

NIAG submission to MOJ consultation **Strengthening Probation - Building Confidence – addressing race equality improving BAME outcomes September 2018**

Introduction

This submission from the National Independent Advisory Group (NIAG) to the MOJ consultation Strengthening Probation is focused on improving outcomes for BAME offenders within the probation structure. The content of the submission is informed by the discussions drawn during a consultation event held jointly by BTEG/NIAG and the MOJ on the 13 September 2018.

NIAG welcomes the MoJ's dialogue and consultation on the future of probation services with sector specialists. The response focuses primarily on question 8 from the consultation as this allows for overarching recommendations that address outcomes for BAME communities throughout the Probation services.

The National Independent Advisory Group

The National Independent Advisory Group works with the MoJ to address ethnic disproportionality in the criminal justice system. The NIAG has superseded the Young Review Independent Advisory Group which was established following the launch of the Young Review report into improving outcomes for black and Muslim young men in the criminal justice system of England and Wales. The review was instigated by BTEG and Clinks and was chaired by Baroness Lola Young who subsequently chaired the Young Review Independent Advisory Group until May 2018. The Independent Advisory Group recently appointed a new Chair, Iqbal Wahhab OBE, and will be relaunching with a new name and brand in the coming months.

Strengthening Probation, Building Confidence

The MoJ is consulting on the development of probation services four years after the government's major reorganization of probation services in England and Wales. Below is a link to the consultation website.

BTEG/NIAG facilitated an event on the MoJ's consultation, focusing on improving outcomes for BAME communities, which has informed this submission.

RESPONSE:

Question 8: How can we ensure that the particular needs and vulnerabilities of different cohorts of offenders are better met by probation? Do you have evidence to support your proposals?

The Lammy Review ¹, launched in September 2017 provides the most recent and useful reference from which to assess the probation service in relation to race equality outcomes.

Lammy highlighted a number of key points with regards to the probation service reforms of 2014 and their impact on BAME communities:

- The evidence from inspection reports, the NAO and select committee investigations are that probation services have not been transformed and have in many cases deteriorated
- There is a lack of accountability in highlighting the outcomes for BAME groups under the Transforming Rehabilitation reforms. It recommends that CRC's should publish relevant performance data to establish if they are effectively meeting the needs of BAME communities.

Rec1: MOJ should develop specific requirements in the contract that meet their stated objectives of enabling smaller, community and BAME led providers to engage in supply chains on terms that meet their needs

The Lammy Review highlighted that since the probation reforms of 2014, smaller providers, including those from BAME communities, have not been part of established supply chains. The promises of smaller, community based providers being involved in supply chains with the CRC's has not emerged. Lammy also identified a lack of focus in meeting the needs of BAME groups that, for example, are over-represented amongst specific target groups (e.g. black men with higher reoffending rates, for example). The Review also highlights, different BAME groups, such as Gypsy, Traveller and Roma people, Muslim people and young Black men should have access to services that are sensitive to the cultural contexts and familiar to those specific needs.

The lack of any BAME organisations in the CRC supply chains is recognized in the Clinks' TrackTR report ². In addition the report emphasized the underrepresentation of small and specialist VCS organisations, i.e. those likely to be delivering specific services to BAME offenders.

To overcome these shortcomings, it is vital that providers are able to offer small grants to local BAME providers, creating an accessible route to participating in delivery at each stage. In each of the 10 areas, BAME consortiums should be supported by the local

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf

² https://www.clinks.org/sites/default/files/basic/files-downloads/clinks_track-tr_under_final-web.pdf

probation providers who should appoint a specialist to liaise with and develop BAME service providers .

NIAG is proposing the establishment of a 'national model' for meeting the needs of BAME service users which should be supported by local (CRC) action plans. The action plans should be reviewed as part of standard service delivery monitoring. To support, manage and administer the implementation there needs to be equality/diversity reps in each of the 10 geographical areas.

