



**‘Race’, disproportionality and diversion from the
youth justice system:
a review of the literature**

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Executive summary

Introduction

This is a narrative review of the literature relevant to understanding the relationship between ethnicity, disproportionality and diversion of children from the youth justice system. The review is part of wider research project, funded by the Nuffield Foundation and undertaken by the University of Bedfordshire and Keele University, exploring ethnic disparities at the gateway to the youth justice system and the impact of increased use of diversionary mechanisms in that context. Further information on the wider project is available on the Nuffield Foundation website at: [Exploring racial disparity in diversion from the youth justice system - Nuffield Foundation](#).

Methodology

Literature is drawn largely from UK and US, English language, sources, from 2010 to the present. Grey literature is included where from an authoritative source. The focus is decision-making at the gateway to the youth justice system with a particular emphasis on the mechanisms whereby children are drawn into, or diverted from, formal processing and the extent to which those decisions are characterised give rise to disparity. Search terms were used flexibly and in combination.

Disproportionality and the youth justice system

Concern about the over-representation of children from minority backgrounds in the youth justice system is long-standing and evidence of disparities are well established. In his government commissioned 2017 review of the treatment of Black and other minoritised individuals within the criminal justice system, David Lammy MP noted that disproportionality in the youth justice system was his ‘biggest concern’ highlighting that ethnic disparities among children receiving criminal disposals had increased in recent years. In the year ending March 2022, 29 percent of children receiving a formal sanction came from a minority background compared to 19 percent a decade before. Similarly, while slightly fewer than one third of the child custodial population came from a minority ethnic background in 2012, a decade later the equivalent figure was in excess of half.

Many of the causes of disparities within the youth justice system have their origins in inequalities outside of it. Children from minoritised backgrounds suffer disproportionately from disadvantage and social exclusion and concentrations of poverty and disempowerment result in increased contact with criminal justice agencies. But there is also consistent evidence that disparities are exacerbated by the responses of criminal justice agencies themselves and are accelerated once children enter the system. Black children, for instance, are significantly less likely than their white peers to be cautioned rather than charged, and once convicted are subject to higher levels of punishment for similar offending. In the year ending March 2022, Black children accounted for less than 12 percent of all proven offence but 20 percent of those given a custodial sentence.

The case for diversion: the consequences of criminalisation

Research confirms that children who are diverted from formal sanctioning avoid the negative consequences of system involvement which include the acquisition of a criminal record, as well as interrupted education, training and employment. Formal contact with the justice system, particularly at an early age, can be criminogenic, deepening and extending the child's criminal career.

Despite the evidence that diversion yields better longer-term outcomes than formal sanctioning, youth justice policies have in most jurisdictions tended to favour the latter. Data suggest that minority ethnic children have been less likely to benefit from diversionary mechanisms that have existed, in the form of cautioning, than their white peers. In recent years, contractions in youth justice populations across Europe are indicative of increased diversionary activity but this welcome reduction in criminalisation has not benefited all populations of children equally.

The rise of diversion: policy context 2010-present

The decline in the number of children subject to formal criminalisation is, in large part, a reflection of changes in the way that agencies respond to children for minor offending in the form of a substantial rise in the use of diversionary mechanisms. Such changes were triggered initially by the introduction of a government target in 2008 to reduce the number of children entering the youth justice system for the first time (so-called first-time entrants or FTEs), by 20 percent by 2020. The target was met within 12 months of its adoption and the decline in FTEs has continued in the interim period, falling by a further 78 percent between 2012 and 2022.

Analysis of youth justice policy from 2010 onwards indicates a progressive shift towards a more child-centred, less punitive, approach to dealing with children's offending behaviour. This has involved a turn away from a focus upon individual and familial risk factors to a more subtle understanding of vulnerability and trauma. It also marks a transformation from policies based on correcting the child's deficiencies to an approach that maximises the child's potential. Central to this emerging philosophy is the idea that whenever possible children in trouble should be diverted from the criminal justice system because of its tendency to worsen the problems to which it is the purported solution. These shifts have generated a rapid expansion in the use of a range of informal outcomes which do not constitute criminal justice sanctions and, unlike youth cautions and convictions, are not captured in the figures for detected youth offending.

