the YOT worker to be the one to offer restorative justice.

4.1.5 Timing of the offer

As with practitioners, children felt that the timing of the offer was important in getting more children to consider taking part in restorative justice. Some children thought they should have been offered the chance to meet their victim prior to sentencing. Only one child said his motivation for this would have been the possibility of getting a lighter sentence – the others just thought they would be more inclined to agree at that point.

Overall, children agreed with practitioners that restorative justice should be made available as early as possible and preferably during the court proceedings. The tendency for BAME children to be less likely to plead guilty, as discussed in section 3.1.1, may make this more difficult to achieve.

A few of the children, however, were adamant that restorative justice was not a good idea because they had already worked through their order and that the process would not be of any benefit to them.

These children, all in their late teens, also felt that timing was relevant in terms of the age and stage of offending. They suggested that restorative justice may work with younger people, which meant before they reached the age of 15, as they were still easily influenced:

“But for young people coming up that would be good for them coming up, give them a second chance. That will scare them ‘cos they are young. They don’t know how it is so if they sit down with the victim and the victim said, ‘I can’t sleep at night ‘cos of what you did to me,’ young people would be scared thinking, ‘This is what I’ve done’.” (CH12)

4.1.6 Motivation for taking part in restorative justice

Out of the 25 BAME children interviewed only five had taken part in a restorative justice intervention but a further six had wanted to and could not, for various reasons. The main reason for wanting to do it was to make amends to the victim:

“I think it’s a strong idea to stop you from doing [crime] and to see how the victim feels about it, see how he feels about.” (CH19)

Some boys, from a range of BAME backgrounds, mentioned the impact of their offending behaviour on their mothers and how restorative justice was also a way for them to make their mothers happy (for further discussion of parental influence, see section 4.1.7).

Others wanted to use it as a way of moving forward from the offence they had committed:

“...I wanted to change, like I’m young, innit, I did this crime cos I needed the money. But now I’m getting older, I’m nearly 17, so I want to have a good life. You know get a job, be safe.” (CH6)

Some children who had not taken up restorative justice, however, felt that it was ‘weird’ and not for them. It was not seen as the right response to their offending behaviour:

“But for me I think it is weird, I wouldn’t do that. Because at the time if I did something I wouldn’t care what the victim feels. To me if you’ve done something you can’t take it back. There’s no point talking about it after you’ve done something. You’ve done it so that’s the end of it, there’s no point going back to it. There’s no point sitting down and trying to explain ‘cos you’ve still hurt that person.” (CH12)

Other children felt they had already been punished enough:

“[I have] already served time in jail – no need to meet the victim ... before going to jail I might have considered it.” (CH22)

Others felt they did not want, as they perceived it, to be ‘judged’ by the victim:

“I wouldn’t want to go and speak to someone face to face if they are the victim of what I have done. I wouldn’t want to sit there and have to look into their eyes and them judging me.” (CH1).

These perceptions indicate a lack of understanding of the purpose and benefits of restorative justice, which may be a result of other barriers already identified – who makes the offer, the timing of the offer and inherent mistrust of the police and the system.

4.1.7 Influence of family members

Research has identified that issues around shame may play a part in parental attitudes towards children in BAME families who have offended. It is unclear whether this is a driver or a barrier to parents encouraging children to take part in restorative justice. Ten of the children interviewed, however, said their parents, family members or friends had been a positive influence in them taking up some form of restorative justice or reparation to the community. For example, one child said that his mother had been a significant influence:

“My mum said to me, ‘Imagine how I would feel if someone took [my] stuff and I couldn’t get back.’ That made me feel really bad about it.” (CH9)

This highlights a need to ensure that parents, extended family members and peers have a clear understanding of restorative justice in order to encourage more children to take up the opportunity when offered. Conversely, however, it is important for practitioners to be able to recognise where the child may have been pushed into participating. The effectiveness of restorative justice relies on the voluntary participation of both parties, and practitioners need to work with the child away from the parent in order to make sure their reasons for taking part are their own.

4.2 Experience of restorative justice

Only five of the children – all boys – had first-hand experience of restorative justice, three via a direct process and two an indirect. Their offences were an assault on a schoolteacher, an assault on another child, damage to school property, theft from a small retailer and a burglary.

Of the three children who had experience of direct restorative justice, one was offered it by the police after committing criminal damage at a school and the other two via their school and YOT worker. They all met their victims face to face. The other two children had indirect contact with their victim through a letter of apology or explanation.