The Young Review ³ published in December 2014 provided recommendations aiming to improve the outcomes for young black and/or Muslim men in the criminal justice system. As part of this ongoing work a Charter for CRC's is been developed to assist with the long term integration of young black and/or Muslim men into their communities, strengthen the protective factors known to limit recidivism and improve engagement with this cohort thereby increasing the rate of desistance. The Charter is a concrete way in which CRCs and the NPS can demonstrate to Commissioners, Inspectors, Government, communities and service users their desire to deliver equitable and better services to black and/or Muslim young men. The development of the Charter has been endorsed by Secretary of State David Gauke MP and Baroness Lola Young.

Rec 2. The next commissioning round for CRC contracts should include a specific race equality weighting to reflect the ethnic disproportionality in the caseload and in recognition of the Lammy agenda. This should be between 10-15%

Equalities did not feature strongly in the last review implying that this was not taken seriously and therefore not integral to the process. However, the issue of disproportionality has been highlighted by both the Lammy Review ⁴ and the data produced by the Race Disparity Audit ⁵.

The use of the Social Value Act to stipulate social benefit and social engagement should be incorporated in to the commissioning process.

The new contracts should enable opportunities to offer grants for local delivery partners delivering support/projects of a value less that £20,000 (for example). Better sourcing of BAME VCS is essential to address issues highlight by Lammy and recommendations 31 and 32 in the review. Contributors at the consultation event emphasised the importance of independent relationships suggesting that more local and specialist organisations need to be part of the process.

³ <http://www.youngreview.org.uk/reports>

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf

⁵ <https://www.ethnicity-facts-figures.service.gov.uk/static/race-disparity-audit-summary-findings.pdf>

Rec 3. The contract specifications should include requirements for CRC's to produce ethnic performance data and to meet the requirements set out in the Lammy Review. This should be of both BAME users and BAME intervention programs.

The Lammy review identified the lack of any data analysis around the experience of BAME communities under the probation service reforms. The Review made specific recommendations around CRC supply chains (Rec 31) and equality reporting for CRC's (Rec 32.). BTEG's How to improve outcomes for BAME offenders – A guide for commissioners and providers ⁶ emphasizes the need to have relevant and robust data and a recognition that BAME people should be viewed as distinct groups within the offender population, and appropriate strategies and interventions should be adopted to deal effectively with this population. Contracts should specify data requirements and should be comparable to National Probation Services allowing for amalgamation and comparisons.

The MoJ needs to be realistic and forthcoming with the allocation of resources to enforce the production of data from CRCs and subsequently monitor and analysis of the data.

Requirements should include:

- Data broken down into specific groups including Gypsies, Roma and Irish Travelers, Somali, women, Muslim etc.
- A review of the performance/effectiveness of probation intervention programs including BAME completion rates.
- Specific work looking at minority groups who are experiencing persistent discrimination needs to be highlighted including the experiences of the GTR communities ⁷.

Participants at the consultation highlighted the need for the MoJ to make more use of the 'explain or change' approach stressed by the Prime Minister Theresa May at the launch of the Race Disparity Audit ⁸ to question and challenge disproportionality in the Probation service.

Rec 4: The needs of specific ethnic groups such as Gypsy Traveler and Roma, Somali community etc. must be recognized through the commissioning process

It is important to gauge the needs of specific minority groups within the BAME spectrum. Current statistics ⁹ hide the true picture affecting particular groups, especially BAME

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<https://www.bteg.co.uk/sites/default/files/BTEG%20GUIDE%20IMPROVING%20OUTCOMES%20FOR%20BAME%20OFFENDERS%20MAY%202013.pdf>

⁷ http://dera.ioe.ac.uk/11129/1/12inequalities_experienced_by_gypsy_and_traveller_communities_a_review.pdf

⁸ <https://www.gov.uk/government/publications/race-disparity-audit>

⁹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/669094/statistics_on_race_and_the_criminal_justice_system_2016_v2.pdf

women, BAME Muslim women, young BAME people, Somalis, young Somalis, Gypsy, Traveller, Roma and Irish communities ¹⁰.