Youth justice practice has adapted to, and reinforced, such developments. Pre-court work had expanded considerably beyond responding to children who were subject to youth cautions, with diversion schemes in most areas operating in a manner which exceeded expectations associated with the statutory framework. By 2021, prevention and diversion cases accounted for 52 percent of youth offending teams' workloads in

England and 72 percent in Wales, although these averages obscured substantial variation between areas, with the scope of diversionary and preventive work ranging from 85 percent to six percent.

Such large geographic differences in the scale of diversionary work are indicative of the fact that this changing landscape, wherein cautioning and prosecution has rapidly given way to informal mechanisms, has tended to evolve piecemeal with extensive local autonomy, leading to inconsistencies of practice and understanding. Although informal outcomes are recorded by the police locally, there is no systematic national monitoring of their use for children; published data are not broken down by age or ethnicity. The Youth Justice Board has for instance recently noted the lack of ‘consistent definitions, assessment tool or data recording standards’ and the limited nature of ‘national and local oversight and governance of prevention and diversion work’.

Diversion from the youth justice system and ethnic disproportionality

Diversion shares with other youth justice mechanisms a tendency to manifest disproportionality. For instance, in the United States in 2019, while 52 percent of delinquency cases involving white children were diverted, the equivalent figures were 40 percent for Black children, 44 percent for children of Hispanic origin, 48 percent for both Tribal children and Asian-American children. Recent analysis conducted for the Youth Justice Board has confirmed a similar pattern in England and Wales: Asian, Black and mixed heritage children were all less likely to receive an out-of-court disposal and more likely to be charged than their white peers. Demographics and offence related factors did not explain this difference.

The above studies do not consider the extent to which informal diversionary mechanisms might be characterised by similar disparities. Given the dramatic growth in such outcomes, this lack of attention might be considered a significant gap in the evidence base. Latest statistics appear to confirm that the rise in informal diversion may have played a role in exacerbating ethnic disparities over the same period. While first time entry has declined for all children (78 percent over the past decade), the fall has been noticeably more pronounced for white children than for those from minority communities: in 2022, the number of white children entering the youth justice system for the first time was 83 percent below that in 2012; the equivalent figure for Black children was 71 percent. The benefits of reduced criminalisation have accordingly not been distributed equally since minority children have become increasingly less likely to be diverted than the equivalent white population.

Recent analysis of data for community resolutions provides further confirmation of this hypothesis. White children constituted a higher proportion of cases resulting in such a disposal by comparison with those attracting a court disposal: 73% compared to 66%. Conversely, just 14% of children receiving a community resolution were Black while such children accounted for 17% of court outcomes.

Decision making at the gateway to the youth justice system determines which children enter the criminal justice process, whether they are subject to formal sanctions and acquire criminal records. Any disparities at that juncture will thus be reflected, and potentially amplified, within the system itself. Given that relatively little is known about the nature or operation of informal diversion, it is important that a better understanding of the nature of diversionary mechanisms should inform any strategies for reducing ethnic disproportionality within the youth justice system.

