

## MIND THE GAP: QUALITY WITHOUT EQUALITY IN TRANSFORMING REHABILITATION

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### **Abstract**

This paper forms part of a research project that started in 2012 and aimed at reviewing and identifying existing practices within probation that should be highlighted and maintained. The review focuses on the black and minority ethnic (BME) population of probation users. The nexus of our investigation was the London Probation Trust (LPT) and our primary research question was whether race equality can drive quality in the probation service. If the current reforms are all about competition and quality outcomes, then where does race equality sit?

### **Keywords**

Transforming Rehabilitation; black and minority ethnic offenders; equality

## Introduction

In the UK, the world economic crisis in combination with the 2010 change in government brought a number of institutional restructures and a shift in the philosophy on public spending. Under the slogan of “Punishment and Reform”, a number of public consultations were initiated including some that were focused on probation services (Ministry of Justice, 2012).

There should be no doubt that substantial changes will occur to criminal justice service provision nationally. The key concern principally stems from the high reoffending rates (i.e. one in two offenders return to custody, rising to 75% of young offenders). According to the Offender Management Caseload Statistics, in 2009, the UK had 151 prisoners per 100,000 population, the second highest rate in Western Europe, below Spain (Ministry of Justice, 2010). In England and Wales, the prison population is forecast to rise to 94,000 before the next general election (Berman, 2010). These failings are at an annual cost of £10 billion with an average bill of around £40k for each adult offender and £200k for juveniles (National Audit Office, 2010).

In December 2010, the UK coalition government published the Green Paper “Breaking the Cycle”, announcing its intentions for key reforms to the adult and youth justice sentencing philosophy and practice. One of the results of this new approach was the introduction of what is now called “Payment by Results” policy. One key element of this new approach to competition for criminal justice public funds is to test a range of models where providers from the private, public and voluntary sectors work in partnership and are paid by the results they deliver.

Following various consultations that aimed at bringing tailored changes to the probation services, 598 formal responses were received<sup>17</sup>. In their subsequent 2013 paper *Transforming Rehabilitation (TR)* (Ministry of Justice, 2013), the government is said to have reflected on these responses putting “forward proposals for reforming the delivery of offender services in the community to reduce reoffending rates whilst delivering improved value for money for the tax payer” (Ministry of Justice, 2013). One of the key objectives of these reforms is “opening the majority of probation services to competition, with contracts to be awarded to providers who can deliver efficient, high quality services and improve value for money” (Ministry of Justice, 2013).

It is expected that 70% of probation’s core work will be put out to competitive tender. We now know that TR will create a National Probation Service (NPS) taking away the current functions of the 35 Probation Trusts. NPS will retain the risk assessment of all offenders, the direct management of “high risk offenders”, the provision of advice to courts/Parole Board, the provision of victim liaison services and the management of their existing Approved Premises. What we also know is that 21 contract package areas will be created where market providers from all sectors will have the opportunity to compete for

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<sup>17</sup> All 35 Probation Trusts of England and Wales sent their thoughts including LPT, to read the response <http://www.london-probation.org.uk/pdf/LPT%20Response%20to%20Effective%20Probation%20Services%20Consultation.pdf> (accessed March 2013)

contracts that will pay them for providing supervision and rehabilitation services to service users who are:

- sentenced to community order or suspended sentence order
- sentenced to custodial sentence, including those discharged from short custodial sentences.

Criminologists and anyone working in the criminal justice field should be used to seeing new government proposals and reforms but what is being proposed under TR is unprecedented. One of the key concerns expressed in the literature is the pace in which these radical reforms are being introduced without too much evidence and data to back up their direction.

Comparisons for purposes of proportionality, fairness in sentencing, criminogenic factors and desistance are not the focus of this paper. In fact, there is one more truth that we have to accept before we proceed with our argument. We are not living in an equal society. Racism is embedded within our institutions and societies. We also need to accept that there is disproportionality in the criminal justice system (Mason, 2003; Rollock, 2009; London Probation Trust, 2012f). Analyses of disproportionality have demonstrated unequal outcomes for certain groups.