For each of the distinct groups of people, there needs to be an understanding and recognition of both issues and needs. For example, a study by Cemlyn et al (2009) found there was a high use of remand in custody for Gypsies and Travellers, “both because of judicial assumptions about perceived risk of absconding and lack of secure accommodation; prejudice against Gypsies and Travellers within pre-sentence reports, the police service and the judiciary”. This study also identified a belief that Gypsies and Travellers are more likely to skip bail. A report by Power (2003) ¹¹ also found evidence of prejudice playing a part when it came to the interpretation of pre-sentencing reports, with nomadism being associated with criminality. Similarly the issues and barriers facing Muslim women in custody are highlighted in the Muslim Hands - ‘Muslim Women in Prison’ report ¹² offering providers an insight in to the needs of this specific group and the gaps in the way facilities, services and rehabilitation programmes are structured which discourage female Muslim inmates from accessing support services.

Rec 5: New contracts should include a commitment on the part of the supplier to deliver culturally competent service models. MOJ should commission the development of a model of cultural competence for probation providers

Suppliers need to firstly understand the disproportionality faced by BAME offenders but further understand the intersectionality of issues (multiple and complex needs) of BAME communities. This includes age, maturity, gender, mental health, use of drugs, domestic violence, culture, identity, the risk of radicalisation or extremism and other vulnerabilities.

Reports including T2As making sense of maturity ¹³, Prison reform Trust report - Counted Out: Black, Asian and minority ethnic women in the criminal justice system¹⁴, the T2A/Maslaha young Muslims on trial ¹⁵ and the Muslim Hands Muslim Women in prison ¹⁶ express the disadvantages and disparities faced by BAME communities.

Initiatives such as ‘Making Every Adult Matter’ ¹⁷ - a multi agency approach including Clinks, Homeless Link and Mind, was formed to improve policy and services for people facing multiple needs should be explored as a model for BAME people with multiple and complex needs.

There needs to be BAME specific services (not subsumed under mainstream providers) - allowing greater visibility and credibility of BAME providers. BAME providers are currently under the radar because of the way contracts/subcontracts are allocated. This is emphasized in the Young Review (recommendation 3).¹⁸

¹⁰ http://dera.ioe.ac.uk/11129/1/12inequalities_experienced_by_gypsy_and_traveller_communities_a_review.pdf

¹¹ Power (2003) <http://journals.sagepub.com/doi/abs/10.1177/0264550503503012>

¹² https://muslimhands.org.uk/_ui/uploads/kqe5a9/MWIP_Report.pdf

¹³ https://www.t2a.org.uk/wp-content/uploads/2017/04/making_sense_of_maturity_digital_version.pdf

¹⁴ <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Counted%20Out.pdf>

¹⁵ https://www.t2a.org.uk/wp-content/uploads/2016/03/Young_Muslims_on_Trial.pdf

¹⁶ https://muslimhands.org.uk/_ui/uploads/kqe5a9/MWIP_Report.pdf

¹⁷ <http://meam.org.uk/>

¹⁸ <https://www.bteg.co.uk/content/young-review-report-recommendations>

Local knowledge and local relationships with BAME providers (not just CJS specific providers) need to be pivotal to offering options as part of the recommendations going forward. These contacts/links should be refreshed annually to ensure relevance and scope to expand the list of potential provisions and services.

BAME users should inform the production of intervention programs. There should also be a bespoke BAME intervention program allowing for relevant and appropriate cultural, religious, community and family contributions.

Rec 6: Through the gate services need to recognize the huge support of mentoring and this must be reflected in resources for paid mentors.

The emotions experienced at the point of release are very intense and complex including the fear of the unknown, fear of the community and family backlash, fear of failing as well as dealing with new challenges of survival. These emotions are on top of the complexities leading up to the committed crime. These issues are highlighted by the Centre of Social Justice report – Meaningful Mentoring¹⁹ which goes on to express the value of culturally appropriate mentors and role models.