The current state of diversion in England and Wales

There are currently two statutory out-of-court disposals for children: youth cautions and conditional youth cautions. The use of these formal sanctions has tended to fall in recent years, in large part because they have been supplanted by informal diversionary mechanisms which are not recorded in the data for proven offending. The Youth Justice Board identifies four informal diversionary options: Community Resolution; No Further Action; No Further Action – Outcome 22; and No Further Action – Outcome 21. But this list is not exhaustive. It does not, for instance, include Outcome 20 where no further action is recorded by the police on the basis that another agency will intervene. Nor does it fully capture the options that may be available at the local level. For instance, the 'Bureau' model first developed in Swansea and subsequently adopted in other parts of Wales, is explicitly predicated on an adherence to a Child First approach which seeks to 'normalise youth offending' by diverting children into support services that improve access to their entitlements. In Surrey, most cases leading to an out-of-court disposal, around 90 percent, in what is referred to locally as a 'youth restorative intervention', an informal outcome that aims for 'inclusion, integration and participation'. Service delivery is integrated so that the same case worker is able to continue to work with the child as a user of Family Services, should that be required, once the intervention is completed.

Little is known about the relative distribution of informal disposals for children, the circumstances in which each is used, or the nature of interventions attached to them. Nonetheless, it is clear that the use of such outcomes is growing rapidly – both in terms of absolute numbers and as a proportion of all crime outcomes. Figures are not broken down by age but whereas in 2017 community resolution and Outcomes 20, 21 and 22 accounted for 4.1 of police recorded outcomes, that figure had risen to 5.2 percent by 2022.

The lack of detailed information about the use of out-of-court disposals for minoritised children is a constant theme in the literature. A thematic inspection of the experience of Black and mixed heritage children in the youth justice system, published in 2021, found that information in respect of 'street community resolutions' was rarely shared between the police and youth offending services so it was not possible to assess potential levels of disparity. The quality of work with Black and mixed heritage boys who had received out-of-court disposals was poorer than that delivered to such children subject to statutory

court orders. In 40 percent of cases resulting in informal diversion, children had previously experienced racial discrimination but this was rarely addressed by youth justice interventions. Insufficient attention was paid to identifying structural challenges in the child's life and as a consequence appropriate support to overcome such barriers was frequently not provided.

Explanations of ethnic disparities in diversion

There is a limited literature exploring why children from minority ethnic backgrounds are less likely to access diversionary options. Inequalities outside of the youth justice system clearly play an explanatory role but decision making and practices within the system can amplify such effects.

For instance, eligibility criteria that focus on the gravity of the index offence, exclude certain forms of offending or restrict access to diversion on the basis of previous offending, have the potential to disadvantage children from minority ethnic backgrounds since such criteria can reflect the impact of previous discriminatory policing.

The fact that a diversionary outcome frequently requires an admission of guilt can also generate disproportionate outcomes. Children from minority backgrounds are less likely to offer an admission at the point where decisions about diversion are made. Such differentials are commonly explained as the consequence of a lack of trust in the police and other authority figures, which is in turn a product of the fact that individuals from minority communities believe themselves to be unfairly targeted through stop and search and other measures. Baroness Casey's recent review of the Metropolitan police highlights that lack of trust is intergenerational, with many Black families teaching their children that they should avoid contact with the police. Such dynamics underpin data showing that 37 percent of Black children 'completely distrust' or 'somewhat distrust' the police compared with 11 percent of white children.

Given the potentially problematic nature of strict eligibility criteria for accessing diversion, many commentators have called for higher levels of discretion in decision-making at the gateway to the youth justice system; others however note that increased discretion associated with the emergence of informal diversion has promoted inconsistency, has proved to be an obstacle to transparency and potentially provides a site where unconscious bias and institutional racism can influence decisions.

One mechanism through which bias manifests itself is 'adultification' whereby minoritised children are denied the status of innocence and vulnerability afforded to their white counterparts, resulting in the rights of the former being diminished. Davis argues that Black children are most likely to experience adultification bias because of the legacy of slavery and racism which has perpetuated negative, stereotypical, perceptions of Black adolescents. As a result Black children are considerably more likely to be understood as more

mature and less vulnerable than their chronological age would suggest and there is, accordingly, a greater prospect of them treated as if they were adults when they come into contact with the justice system, reducing opportunities for diversion.

