Race, mental health and criminal justice: moving forward

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Association of Mental Health Providers

Race Equality Foundation

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> If you're black, you're treated more harshly by the criminal justice system than if you're white.
>
> Theresa May, July 2016

People from Black, Asian and minority ethnic (BAME) groups are disproportionately represented at all stages of the criminal justice system (CJS); the Equality and Human Rights Commission has stated there is greater disproportionality in the number of Black people in prisons in the UK than in the United States.[1] Additionally, research studies and data monitoring have consistently shown that those from Black communities in particular are also overrepresented across mental health services.[2] This anomaly is compounded by the fact that both systems seriously disadvantage Black people.[3]

The Five Year Forward View for Mental Health report noted that, "For many, especially Black, Asian, and minority ethnic people, their first experience of mental health care comes when they are detained under the Mental Health Act, often with police involvement, followed by a long stay in hospital."[4] Even though a significant number of service users from BAME communities access mental health services via the CJS,[5] there is no consistently collected national data that specifically triangulates the combination of ethnicity, experiencing mental health problems and contact with the justice system.[6]

The challenge for many service users is how to effectively navigate a system that is at best confusing and impersonal and, at worst, hostile and discriminatory.

This briefing explores how pathways for people from BAME communities can be more effectively integrated to provide the most appropriate and timely support for those with mental health needs who are in contact with, or end up in, the CJS. It will consider what strategies should be in place to:

- address key challenges highlighted by BAME communities who have experience of both the justice and mental health systems
- address disproportionality and ensure that people's needs are effectively and appropriately addressed

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1. Equality and Human Rights Commission. (2011). How fair is Britain? Equality, Human Rights and Good Relations in 2010. *The First Triennial Review*, [online] p.172. Available at: https://www.equalityhumanrights.com/sites/default/files/how_fair_is_britain_-_complete_report.pdf [accessed 29.09.2014].
2. Fernando, S. (1991). *Mental Health, Race and Culture.* London: Macmillan/MIND Publications.
3. Ibid.
4. Mental Health Taskforce (2016).*The Five Year Forward View for Mental Health: A report from the independent Mental Health Taskforce to the NHS in England* [online] NHS England, page 3. Available at: https://www.england.nhs.uk/wp-content/uploads/2016/02/Mental-Health-Taskforce-FYFV-final.pdf
5. Reports with this finding include:
· Bradley, K. (2009). *Lord Bradley's Review of People with Mental Health Problems* or *Learning Disabilities in the Criminal Justice System.* London: House of Lords.
· Browne, D. (1990). *Black People, Mental Health and the Courts.* London: Nacro.
· Department of Health. (2003). *Inside Outside: Improving mental health services for black and minority ethnic communities in England.* London: Department of Health.
· Sainsbury Centre for Mental Health. (2002). *Breaking the Circles of Fear.* London: Sainsbury Centre for Mental Health.
6. Kane, E. (2014). *Prevalence, patterns and possibilities: the experience of people from black and minority ethnic minorities with mental health problems in the criminal justice system.* London: Nacro.

This briefing and its recommendations builds on a programme of work undertaken by Nacro, Clinks, the Association of Mental Health Providers, Mental Health Foundation and the Race Equality Foundation, which includes:

- A partnership event held in London, November 2014 – Race, mental health and criminal justice: Solutions for better practice, integration and patient experience.
- Kane, E. (2014) *Prevalence, patterns and possibilities: The experience of people from black and minority ethnic minorities with mental health problems in the criminal justice system.* London: Nacro. A background reader to the above conference.
- Breedvelt, J. J. F. & Elliott, I. (2016). Demonstrating the Value of the Voluntary and Community Sectors; Mental Health and Criminal Justice. London, England: Mental Health Foundation.
- Collecting case studies demonstrating the crucial role the voluntary, community and social enterprise (VCSE) sector plays in engaging with service users from BAME communities.

This work culminated in two workshops with voluntary sector practitioners and people with lived experience, held in late 2016 and early 2017, to develop and refine the findings and recommendations presented here.

What we know

The current evidence demonstrates that – in comparison with the White population – individuals from minority ethnic groups who are over the age of criminal responsibility face an increased likelihood of being stopped and searched, arrested, taken to court and given custodial sentences. For example, Home Office data for the year ending March 2016 shows that, although the number of stop and searches fell by 28% to 386,474, people from BAME groups were almost three times more likely to be stopped than White people. Further to this, the data shows that a Black person was six times more likely to be stopped and searched by police than a White person – a fourfold increase when compared to the year before.

Successive reviews into the criminal justice system over many years – including the Young Review (2014), Taylor Review (2016) and current Lammy Review of the treatment of, and outcomes for, BAME individuals in the CJS commissioned by former Prime Minister David Cameron – have demonstrated the disproportionate representation of BAME individuals in the system and the poor outcomes they face.