Similarly the College of Policing ‘what works’ report²⁰ suggests that mentoring has reduced crime. The overall evidence based on 46 studies showed a statistically significant reduction in reoffending amongst participants who received mentoring compared to those who did not.

There are also successful mentoring initiatives working with offenders including the Prince’s Trusts Mosaic ‘Through the Gate Mentoring Program, BTEG’s Routes2 Success program and Trailblazers.

However, there needs to be significant resourcing of ‘through the gate’ options – both financial and knowledge based. Desistance and rehabilitation works best with the support of people and services that are able to understand and engage with the offender and relate to identity, culture and social needs. Engaging with local projects and communities is vital but this has to be timely and appropriate. With many BAME offenders belonging to a community/family, engaging with people that share their identity is pivotal to desistance.

For this to happen, the community based projects, people and organisations need to have accessible inroads to the system. Invited on to a form of approved supplier list and ideally through a fee or grant process rather than contract commissioning. The interventions will be relatively small scale and do not warrant the bureaucracy of commissioning. This also allows for the provision to be independent from the ‘system’.

CRC’s and officers responsible for pre-release support need to have additional training on the culture, faith and diversity issues. Training delivered by BTEG in 2015 in ‘community engagement’ and ‘myths & misconceptions of Islam’ to YOT’s highlighted the lack of empathy and understanding of how different communities react to family members

¹⁹ <https://www.centreforsocialjustice.org.uk/core/wp-content/uploads/2016/08/mm.pdf>

²⁰ <http://whatworks.college.police.uk/toolkit/Pages/Intervention.aspx?InterventionID=44>

who have been incarcerated and how these dynamics can be managed. Through the Gate providers need to be included in wider work including inputting into training and thematic workshops (i.e by supporting the development of pre-sentence advice for Somali, GTR, Muslim women).

Rec 7: The public sector equality duty (PSED) and its obligations should be given a greater emphasis throughout the contract

The needs of offenders protected under the Equalities Act (2010) are currently being failed by probation services as referenced in the Lammy Review and Young Review. The Young Review's fifth recommendation specifically called to "Ensure that the particular needs of ethnic minority offenders are considered in making and carrying out arrangements for the confinement and/or supervision or rehabilitation of offenders as required under s.149 Equality Act 2010 - the Public Sector Equality Duty".

A considerable push needs to be made to use and enforce the PSED. This is under utilised but is a tool that along with the principle 'Explain or Change' articulated by the Prime Minister can be used to develop the equalities agenda.

Specifically to develop outcomes for BAME offenders. There needs to be better data from all providers evidencing reach, benefits and outcomes. New commissioning should be enforce compliance with the PSED and the Social Value Act should be utilised to improve the social, economic and environmental well-being of the local area. NIAG calls for a senior member in a director level post at HMPs to be responsible for delivering better outcomes for BAME offenders – they will monitor the statistics e.g. recall rates, completed interventions etc. and flag when numbers fall/rise, with improvement plans put in place when the fall/rise is too great.

Rec 8: Probation services need to have a significantly improved representation of BAME staff at all levels.

The Lammy Review ²¹ called to set new public targets for increasing the proportion of black and minority ethnic staff it employs, with a particular focus on increasing representation in leadership roles. The review states that while BAME people made up just 14% of the UK population, 25% of prisoners were from BAME backgrounds, rising to 40% for young offenders in custody but 6% of prison officers are from BAME backgrounds (latest MoJ statistics show that just under 50% of young offenders in custody are BAME²²).

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/643001/lammy-review-final-report.pdf

²² <https://www.gov.uk/government/statistics/youth-custody-data>

In addition NIAG is proposing equality/diversity representatives in each of the 10 probation areas who will report on recruitment, retention and progression trends in each area.

Conclusion:

NIAG has welcomed the opportunity to contribute to the future design of probation with a view to improve outcomes for BAME communities. A systematic and cultural change is needed which is only achievable if the mind-set, behaviors and attitudes are changed both internally and externally. This can only be done through better representation in staffing, increased valued engagement with communities and community organisations and a great appreciation for 'third sector' providers. We hope that the MoJ will continue to engage with NIAG members on race, equality, diversity and inclusion when developing the new model and structures.