A further mechanism by which bias impacts decision-making is through assumptions about the family backgrounds of minority children. Access to diversion may be restricted by assessments which focus on the role of family and mistakenly identify minority families as uncooperative or providing poor supervision of their children.

Children's Experiences of Diversion

A recent exploration of children's experience of diversion undertaken by the Centre for Justice Innovation sheds further light on the nature of disparities at the gateway to the youth justice system. Children's views of the police mirrored some of the dynamics identified in other research described above. Interviewees for the most part demonstrated a distrust of the police and there was a consensus among respondents that children from minority ethnic backgrounds were treated less favourably by that agency, even if individual children did not identify discrimination as a problem for themselves.

Children's experience of legal representation was mixed. Several of the respondents made it clear that they did not fully understand the solicitor's role, a significant concern given the important part that one might anticipate advocacy would play in terms of whether an outcome at the police station was diversionary or otherwise. At least one respondent had been advised to make a 'no comment' interview by the legal representative suggesting a lack of awareness on the latter's part that to do so would potentially exclude the child from diversionary options. However, it was also apparent that other children were, in any event, reluctant to provide the police with any information, even if that increased the likelihood of a formal sanction.

Some of the sample demonstrated a limited understanding of the processes to which they had been subject, the nature of the outcomes which they had received or the obligations to which they were subject as a result. In some cases, children gave a sense of simply 'going along' things without appreciating their choices or the implications of decisions that were being made about them. Some respondents mistakenly believed that they could avoid a criminal record if they complied with the expectations of a caution. By contrast, other children were able to give a clear account of the outcomes they had received, the expectations upon them and the consequences of non-engagement. In such cases, respondents attributed their understanding to the manner in which options had been communicated to them by police or youth justice workers.

Reinforcing findings described earlier that out-of-court interventions may simply replicate offence-focused work traditionally associated with court orders, the study found that children were less likely to engage unless what was offered matched their specific needs. One for instance reported being expected to participate in a knife crime reduction programme although this was not an offence he had committed. Others were critical of the fact that interventions were frequently online, expressing a preference for face-to-face sessions.

Research on the operation of community resolutions has found that children were largely positive about the benefits of interventions with many highlighting good relationships with youth justice staff. However, some were also critical of the repetitive nature of the work and described taking part in sessions that appeared to rely on deterrence and a 'scared straight' rationale.

Clear communication with children about nature of the decision-making process, their options and the consequences for them, combined with the offer of meaningful support that meets their needs, are thus prerequisites of reducing disparities in diversion.

Promising practice: reducing disparities in diversion

Revised Case Management guidance, produced by the Youth Justice Board in 2022 includes, for the first time, a section on '*How to adapt for a child's race and ethnicity*'. It highlights the importance of services understanding what drives disproportionality at the local level, but the literature suggests that, insofar as diversion is concerned, such understanding is at best limited. Improved data and monitoring is a prerequisite of addressing disparities in diversion and research directed at understanding decision-making processes is key to holding agencies to account.

There is some debate about what forms of eligibility criteria are most likely to reduce disparity. The Centre for Justice Innovation maintains that focusing on the severity or type of offence unduly restricts the scope for diversion and proposes a more flexible approach that allows for professional discretion. Other commentators point to the potential for bias to inform subjective assessments of suitability for diversion on the basis of willingness to change or supportive family backgrounds.

Roger Smith is critical of current arrangements which do not allow for multiple second chances. Antecedent history is a significant factor in determining eligibility for an out-of-court disposal. Focusing on prior contact with the youth justice system is not race neutral since it assumes that previous records of offending are an accurate indicator of criminal behaviour rather than an artefact of prior instances of discrimination. Good practice is thus not served by using previous system contact or diversionary interventions as an automatic bar to further informal outcomes.