We also accept that progress in race equality has been, and will continue to be made. All 35 probation trusts seem to have acknowledged that they have no other choice but to accept the shift in government thinking on how public funds are disposed for criminal justice. Here, we simply make the point that the shift in public spending philosophy has brought upon probation trusts the challenge of a competitive market. This put an emphasis on outcomes, not activities, and as a result the need to look at each user afresh and ask, "How satisfied are they if we are to compete for continuing to deliver services to them"? We argue that specialist services that enhance race equality can help render better outcomes within this competitive market. As noted by LPT's response to the government's reforms:

"Engaging with black and minority ethnic offenders and communities is important if the Ministry of Justice are to achieve success in reducing the negative impact of disproportionality. In this context we would suggest that there is a risk that, by introducing an increasingly commercial approach, the Probation Service could appear more profit driven which may lead to a reduction in trust and confidence in our motives and independence" (London Probation Trust, 2012: 32).

### Research methodology

In this paper we draw from a range of material including primary and secondary sources that were analysed as part of a project that was commissioned from LPT by the think-tank Independent Academic Research Studies (IARS). In particular, we looked at fieldwork data, academic literature, political discourse and policy documents, media

representations, statistics, and official reports. We also looked at publications and material from the voluntary sector, an important player that is often forgotten.

As part of the project, a half-day event was held on the 15<sup>th</sup> November 2012 at LPT headquarters. Titled “Towards better outcomes for BME service users of probation”, the event was structured as a consultation exercise with 50 probation staff working both at frontline and managerial levels. Further primary data was collected in a semi-structured discussion with members of LPT’s Serious Group Offending Forum. The Forum’s membership includes “a wide range of community organisations, faith groups and academic institutions that have developed substantial experience in providing effective evidence-based service solutions” (Choak *et al.*, 2012: 12). Thirteen forum members were present at our questioning, which took place during a scheduled meeting in February 2013.

Finally, eight unstructured interviews were carried out during the life of the project with key experts in the field including practitioners, policy makers, representatives of criminal justice agencies and academics. The findings were also presented at a workshop at the National Chief Probation Officers conference giving the research team an opportunity to refine and revise. The data was then published as Gavrielides and Blake: 2013 and launched at a national conference in June 2013<sup>18</sup>.

Many consultation responses expressed concerns that the TR reforms would lead to the implementation of a ‘one size fits all’ approach particularly in relation to offender supervision services. Bodies such as the Black Association of Probation Officers (ABPO) as well as a number of equality focused organisations also expressed concerns that TR does not provide for any equality and race equality responsibilities for contractors who are expected to work in three different tiers<sup>19</sup>. The Ministry of Justice has made it clear that it will not instruct Tier 1 providers on their equality and race equality obligations. However, it has pointed out that the payment mechanism that will be used is Payment by Results.

Here, we list some critical areas that we believe can drive quality for BME users of probation services. As the reforms are still on-going, it is unclear whether these areas that we identified will be addressed. However, they are mentioned here as there are good indications that they are not of primary concern in the TR philosophy.

## Drivers of quality for BME users of probation

### **BME user confidence & engagement**

The literature indicates that BME user confidence and engagement is directly linked with users’ perceptions of a better service. We know that poor relations with the criminal justice agencies, overrepresentation, and a history of discrimination and racial prejudice

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<sup>18</sup> See <http://iars.org.uk/content/bme-probation>

<sup>19</sup> Tier 1 providers will contract directly with the Ministry of Justice and are likely to be from the private sector. Tier 2 and 3 providers are expected to be made principally from the voluntary and community sector (VCS) and they will only be sub-contracted by Tier 1 providers.

all play a part in distancing BME groups from probation service providers and lowering their confidence in the system. Whilst many of these issues might arise early in an offender's journey, their effects are felt throughout the system.

One example that we identified was the difficulty in delivering drug treatment and counselling services to BME groups due to fears about breaches of confidentiality. This was also identified as an issue amongst South Asian service users, where the cultural stigma attached to drug use creates an added pressure for drug abusers to remain anonymous (Fountain, 2009). Among BME groups the status of the probation service as a statutory body and agent of the criminal justice system can therefore threaten the ability of offender managers to negotiate a trusting relationship with their client. Indeed this is a point that was completely lost in the TR proposals.