Additional Comments:

Training:

- Cultural competency workshops should also incorporate multiple and complex issues including mental health, class, culture, faith, learning disabilities, gang culture, DV and other intersecting topics. Ongoing thematic short workshops or masterclasses should be incorporated into the wider training program.
- There should be a greater emphasis on relationships and the benefit of mentors with lived experience.
- The training needs analysis for the service must be revisited and evaluated. Independent training providers with equality, inclusion and diversity specialism should be allowed to annually review the material, style and delivery (as critical friends).
- The training offered to staff working directly with offenders needs to be revisited to include 'customer care' type training (tone, body language etc.). The cultural differences in communication are omitted and lead to a break down in relationships and ultimately trust.
- Activities and engagement should be timely as well as appropriate. This can only be done through more local BAME VCS providers being engaged/commissioned. A professional register or approved supplier list would allow small VCS organisations to be on the radar, however the process needs to be simple and streamlined, allowing for annual reviews to ensure quality of provision and the opportunity for new providers to join. It is essential that any form of register has diverse categories of specialism and allows for local small organizations that are not specifically CJS specialist to also offer their expertise. There are many BAME organisations that are not CJS specialists but offer effective intervention programs as well as invaluable engagement for 'through the gate' provisions.

- Pre-sentence reports aim to give the Sentencer some context and understanding to why the offence was committed. For this to truly work, the reports need to confidently encompass intersectionality, i.e. a briefing on multiple factors affecting the situation including health, mental health, faith, poverty etc.
- Those receiving the report need to be better informed through their training of the cultural, economic and social contexts in which the offender is placed as well as unconscious biases.
- Courts need to have a decent amount of time to understand the context and options especially if there is push for more community sentencing. Courts need to have better training and access to IT software. An APP could be developed that gives access to 'live' projects in the community.
- The existing training provision for staff at all levels including induction needs to be evaluated and assessed against current relevant and context. Online training in particular needs to be reviewed and evaluated in relation to value and impact, it is on one hand accessible and cheaper, however, it isn't able to work accommodate different learning styles. Once reviewed, this could perhaps adapt the online material for individuals to online group sessions. Topics such as unconscious bias are very difficult to explore as an individual.
- Training needs to incorporate 'customer service' or 'dealing with people' type components which includes the use of language, tone body language and are crucial to developing trust and relationships. Being unaware of cultural differences in language, tone, and body language can be perceived or interpreted wrongly by both the service user and the officer.

Additional key themes from the consultation event:

The participants raised additional issues outside the scope of the questions we addressed.

- Mental health, personality disorders and gangs
- Explain or reform- utilize the evidence to challenge institutions at all levels. Greater transparency and availability of data will support accountability
- A need for visible leadership at local and national levels. Knowing who the senior leaders are and who to challenge
- Public Sector Equality Duty. Using the EHRC to mount legal challenges utilising pro-bono lawyers
- Protection for organisations challenging institutions
- Progression and retention in workforce at senior level of BAME staf

- Too much pressure on BAME staff to challenge inequality in the CJS
- How do we facilitate desistance through probation practice? We need a theory of change to achieve this
- Risk trumps responding to needs of individuals. For BAME groups this hinders rehabilitation

Further questions that would require more targeted consultation and possibly research were highlighted:

- Is the split in high/low risk offenders leading to more BAME offenders being assessed as high risk?
- What has been the experience of Muslim offenders under TR?
- How are CRC/NPS services working around the issue of gangs and is this supporting or hindering resettlement of black offenders?
- What has been the experience of BAME women under TR?
- How can the process improve participation from BAME community organisations and user voice?

Notes from consultation event 13/9/18

1. Presentations

George Barrow MOJ

George Barrow gave an overview of the procurement process for the next round of community rehabilitation company contracts. The consultation ends 21 September and is one of a number of events through a short consultation period to inform procurement/policy development process. Separate process in Wales.