The requirement for a formal admission of guilt in order to access some forms of diversionary measures disadvantages minority children, based on misleading assumptions that admission is an indicator of remorse and willingness to comply diversionary interventions. Since some measures, such as Outcome 22, do not require an admission prior acceptance of responsibility should not be a prerequisite of other informal outcomes.

Increasing trust of minority children in youth justice processes is clearly important in its own right and in the context of minimising disparity at the gateway to the system. Increased trust is contingent on children being given information in a form that allows them to understand the processes to which they are subject and in order to make informed decisions.

Staff having the confidence to address the impact of prior experiences of discrimination and support children to overcome structural barriers, is important both in the delivery of legitimate decision making and increasing children's recognition that interventions are relevant to their needs. Encouraging practice that is informed by Child First principles can help to mitigate against the potential for adultification of children from minority backgrounds.

Introduction

This is a narrative review (Greenhalgh et al, 2018) of the literature relevant to understanding the relationship between ethnicity, disproportionality and diversion of children from the youth justice system. It builds on a number of existing reviews (Petrosino et al, 2010; Gengdreau et al, 2006; Lammy, 2017), relevant literature, as well as prior work of the research team.

Initial searching and screening confirms that ethnic disproportionality is a feature of criminal justice systems across a range of jurisdictions and that this is explained largely as a function of racial bias in decision-making in systems designed to deal with offending as well as organisational systems that feed them, including education, mental health and employment (Corrado et al, 2014; Fader et al 2014; Leiber & Fix, 2019; Warner et al, 2022; Moore and Padavic, 2010). Structural discrimination and unconscious bias appear to pervade all stages of the decision-making process for children in the youth justice system, including risk assessment tools (Moore and Padavic, 2011).

There is also ample evidence of disparity at the gateway to the youth justice system, manifested in reduced rates of diversion for children from minority ethnic backgrounds (Uhrig, 2021; Ofori et al, 2021), although research has tended to neglect this area of the youth justice process (Wilson et al, 2018). Relational and participative models of practice are viewed as important ways in which experience of structural discrimination, including racism, can be addressed (see, for example, Spacey and Thompson, 2022).

Methodology

In order to ensure that the evidence base was comprehensive and up-to-date, additional searching was undertaken using the University of Bedfordshire's Discover database, SOCINDEX and SCOPUS, focusing on the period 2010-2023. Grey literature was searched via relevant organisational databases. Additional references were identified through the expertise of the research team, and some additional hand-searching of specific journals. The inclusion criteria for searching were as follows.

Items were included if:

- English language
- Peer reviewed or grey literature from an authoritative source
- Published 2010-2023
- UK and US specific
- Focus on decision making in relation to children and the youth justice system, as opposed to other parts of the criminal justice system
- Focus on decision making relating to diversion.

Search terms were used flexibly and in combination, using Boolean operators AND/OR/NOT

1. Terms relating to children and young offenders: youth/adolescents/young people/teen/young adults/juvenile
2. Terms relating to disproportionality: disproportionality/disparity/ over-representation/racial/ethnic/bias/
3. Terms relating to processes in the youth justice system: decision making/youth justice/youth offending/system/diversion/youth court.

Disproportionality and the youth justice system

In January 2016, then Prime Minister, David Cameron commissioned a review, led by David Lammy MP, of the treatment of, and outcomes for, Black and other minoritised individuals within the criminal justice system. Lammy's final report, published in September 2017, noted that disproportionality in the youth justice system (YJS) was his '*biggest concern*' (Lammy, 2017: 4), although recommendations specific to youth justice were, given that finding, surprisingly few (Bateman, 2020). In support of that assessment, the report pointed out that while a reduction in the number of children formally sanctioned for offending and a decline in the child custodial population had been widely lauded as '*one of the success stories*' (Lammy, 2017: 4) of criminal justice in recent years, ethnic disproportionalities among children subject to criminal justice disposals had increased over the same period.