All five children had found the experience to be positive. Four said that the experience had made them feel better immediately. The children had felt well-supported by the practitioners involved, and this was a significant factor in making the experience a positive one. For example, one child felt the choices and support given to him by his caseworker had helped him decide that an indirect restorative approach suited his situation more than a direct one:

“I think writing a letter would show my feelings and my guilt more, and if she was right in front of me I wouldn’t be able to talk about what I’d done.” (CH19)

Other considerations had been that an indirect restorative process would be better for the victim.

4.3 Impact of restorative justice

The previous section indicates that when restorative justice was taken up, it had a positive impact. In the words of the children themselves:

“It was petty wasn’t it. I didn’t need to put the window through ‘cos I was like 11 or something when I broke the window and I am happy that they did the restorative justice ‘cos otherwise they would have taken my fingerprints and something and I was only 11. Do you know what I mean?” (CH2)

This child is of mixed ethnicity and was offered restorative justice by a police officer. He felt pleased that he was given the chance of an informal sanction involving a direct conference with the caretaker of the school, who was responsible for the school building. The boy’s mother was also very keen for him to get involved in the restorative justice process so that he would be diverted from entering the YJS.

Two other boys expressed the relief they felt after taking part in restorative justice:

“I felt alright and that everything was going to be alright now.” (CH5)

And:

“Definitely [good]. I’ve already been holding it in actually, so why not let it all out and move on?” (CH19)

For another child, the process increased his feelings of empathy for his victims:

“They’re just people so it would be no different to me talking to [YOT worker] or me talking to you. Then next minute you know – bang – I’ve burgled their house. So it’s not very nice is it?” (CH9)

The benefits of restorative justice from the children’s perspective, therefore, included not only the opportunity to be diverted from the YJS, but also emotional and psychological benefits. This raises a question about the six children who had wanted to take part but had not been able to. For example, one child wanted to meet with his victim of another more serious crime he had committed, an assault, but the victim did not want to meet him. Consideration needs to be given to whether the barriers could be overcome in such cases, or, if restorative justice is really out of the question, what alternatives could be offered.

5.

Conclusion



This report has explored the access to and experience of restorative justice among BAME children. Building on existing knowledge about both BAME children caught up in the YJS and the use of restorative justice in the YJS, it has involved interviews with YJS professionals and BAME children who had offended, including those who had participated in restorative justice interventions and those who had not.

While take-up was low, the children who we interviewed who had taken part in restorative justice had clearly had a positive experience and felt that they had benefitted from it. Some of those who had not participated had wanted to and felt that it would have helped them. Children's awareness of restorative justice was, however, often very limited. They either did not know what it was, or had a poor understanding of how it worked and the potential benefits. The practitioners also felt that restorative justice has significant benefits for the children who they work with, including BAME children. They recognised, however, that not enough children are currently participating. While practitioners said that it is offered to all children, they felt that it was often difficult to engage them, regardless of ethnicity.

Specific barriers to accessing restorative justice identified by this research are, in line with the findings of previous work, multiple and complex. Some do not relate specifically to the child who has offended – victims may choose not to take part, for example – but others do. Most are applicable to all ethnic groups. For example, the timing of the offer, who makes it and how it is made may all impact on a child's decision as to whether to take part or not, as may the views of their parents.

The primary challenge for the study, then, was to distinguish between generic factors that affect all children in the YJS and those that affect BAME children specifically. Many of the barriers to accessing restorative justice identified through this research clearly impact on all children who have offended, but some may have particular implications for BAME children, such as cultural attitudes towards shame or relationships with the police.

It is essential that practitioners are equipped to recognise and respond to these additional layers of complexity so that they can provide a differentiated response and thus increase engagement. With this in mind, the findings suggest that more needs to be done to ensure that the needs of BAME children are met when offering and facilitating restorative justice.

6.

Recommendations



The findings from this study highlight areas that need consideration by policy makers and practitioners.

6.1 National recommendations

1. The YJB should clarify with all YOTs the definition of restorative justice that they should use, that being the definition set out by the Ministry of Justice.⁶
2. All YOTs should be required to offer restorative justice, in line with the agreed definition, to any child who has offended (and admitted the harm caused) and their victim, as required by the Code of Practice for Victims of Crime.
3. Specific training should be developed by the YJB to provide YJS practitioners with the knowledge they need to enable them to engage effectively with BAME children from different cultural and faith backgrounds. YOTs should be required to demonstrate that their staff have completed the training. This should be supplemented by the provision of online resources that provide accurate, relevant information on different cultures and faiths.
4. The YJB should work with the RJC to develop and disseminate resources on restorative justice for children who have offended and their parents. These resources should be inclusive and the specific needs of BAME children should be considered in their development.
5. Training should be developed with the support of the YJB to enable practitioners to use restorative justice safely in cases involving gangs. Examples of good practice should also be collected and disseminated by the YJB.
6. Further work should be done by the Ministry of Justice to raise awareness among magistrates and district judges sitting in youth courts of restorative justice, and how it can be incorporated into their work.