MOJ/HMPPS are keen to get a race perspective through the procurement/policy development process. The future design must take on board Lammy and wider equality agenda.

Probation has changed, the emphasis is on risk assessment and public protection and post custodial release supervision. The legal context moving forward must include a greater emphasis on compliance with the equality act.

Reducing reoffending rates is a key objective. Caseloads are more challenging, staff address a range of complex needs. Wider strategic context includes:

- Prison safety reforms
- Court modernization programme
- Race and ethnicity- Lammy and RDU
- Female offender strategy.

NPS caseload= 107000

CRC caseload= 156000

Despite serious difficulties in delivering the service there have been some CRC successes within a context of diminishing resources. It has been the challenge of falling revenues which has prompted the early contract renewal process. A key issue has been that through the gate support has not been delivered to standard.

The new contracts will focus on minimum standards and greater consistency underpinned by more investment with the overarching expectations highlighted below:

- Mixed market approach
- Stronger local partnerships
- Diverse mix of suppliers
- Increased judicial confidence
- Create 10 probation regions co terminus with NPS
- Greater collaboration with PCC's
- Work with London and Greater Manchester on devolution

HMPPS Dave Ferguson and Tanya Robinson

Tanya and Dave gave a short verbal update and perspective from HMPPS. Some of the main points are highlighted below.

Thirteen of the Lammy Recommendations fall to HMPPS to implement. There is a monthly checkpoint process where items a risk assessed and implementation progress is tracked. HMPPs will be providing an annual report on Lammy implementation to the Minister in December.

An example of the delivery is recommendation 24 around improving race equality outcomes around the Incentives and Earned Privileges scheme. Prison Governors have to establish forums of prisoners to work with prison staff to improve race equality outcomes from the scheme. A letter of instruction has been sent to all Governors. This has to have been achieved by July 2018. Assurance processes are currently being carried out. There will be a medium term analysis of data seeking improvement in outcomes.

There are two key Lammy recommendations for CRC's 31 & 32 on data and VCS involvement in CRC supply chains. Bridges need to be built with the voluntary and community sector under TR relationships broke down. HMPPS needs to ensure equalities is impacting practically on the ground.

2. Questions from the presentations

A short question and answer session followed the presentations. Key points that were highlighted were as follows:

- Can data be broken down by ethnicity? For the NPS yes but not for the CRC's. It is a priority for the next commissioning round to correct this.
- Commissioning intentions in the first commissioning round excluded race/ethnicity will this change in next commissioning round? No decision has been made.
- Lack of ethnicity data must be addressed
- Great that women are included but only 5%. The BAME cohort is more than 25%.
- How can smaller BAME groups get brought into the supply chains? Clinks has done research on this and MOJ acknowledge the problem. Solutions are difficult but some practical things can happen. MOJ will look favorably at grant funding for example. There needs to be greater transparency, more flexibility and greater emphasis on cultural competence in supply chains
- Gypsy Traveler and Roma are a significant minority there needs to be a focus on specific ethnic groups. Need to break down ethnic groups .
- Trauma informed approaches and training needs to be culturally informed.
- In developing the delivery model MOJ should consult with service deliverers to get their perspective on the practical delivery of contractual models

Attendees:

Adam Mooney	YJB
Andy Gregg	ROTA
Dave Ferguson	NOMS
Dez Brown	Spark2Life
Gemma Egan-Perkins	Traveler Movement
George Barrow	MoJ
Harbi Farah	Council of Somali Orgs and Step Up Hub
Iqbal Wahhab	BTEG
Laurie Hunte	Barrow Cadbury
Mark Blake	BTEG
Nathan Dick	MoJ
Neena Samota	Westminster University
Oliver French	Lankelly Chase
Patrick Williams	MMU
Tanya Robinson	MoJ
Tebussum Rashid	BTEG
Whitney Iles	Project 507