Lammy's concerns are scarcely new. The differential treatment, by the criminal justice system, of people from minority ethnic backgrounds has been recognised for many years (see for instance, Bowling and Philips, 2002). An acknowledgement of the over-representation of minoritised communities among those receiving criminal sanctions led to the requirement, introduced in 1991, that the government publish information for England and Wales to assist criminal justice agencies in meeting their duty to avoid discrimination on the grounds of race. Evidence of racial disparities specifically within the youth justice system is equally long-standing (see for instance, Pitts, 1988; 1993). Nor have those concerns diminished in the years since the publication of Lammy's report. In the year ending March 2022, while around 18 percent of the 10-17 child population came from a minority ethnic background, such children accounted for 29 percent of those receiving a formal youth justice sanction (Youth Justice Board, 2023a). Moreover, these global figures disguise higher levels of disproportionality for some groups. Asian children are *under*-represented in the youth justice system, accounting for five percent of those receiving a substantive youth justice disposal while making up nine percent of the wider 10-17 population. Conversely, Black children are three times more likely, and children of mixed heritage 2.5 times more likely, to receive a youth justice sanction than would be expected given the composition of the general population in the relevant age range (Youth Justice Board, 2023a).

Lammy (2107) acknowledged that many of the causes of disparities within the criminal justice system have their origins in inequalities outside of it and this observation is evidently equally relevant to explanations of over-representation in relation to the criminalisation of children.

Evidence that children from minoritised backgrounds suffer disproportionately from disadvantage and social exclusion is overwhelming. For instance:

- One in five Black people and one in seven Asian people live in the 10 percent most deprived neighbourhoods
- 22 percent of Black children and 18 percent of children of mixed heritage are entitled to free school meals compared with 12 percent of white children
- Black people are twice as likely as white people to be hospitalised as a result of mental ill health but children from minority communities are less likely to engage with preventive mental health services
- Children from minority ethnic backgrounds are at considerably higher risk of being a victim of violent crime
- Children of mixed heritage are 50 percent more likely, and Black children twice as likely, to be excluded from school than their white peers (Youth Justice Board, 2019a; for similar evidence in an American context see Development Service Group, 2014).

Concentrations of poverty and disempowerment are inevitably mirrored in increased contact with criminal justice agencies (see for instance, Home Affairs Committee, 2007). Analysis conducted to support the Lammy inquiry contended that social factors of this nature had a considerable influence on *'the raw number of defendants proceeding through the courts system and ultimately into prison'* (Uhrig, 2016: 12). But it is important to recognise that there is equally consistent evidence that such disparities are exacerbated by the responses of criminal justice agencies themselves and are accelerated once children enter the youth justice system (see for instance, Feilzer and Hood, 2004; May et al, 2010; ZK Analytics, 2021).

In the year ending March 2022, for instance, the rate of stop and search for Black people was six times higher than for the white population (36 per 1,000 compared to 6 per 1,000) (Home Office, 2022). The level of disparity appears to be similar for children, albeit at that the prevalence of stop and search for those under 18 is considerably higher. Youth justice annual statistics indicate that, in the year ending March 2022, 12 in every 1,000 10-17-year-old white children had been stopped and searched compared with an equivalent figure for black children of 52 per 1,000 (Youth Justice Board, 2023a).

A further indication of the differential impact of criminalisation is given by the fact that the extent of disparities rises with the intensity of youth justice intervention, as children progress through the system. As shown in Table 1, whereas Black children accounted for less than 12 percent of all proven offences, they comprised almost 15 percent of those convicted, implying that they were less likely to receive a caution; this group moreover constituted one in five of those given a custodial sentence indicating higher levels of punishment for those who proceed to court (Youth Justice Board, 2023a).