Furthermore, when tackling BME confidence in the probation service, it is necessary to look further than explicitly discriminatory practices. It has been repeatedly observed in the literature that perceptions of discrimination in the criminal justice system can be just as damaging to BME confidence as the reality of unfair treatment (Nacro, 2004; Phillips, 2011).

To unravel these hidden biases, probation service providers under the new proposals will need to go the extra mile. For example, our review of LPT has shown that proactive steps had to be taken by commissioning "User Voice" as part of its Offender Engagement Project. User Voice set up four "Community Councils" consisting of users of LPT. According to User Voice, "The Councils provide an opportunity for service users to voice the concerns and ideas of the wider service user community in a solution focused way". Although not BME specific, this initiative should provide LPT with some more qualitative insight into its user's experiences and the factors that could increase their confidence and engagement with probation staff. It is highly questionable whether private sector providers will see this as a priority.

Furthermore, effective communication and confidence building lie at the heart of improving BME engagement with the probation service. Various barriers including language, social isolation, low literacy and cultural differences may hamper communication. All these factors make ethnic minorities one of the traditionally 'hard to reach' groups with which organisations struggle to connect. We also know that confidence and engagement can only be built if there is understanding of each other's cultures. Culturally inappropriate services create a real barrier to BME engagement with probation. Consequently, overlooking BME cultural needs contributes to low confidence in the criminal justice system and limits the effectiveness of probation interventions. Moreover it stands in the way of probation developing links within the community. For example, research revealed that many families have been discouraged from accessing professional support and advice due to a general perception of the inability of criminal justice agencies to meet diverse needs (Samota, 2011). Cultural sensitivity must guide service delivery at all times but the government has made it clear that it does not see its role as directing Tier 1 providers to include such courses or obligations on their staff or their subcontractors.

What is even more concerning about the current TR proposals is that they do not provide for any capacity building around race equality and the significance of culture as a driving factor. Our research has shown that generalised cultural preconceptions can lead to mistakes in service delivery. For instance, one ex-offender Nadim, who was released from prison late on a Friday night without any accommodation, suggested that presumptions made by LTP about close-knit Asian families meant it was wrongly assumed that he would be accommodated by relatives. Probation workers must therefore be sensitive to the offender as an individual with unique needs as well as a member of an ethnic or cultural community (Knight, 2004).

We must note that diversity and cultural awareness training is already offered by LPT to all members of staff, but the literature suggests that these practices could be expanded and given a more prominent role within the institution (House of Commons Home Affairs Committee, 2007). It is also apparent that training should encourage a nuanced approach to ethnic diversity and not rely on sweeping generalisations about different ethnic or religious groups. Such training is not provided for under TR.

Another way to tackle issues of staff confidence and to ensure cultural sensitivity is through cultural consultation. For example, the HIMMAT project works to improve outcomes for South Asian offenders in Calderdale by providing West Yorkshire Probation with cultural input and helping with the supervision of South Asian offenders. The project has received positive feedback from both the participants and offender managers, who emphasised the advantage of having staff on hand who are able to challenge offenders on issues that the offender managers were not comfortable dealing with themselves (Robinson, 2007).

In summary, probation service providers will need to acknowledge that occasionally it may be necessary to modify normal service delivery in order to ensure that probation remains appropriate for BME users (Jacobson *et al.*, 2010). The probation service should not be imposed as a 'one size fits all' practice. It is beneficial to adopt different service models when dealing with BME clients<sup>20</sup>.

### **Working with the BME voluntary sector**

According to Clinks, a national VCS infrastructure organisation supporting VCS groups who work with offenders, TR outlines a number of measures designed to facilitate the participation of the VCS in service delivery.