For example, emerging findings published by the Lammy Review in 2016 pinpoint specific stages of the CJS at which disproportionality occurs, such as:[7]

- Young Black males are three times more likely to be arrested and 10.5 times more likely to be arrested for robbery than young White males.
- BAME people are more likely to be convicted at magistrates' court, have their case sent to Crown Court and be sent to prison from Crown Court.
- For every 100 White women given custodial sentence for drug offences, 227 Black women are sentenced to custody for the same offence.
- Once in prison BAME men are 50% more likely to have adjudications brought against them.

7. Uhrig, N. (2016), *Black, Asian and Minority Ethnic disproportionality in the Criminal Justice System in England and Wales.* [online] London: Ministry of Justice. Available at:https://www.gov.uk/government/publications/black-asian-and-minority-ethnic-disproportionality-in-the-criminal-justice-system-in-england-and-wales [accessed 10.07.2017]

Studies also highlight that different ethnic groups have different rates and experiences of mental health problems, which reflect their different cultural and socio-economic contexts and access to culturally appropriate services. For example, African-Caribbean people living in the UK have lower rates of common mental health disorders but are three to five times more likely to be diagnosed with, and admitted to hospital for, schizophrenia. In general, people from BAME groups living in the UK are:

- more likely to be diagnosed with mental health problems
- more likely to be diagnosed and admitted to hospital
- more likely to experience a poor outcome from treatment
- more likely to disengage from mainstream mental health services, leading to social exclusion and a deterioration in their mental health[8]

The reasons for this disparity include:

- the impact of migration, including trauma in country of origin, complications in navigating the migration process and hostile responses in host country
- material and socioeconomic disadvantage, including reduced access to employment and housing
- experience of racism and/or exclusion[9]

Such studies also highlight differential access to, and responses from, health services for BAME people. It is suggested that such experiences contribute significantly to disproportionality. A further study found that some communities, most notably Black Caribbean and Black African, are more likely to experience admission under the Mental Health Act 1983 and are overrepresented in psychiatric and secure mental health hospitals.[10] Significantly, the Bradley Review of people with mental health problems or learning disabilities in the CJS, found that people for BAME communities are 40% more likely than White Britons to access mental health services via a CJS gateway.[11] The Bradley Commission[12] subsequently recommended that more work needed be done to expand the understanding of the experience of BAME groups who have contact with the CJS and experience of mental health problems.[13]

The Queen's Speech in June 2017 pledged that the Government would "reform mental health legislation and ensure that mental health is prioritised in the National Health Service in England".[14] As part of this reform, the Government pledged to look at "why rates of detention are increasing and [take] the necessary action to improve service responses" as well as examine the "disproportionate number of those from certain ethnic backgrounds, in particular Black people, who are detained under the Act".

The 'Strategic direction for health services in the justice system: 2016–2020' review highlights the need to strengthen the voice and engagement of people with lived experience and notes that this should be "inclusive and… an opportunity to [include] those who may be particularly vulnerable and at further risk of isolation", including people from BAME groups.

Despite calls from regulatory bodies, such as Her Majesty's Inspectorate of Prisons, to collect data that would help understand the nature and extent of inequalities more fully, there is a notable lack of data and breadth of high-quality studies that address the combination of ethnicity,

8. Findings from the Mental Health Foundation. Available at: https://www.mentalhealth.org.uk/a-to-z/b/black-asian-and-minority-ethnic-bame-communities
9. Kane, E. *op. cit.*
10. Rutherford, M., and Duggan, S. (2007). *Forensic Mental Health Services: Facts and figures on current provision.* London: Sainsbury Centre for Mental Health.
11. Bradley, K. *op. cit.*
12. The Bradley Commission was set up to review the implementation of the Bradley Report's recommendations.
13. Saunders, A., Browne, D., and Durcan, G. (2013). *Black and Minority Ethnic communities, mental health and criminal justice.* Bradley Commission briefing 1, London: Centre for Mental Health.
14. The Queen's Speech (21 June 2017). Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/620838/Queens_speech_2017_background_notes.pdf

contact with the criminal justice system and experiencing mental health problems within the UK. Nevertheless, it would not be "unreasonable to suggest from the existing data and research studies that it is highly likely that individuals who meet these criteria experience challenges and inequalities disproportionate to others who do not."[15] 'Prevalence, patterns and possibilities: the experience of people from black and minority ethnic minorities with mental health problems in the criminal justice system' concludes that, "Given that there is no consistently collected data and no large, high-quality design research studies that focus on the triangulation of ethnicity, contact with the criminal justice system and mental health problems, it is unsurprising that the same gaps apply to ways of dealing with possible inequalities."[16]