Table 1

**Breakdown by ethnicity of children at different stages of the youth justice process:
2021-2022**

| | Asian | Black | Mixed heritage | Other | White |
|---|-------|-------|----------------|-------|-------|
| Proven offences | 5.4% | 11.7% | 10.2% | 1.9% | 70.9% |
| Court convictions (indictable offences) | 4.6% | 14.4% | 5.8% | 1.3% | 44.5% |
| Custodial sentences | 3.8% | 20.0% | 5.6% | 1.3% | 39.3% |

Nor are such differentials fully explained by factors such as the gravity of the offence, the extent of previous convictions or demographic profile. A recent analysis of data, conducted for the Youth Justice Board, concluded that:

'the reduced likelihood of Black, Asian and Mixed ethnicity children receiving an out-of-court-disposal compared to White children could not be fully accounted for'

by such factors. Even where offence related and demographic factors were controlled for, Black children:

'remained between 2 and 10 percentage points less likely to receive a first-tier outcome and between 2 and 8 percentage points more likely to receive a custodial sentence vs a Youth Rehabilitation Order' (ZK Analytics, 2021: 9).

Assessments of risk, conducted by the youth justice practitioners, both reflect the extent of children's need but also impact on levels of intervention imposed and the potential for breach action where requirements of supervision are not complied with (Bateman, 2011). Research (albeit

conducted prior to the introduction of AssetPlus, the current mandatory tool for youth justice assessment) found that Black and mixed heritage children had higher levels of assessed needs than their white counterparts and were correspondingly more likely to receive more intensive, and intrusive, forms of disposal (May et al, 2010). In this context, it has been argued, minoritised children are further disadvantaged by risk assessments which in effect '*responsibilise [them] for previous experiences*' of deprivation and discrimination (Bateman, 2020: 63). Research from United States provides confirmation of this process. Moore and Padavic (2011: 850) argue that because they '*decontextualise race*', risk assessments may be inherently liable to inflate risk for minority children.

As noted above, David Lammy (2017) highlighted the fact that the youth justice system has been characterised by increased disparities in the recent period despite growing policy attention to the issue, including a government commitment, in the wake of the Lammy review, to '*take action to make a difference and ... hold ourselves accountable for progress*' (Ministry of Justice, 2017: 3). For its part, the Youth Justice Board has produced a 'Case Level Ethnic Disproportionality Toolkit', designed to assist youth justice services in reducing the over-representation of minoritised children in their area (Youth Justice Board, 2018). The Board has also adopted a 'child-first' ethos, aimed at reinforcing less punitive responses to children in trouble and reducing the adverse effect of unnecessary criminalisation (Youth Justice Board, 2019). These shifts have followed, and given further impetus to, a dramatic, and welcome, reduction in the number of children processed for detected offending; a decline of 79 percent between 2012 and 2022. But such progress not been accompanied by any lessening of ethnic disparities. Indeed, disproportionality has increased considerably, suggesting that any benefits of recent developments have not been experienced to the same extent by minoritised children.