Our research has shown that one of the biggest strengths of the VCS is that the majority of its activity takes place at a local level, often addressing the needs of society's most disadvantaged groups. Historically, London has seen a strong and well-organised BME VCS. By that we do not just mean the visible BME organisations but the many small BME led

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<sup>20</sup> For example, one community-led research project found strong support amongst their focus group of black and Asian offenders for faith-based programme options (Johal *et al.*, 2006). Ensuring services are appropriate for BME offenders may therefore require offender managers to think creatively and to respond to specialist needs at the development as well as delivery stage (Youth Justice Board, 2010).

projects that function in kitchens and back gardens of council estates and neighbourhoods. It is questionable how these small BME local groups and projects can participate in the service delivery in ways that TR is proposing.

We know that as partners, providers, and advocates, these local BME projects are ideally placed to work with Local Delivery Units (LDUs) to achieve results for local people - improving the quality of life and the quality of services in every area and encouraging strong and cohesive local communities. They can act as a broker between hard to reach BME communities, LPT and its LDUs. Statistics show that the public trusts the VCS more than other sectors, particularly in relation to equalities and criminal justice related work (ROTA, 2007). This is even more important to London's BME communities whose trust in criminal justice agencies is lower than average.

### **Accessing informal support networks**

Informal support networks such as those provided by religious groups, family and community organisations play a vital role in the resettlement of BME offenders. For example, it has been noted that the support provided by social relationships complements the work of offender managers by aiding BME offenders' reintegration into society and creating opportunities for a life without crime. We also know that the support networks available to each offender will vary based on individual circumstances and so it is important for probation workers to be well-informed about the personal situations reflected in their caseloads. This is particularly pertinent for BME users as some may completely lack an infrastructure of family and friends (e.g. foreign nationals). However, it has also been documented that others may have unusually strong social and family networks that can hinder reintegration (e.g. by creating a feeling of shame and rejection). To build such relationships there needs to be time and personal investment and it is questionable whether these are factors that will be considered by private sector providers.

The community into which they are resettling provides another key source of support for offenders. In their evaluation of the 'What Works' pathfinder initiative, Durrance and Williams noted that many black people on probation feel isolated from their community and wider society (2003). The stigma attached to offending combined with economic disadvantage and possible racial discrimination creates a barrier to resettlement for many BME offenders and leaves them feeling unable to access community support services (Jacobson *et al.*, 2010). BME groups can also find themselves isolated from their own communities as a result of their offending behaviour. In Asian communities, for example, there is a strong stigma attached to substance abuse and so drugs-based offences can lead to a community backlash where the offender and their family are ostracised (Furzana *et al.*, 2000). However, under the TR proposals and the creation of contract areas it is questionable whether a service provider working in a specific geographical contract area can accommodate an offender from a different region.

### **Self-image and positive thinking**

The TR programme has given no indication that it has considered the impact that the combination of social and economic disadvantage, racial discrimination and historic exploitation had on the negative image of BME groups and how this impacts upon their

conceptions of self-worth (Aleixo, 1997). This is particularly true for young black offenders (Sender, Littlechild and Smith, 2006). BME experiences within the criminal justice system can exacerbate low feelings of self-worth. Particular attention has been given to the effect of imprisonment on BME self-identity. Cowburn and Lavis (2009) maintain that western forms of identity are being forced on to BME prisoners, causing them to lose some of their sense of cultural identity and adding to feelings of isolation. It has also been said that prisons negatively address ethnicity and fail to provide BME prisoners with opportunities to create positive identities based on their race (Cheliotis and Liebling, 2006). Eurocentric service provision, discrimination and staff prejudice can therefore leave BME prisoners particularly vulnerable to isolation and feelings of negative self-identity.

For any individual to develop their potential and thrive, first there needs to be a sense of self-pride and a set of personal goals. Remove these, and independently of the social, societal, biological, political factors that may be evoked, we should not expect to see any desistance (Salkind, 2004). According to classic theories of human development, we acquire and foster these goals and aspirations through a mixture of factors such as our parents, role models, our peers and teachers (Salkind, 2004). But we first have to believe in ourselves.