Findings, concerns and recommendations

Discrimination and difference underpin the negative experiences of people from BAME communities across the CJS and in mental health services. Although further measures need to be taken to address disadvantage and discrimination, the following recommendations focus specifically on actions to address disproportionality in health in the justice system. They are grouped in to four areas: appropriate services, data, workforce and training, and involving people with lived experience. The recommendations also identify intersectional themes.[17]

Appropriate services

Strategies to keep people out of the justice process or to make that engagement as positive as possible when it occurs were seen as crucial in order to meet the needs of people from BAME communities as well as to reduce escalation that aggregates disproportionality. Themes and issues, which participants in the workshops raised, included:

- The interface between justice and health is multi-faceted and complex, making change challenging and complicated. This is exacerbated by the complexity of health and justice commissioning.[18]
- Services are not adopting a person-centred approach which has a focus on supporting wellbeing and developing effective and appropriate interventions. To address this, services need to reflect intersectionality, recognising that BAME people should not be seen as a homogenous group.
- Faith is generally seen as having an integral role to play for many in BAME communities. As such, working practice when engaging with people in contact with the CJS must include considerations of faith. This includes social networking to build support and resilience as well as faith as a protective factor. Despite this, some faith groups feel that their religion is seen as a risk and a barrier to rehabilitation.
- Co-production with commissioners is vital to ensure services are reflective of the needs of those with lived experience, including lived experience of criminal justice, mental health and race/ethnicity.

15. Kane, E. *op. cit.*
16. Ibid.
17. The interconnected nature of social categorisations such as race, class, gender, sexual orientation etc as they apply to a given individual or group which may result in overlapping and interdependent systems of discrimination or disadvantage.
18. Dickie, E. (Revolving Doors, 2014). Revised and updated by Alcraft, H. (Clinks, 2017). *Navigating the health landscape in England:A guide for the voluntary sector working in the criminal justice system.* [online] London: Clinks. Available at: http://www.clinks.org/sites/default/files/basic/files-downloads/clinks_navigating-health_FINAL.pdf

- Peer support and advocacy are required to help navigate a system that is impersonal and often hostile. This should be available at all points of the justice pathway. Peers should have lived experience of both criminal justice and mental health services.

- Early intervention and prevention is reliant on people and services having knowledge of services which are rooted in communities and whose staff reflect the diversity of their service users. Those inside the criminal justice system also need to understand what services they can refer into.

- Social stigma attached to mental health may result in people not seeking help or engaging with services and is likely to make recovery harder. Stigma also includes agencies stereotyping and seeing Black people in contact with CJS as 'more dangerous' and communities not discussing mental health issues.

Recommendation 1: Commissioners and providers should ensure that a wide range of tailored services are available to meet the needs of different BAME groups. These should include both peer support and independent advocacy services at all points on the justice pathway. Peer support should be provided by people with experience of both the criminal justice system and mental health or other vulnerability e.g. learning disability or substance misuse.

Recommendation 2: Assessments completed at all stages of the justice pathway including those by liaison and diversion teams, prison mental health teams and police custody healthcare should:

- appropriately assess the impact of trauma[19]
- consider the spiritual and faith needs of individuals and integrate this understanding into each individual's care plan

Recommendation 3: Service providers should ensure that all printed materials use diverse images, have an easy read copy available, and are available in different languages for those for whom English is not their first language and for those with learning difficulties.

Recommendation 4: Commissioners, service providers and criminal justice agencies should engage with anti-stigma initiatives.

Recommendation 5: The prison environment needs to become psychologically informed to support and promote the mental wellbeing of people in prison, including those from BAME communities with mental health difficulties. It should also endeavour to improve behavioural outcomes of prisoners and those working within the prison setting.

Data

What and how data is collected was a recurring theme which arose throughout the different stages of this work. Particular areas highlighted include:

- There is a real need to recognise that BAME communities are not an homogenous grouping, but rather that different ethnic and cultural needs are understood and addressed. This will impact both data collection and the tailoring of services according to need.
- The need for data to be triangulated if trends and issues in relation to race, mental health and criminal justice are to be properly understood. There are concerns both that the quality of data is variable and that some commissioners and providers are too reliant on incomplete data when case studies and personal experiences may be of more use in designing and monitoring services.

19. People in contact with the criminal justice and youth justice system – in particular, young people – are more likely to have suffered traumatic experiences in childhood – see Beyond Youth Custody. (2016). *Young offenders and trauma: experience and impact: a practitioner's guide.* London: Nacro.