⁶The Ministry of Justice's definition of restorative justice is: "The process that brings those harmed by crime, and those responsible for the harm, into communication, enabling everyone affected by a particular incident to play a part in repairing the harm and finding a positive way forward."

7. The YJB should develop resources to support YOTs in work to increase awareness of restorative justice within BAME communities, to ensure both parents and children in those communities have a clear understanding of its benefits.
8. The YJB should develop resources to support YOTs in visiting schools and other relevant children's services to promote restorative justice to children.
9. The YJB should support YOTs to accurately record the ethnicity of those offered restorative justice (in line with the agreed definition) and of those taking it up and to investigate any differential take-up rates.
10. The YJB should publish the data collected from the YOTs broken down by ethnicity and gender.
11. The categories used in the national data to identify BAME children in the YJS need to be more precise in relation to culture and faith, in contrast to ethnic appearance alone.

6.2 Recommendations for YOTs and youth justice agencies

12. Restorative justice should routinely be made available to all children who have offended as part of diversionary measures and at every stage of the justice process, including pre-sentence for those cases that go to court.
13. Restorative justice should be offered to children who have offended as early as possible in their time in contact with the YJS, but flexibility must be retained to ensure that both the offender and their victim are ready to take part.
14. Where restorative justice has been offered early in the justice process it should be discussed again at a later point, to ensure the offer has been understood and properly considered.
15. Wherever possible, restorative justice should be offered to BAME children who have offended by practitioners from agencies other than the police.
16. YOTs and the police should consider developing partnerships with non-statutory providers of restorative justice with links in local BAME communities and support them to manage suitable cases involving BAME children on their behalf and to provide additional support to BAME children participating in restorative justice.
17. All YOT staff, not just restorative justice practitioners, should undergo restorative justice awareness training to encourage them to recognise the benefits of restorative justice and support its potential use with children who have offended, even where they have complex needs or challenging backgrounds.
18. Specific training on effective engagement with BAME children should be provided to all practitioners, and particularly to those from areas that have few or no BAME staff.

19. YOTs should recruit former participants in restorative justice from BAME communities to act as mentors to children who are or are considering taking part in restorative justice, including those who are still under the supervision of the YOTs.
20. YOTs should build relationships with influential figures in their local communities, and particularly BAME communities, to gain their support in promoting the benefits of restorative justice.
21. YOTs should build links with schools and other children's services in their area and hold sessions with children attending them to raise awareness of restorative justice.

6.3 Recommendations for practitioners

22. Practitioners should consider the terminology used when discussing the opportunity for restorative justice with children who have offended and potentially find alternatives to the word 'justice'.
23. Practitioners should recognise higher levels of mistrust of the justice system among BAME children and consider how to overcome them in the offer of restorative justice.
24. Practitioners should recognise that not guilty pleas are more common among BAME children and take that into account when deciding whether and when to offer restorative justice.
25. Practitioners should build relationships with the parents of BAME children to ensure they have a clear understanding of restorative justice and that their influence over their child's participation, if any, is a positive one.

7.

Future research



This project focused solely on the access to and experiences of BAME children in the YJS. From the findings above the following areas have been identified as further areas of research:

- Comparative research between BAME and white children to highlight the difference between take-up of restorative justice and the possible disproportionate service being delivered. This needs centralised data collection and evaluation to be precise.
- More research with parents from different faiths and cultures on interventions for their children while in the YJS.

8.

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About the Restorative Justice Council

The Restorative Justice Council (RJC) is the independent third sector membership body for the field of restorative practice. It provides quality assurance and a national voice advocating the widespread use of all forms of restorative practice, including restorative justice. The RJC's vision is of a society where high quality restorative practice is available to all. The RJC's role is to set and champion clear standards for restorative practice. It ensures quality and supports those in the field to build on their capacity and accessibility. At the same time, the RJC raises public awareness and confidence in restorative processes. The ultimate aim of the RJC is to drive take-up and to enable safe, high quality restorative practice to develop and thrive.



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