However, the TR programme starts from the premise that if we are accessing a public service, then we must have a problem; it is not because we are simply nurturing our talents. Here we argue that however much money is given to the TR programme, it will not help address reoffending, if users of the criminal justice system are not encouraged to develop their talents and self-image.

This is particularly true for BME users whose self-confidence and trust is challenged by additional societal factors. Probation reports and assessments will become a lot more successful in achieving desistance if they are focused less on risks and more on identifying and nurturing individual talents. By identifying each offender's potential strengths and self-image, pride and hope are created while the system is steered towards capturing these opportunities rather than just managing risks.

### **What about victims?**

Traditionally, the criminal justice system, including probation services, has focused on offenders. By definition, TR gives no consideration to victims. Our research points out at least two reasons why this is problematic. First, victims are also users of probation services. Secondly, by working with victims, there are benefits to be gained for improving better outcomes for BME offender users. The literature seems to suggest that often offenders want to make amends (Gavrielides, 2011). This can help desistance and integration (NOMS 2012a; 2012b). Offenders can be, and often are, also victims themselves, and productive interventions with them should recognise this.

One way to work directly or indirectly with victims is restorative justice (Gavrielides, 2007). Restorative practices (e.g. direct or indirect mediation, conferencing, circles and restorative boards) are founded upon the principles of inclusion, respect, mutual understanding, voluntary and honest dialogue (Gavrielides, 2012). One could argue that

these are core values, which if ingrained in society, could render racism impossible (Gavrielides, 2012b).

The 2012 joint thematic inspection by HMIC, HMI Probation, HMI Prisons and the HMCPSP found that the probation trusts that they inspected for restorative justice had “recognised [restorative justice’s] contribution to improved community confidence” (Criminal Justice Joint Inspection, 2012). This is particularly valuable for BME groups whose confidence in probation and the criminal justice system is lower than the average. According to the report, applying restorative justice where it is appropriate can also help improve outcomes in relation to reintegration and recidivism of BME offenders. Satisfaction rates between victims and offenders also tend to be higher compared to more traditional approaches. There are no plans for developing restorative justice schemes within TR proposals.

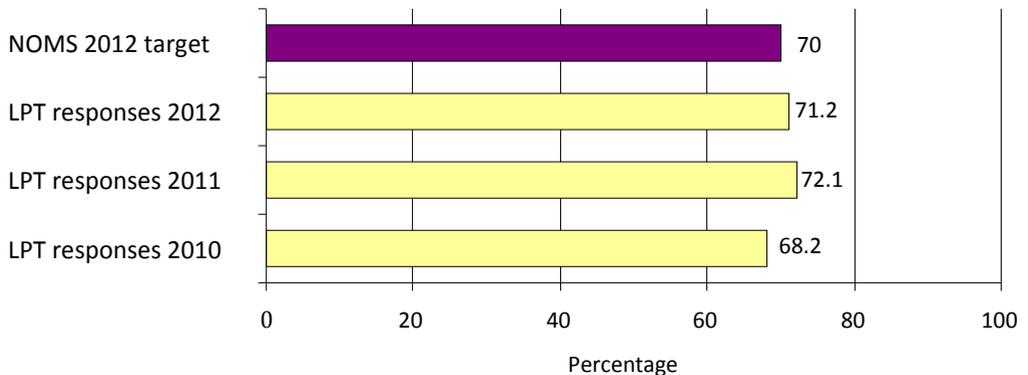
### Keeping good practice

Here we want to highlight some existing practices which our review pointed out as drivers of quality practices for BME users of probation. They are based on the LPT and they are meant to serve only as examples. The findings of our review (Gavrielides and Blake, 2013) included some criticism for LPT which is now working towards some key areas of improvement.

#### **Good practice no 1: User Surveys**

Understanding what is important to those who receive a service is important. Offenders and victims must be treated as more than just passive receivers of criminal justice services. One way to involve them in the shaping up of services is user surveys.