- The NHS and the justice system are collecting data differently. While the NHS allows analysis of data about service users on a single case basis, the justice system only returns aggregated data. Case management systems used in prisons and courts, for example, collect individual data but the reports run only give the numbers for each protected characteristic. Collecting and analysing single case data from both the justice and health systems would allow us to:
  - check what complex intersectionalities appear at an individual level
  - anonymise this data and look at it as a cohort – for example, it would then be possible to see how many intersections people typically have and what kind of intersections are most common
  - help identify what groups might be at highest risk and target early intervention there
  - help to evidence the economic and social reasons for further action

Recommendation 6: The Ministry of Justice should develop its systems to report anonymised single case data for analysis. The Ministry of Justice, NHS England and other partners should work together to develop data analysis systems that can report triangulated data for race, mental health and criminal justice, and intersectionality to include protected characteristics, mental health and criminal justice.

Recommendation 7: Organisations providing services to people in the criminal justice system should collect case studies that demonstrate the effectiveness of interventions to address disproportionality.

Involving people with lived experience

The voice of lived experience is crucial to understanding the range of services that should be engaged with and how those services are designed to deliver effective interventions.

Working in partnership with people with lived experience builds insight, credibility and drives improvement. In addition to bringing about higher quality services, there are also benefits to people with lived experience directly. Being listened to, identifying improvements and being involved in decision making can all support the development of skills, self-confidence and improved wellbeing, and an enhanced understanding of how to engage with health services.

This work should include people with direct experience of services monitoring the Public Sector Equality Duty (PSED)[20] and completing Equality Impact Assessments (EIA). Such activities are often undertaken without reference to people with lived experience and, as such, are not always seen as credible by service users.

Recommendation 8: Commissioners and providers should liaise directly with service users and those with lived experience to understand how services should be designed to effectively engage people from BAME communities in mental health treatment.

Recommendation 9: NHS England should monitor how Health and Justice commissioners and providers co-produce service specifications, commissioning and procurement processes, and health and justice services with people with lived experience. This should include engagement with people from a wide range of BAME groups with lived experience of criminal justice and mental health or other vulnerability.

Recommendation 10: Agencies should include people with lived experience in the monitoring of the Public Sector Equality Duty (PSED) and in Equality Impact Assessments (EIA).

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20. The Public Sector Equality Duty requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities.

Workforce and training

A skilled and diverse workforce was seen as key in delivering effective interventions and supporting people in contact with the justice system, in particular to give confidence to service users that staff understand their experiences and their needs as well as to tackle discrimination and stigma. However, there were real concerns that the current workforce in both justice and mental health services:

- very often was not diverse and did not reflect the communities they served
- lacked appropriate skills and training
- did not understand the role that faith and spirituality plays both in building resilience and providing social support networks
- was not aware how to assess an individual's spiritual needs
- perceive Black people in contact with the justice system as 'more dangerous'

Training is key to building and strengthening skills, gaining new skills and expertise, and improving performance. While diversity and equality training exists, workshop participants highlighted that it did not address the issues – particularly discrimination and unequal outcomes – which concerned them.

Many workshop participants liked the idea of 'champions' – in particular, within criminal justice agencies - who could disseminate learning, encourage and promote good practice, and provide advice and support to colleagues. They believed that a culture of mental health champions in all criminal justice agencies could be a driver for change.

Recommendation 11: Commissioners and providers should ensure that their workforces are representative of the communities they serve and reflect the requirements set out in the NHS Workforce Race Equality Standard (WRES).

Recommendation 12: Criminal justice practitioners and providers delivering services in health and justice settings should have training in:

- effective race equality that enables participants to challenge and address the discrimination and unequal outcomes people face
- trauma-informed assessments
- assessing faith and spirituality needs

Recommendation 13: Criminal justice agencies should establish mental health champions.

Integrated working

Many people in contact with the justice system have multiple and complex needs that should be addressed by a multi-agency approach across the interface of justice and health. These approaches should include families, carers, advocates, BAME providers and, crucially, the service user.

The voluntary sector is vital in engaging with communities and services users – including BAME ones – and delivering services, and is recognised as such by many statutory services including the courts and health providers. The sector is particularly valued for its work with people who are underserved by statutory services. However, many organisations feel that formal commissioning processes often disadvantage small VCSE providers – especially small BAME providers – and that commissioners need to tailor their approaches to prevent that happening.

Recommendation 14: All providers delivering services across health and justice settings should be encouraged and supported to take a multi-agency approach. This should include all agencies and organisations – including the voluntary sector – working with the individual service user, family members and carers. Crucially, the approach needs to demonstrate effective service user engagement.

Recommendation 15: NHS England Health and Justice commissioners should ensure that commissioning processes don't disadvantage voluntary sector organisations in being able to able to bid for tenders (see the Clinks report 'More than a Provider' for further details).

This briefing was produced with support from the Health and Care Voluntary Sector Strategic Partner Programme.