For instance, our review looked at LPT’s third annual “Your Views Count” survey. This was carried out between October 15<sup>th</sup> and 26<sup>th</sup> 2012, and an impressive number of 3245 completed surveys were returned. The questions were designed to assess service users’ experiences of offender management and the extent to which they engaged in the process. 71.2% of user surveys reflected a positive experience of probation (see Figure 1 below). This compares favourably with NOMS 70% target but negatively compared to last year’s LPT’s performance (72.1%).



**Figure 1: Positive results against NOMS 2012**

The Ministry of Justice has made it clear that obligations to measure satisfaction and the views of users will not be included in Tier 1 contracts. It is up to the service provider to show that what they are being paid for has good results. How these results will be measured is questionable.

### **Good practice no 2: Expert community forums**

In order to understand the complex issue of serious group offending, LPT set up a cross sector, multi-agency forum comprising community leaders and experts. The Serious Group Offending Forum brings together various local community projects to communicate key messages to each other and to the Trust. The Forum is funded by LPT and acts as an example of how dependent the success of this kind of community focused initiatives is on relationships and their underlying trust and ethos. This demands a certain level of personal dedication, involvement and investment. Keeping and funding such forms will be critical in understanding local needs for reducing reoffending and keeping the buy-in from BME communities. We have strong doubts as to how these community leaders will continue the same relationships with private sector providers.

### **Good practice no 3: Staff training & development**

Talking at the ABPO 2013 conference, a NOMS representative accepted that the government does not consider that it has a role in instructing Tier 1 providers in relation to the inclusion of staff training and development particularly in the area of race equality. Our review showed that although LPT already provides; (1) diversity in Action Training (designed in partnership with the voluntary sector); (2) Human Rights Training; (3) Engagement with community, there is still a long way to go before it can safely claim that its staff provide culturally specific and sensitive services.

### **Good practice no 4: Supporting race equality staff initiatives**

During our review of LPT, we were able to identify initiatives that had a significant impact on driving better outcomes for BME users of probation. These referred to staff initiatives such as Faith Champions and the Community in Action Project. The time and resource limitations of our project did not allow us to drill down into these initiatives but anecdotal evidence seems to suggest that there is significant support both internally from LPT staff and externally from LPT stakeholders to continue and strengthen this work including the diversity and equalities team and work plan. However, LPT is concerned that under the TR priorities this intention will not be supported. Other initiatives that link with national bodies were encouraged including the work carried out with the ABPO and the National Association of Asian Staff.

## **Concluding thoughts**

This paper is written on the 20<sup>th</sup> anniversary of Stephen Lawrence's murder, whose name reminds us of the shame that our institutions bear for their occasional failings to see their users as human beings, possessing undeniable and basic rights including dignity, respect, equality and fairness. Indeed certain truths must be accepted as we move forward constructively with current criminal justice reforms. This paper also pointed out that any

reform that disregards persistent inequalities within the criminal justice system would simply be a waste of time and money.

Best practices that already exist within probation were identified. It is questionable whether these will continue under the new structures. It is certain that under the TR proposals race equality is not seen as a driver of quality. Nevertheless, it is our argument that the evidence here is clear. It is also clear that more needs to be done in the identified areas for specialist service provision for BME offenders.

A word of caution is offered here for policy makers. Independently of whether they decide to ignore the evidence, there will be a point where failures must be accounted for. This will have to be done publicly and to those who government and decision makers are meant to serve i.e. the public and the users of the reformed services. It would be naïve to ignore that society is changing, and with it the users of public services including those of probation. Excluding the voices of community is no longer an option. We must not forget that the battle for justice for Stephen Lawrence was not fought by government or agencies but by his family. It is because of their mobilisation that in January 2012 two of the murder suspects finally stood trial and were indeed found guilty. This mobilisation of society is also seen in phenomena such as the recent student demonstrations, the riots, public debates and media attitudes. It is also seen through the active and increased role of voluntary and community-based organisations.

Trust in government, its agencies and representatives continues to deteriorate, and this paper posits a key argument: if the Transforming Rehabilitation programme does not continue and intensify its community engagement journey, the necessary insights and 'buy-in' from those it aims to serve will never be achieved. Communities are becoming more organised through local structures and community leaders. This is a community-based infrastructure that should not be underestimated.

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