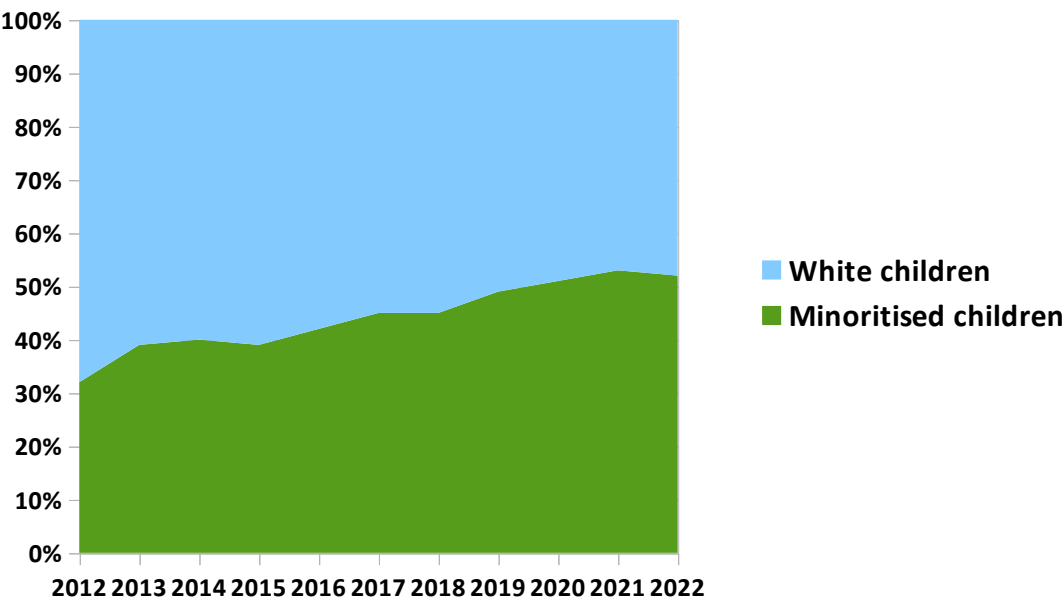
As demonstrated in Table 2, the proportion of children cautioned or convicted for an offence who are from minority backgrounds has tended to rise over the past decade, with a corresponding decline for their white peers (Youth Justice Board, 2023a). The representation of mixed heritage children in the youth justice population was in 2012 only slightly higher than would be anticipated given the composition of the wider child population but had doubled by 2022. The over-representation of Black children has followed a similar course but from a higher baseline.

Table 2**Representation of children cautioned or convicted for offending, by ethnicity, over time
2012-2022**

| | Asian | Black | Mixed heritage | Other | White |
|--|-------|-------|----------------|-------|-------|
| 10-17 general population | 9% | 5% | 4% | 1% | 81% |
| Children cautioned or convicted | | | | | |
| 2012 | 5% | 8% | 5% | 1% | 83% |
| 2013 | 5% | 8% | 3% | 1% | 83% |
| 2014 | 5% | 9% | 5% | 1% | 80% |
| 2015 | 5% | 9% | 5% | 1% | 80% |
| 2016 | 5% | 10% | 6% | 1% | 78% |
| 2017 | 5% | 11% | 7% | 2% | 75% |
| 2018 | 5% | 12% | 7% | 2% | 73% |
| 2019 | 5% | 11% | 8% | 2% | 73% |
| 2020 | 6% | 12% | 9% | 2% | 71% |
| 2021 | 6% | 12% | 10% | 2% | 70% |
| 2022 | 5% | 12% | 10% | 2% | 71% |

The number of children in custody has registered a reduction similar in scale to that in the level of detected child offending. The average monthly population of children in the secure estate fell by 77 percent in the decade from 2012 (Youth Justice Board, 2023a), empirical confirmation of earlier evidence that entry to the formal system is a powerful determinant of the extent to which children are subsequently deprived of their liberty (Bateman, 2012). But this positive trend has not been experienced equally by all children. While the custodial population of white children has declined by 82 percent, the equivalent reduction for children of mixed heritage has been a much more modest 44 percent. For minoritised children as a whole, the fall has been just 59 percent (Youth Justice Board, 2023a). As highlighted in Figure 1, slightly fewer than one third (32 percent) of the child custodial population came from a minority ethnic background in 2012; while this already constituted a substantial over-representation, a decade later the equivalent figure was in excess of half (52 percent) (Youth Justice Board, 2023a).

Figure 1:
Population of child custodial estate – minoritised and white children: 2012 -2022



The case for diversion: the consequences of criminalisation

The term 'diversion' can be used in different ways in different contexts and can refer to a range of various practices (Kilkelly et al, 2021). For current purposes, diversion in a youth justice context is understood as a mechanism that enables children suspected of breaking the law to avoid prosecution, or increasingly, as an alternative to the imposition on such children of a statutory out-of-court disposal such as a youth caution or youth conditional caution. The term diversion is sometimes also used to describe attempts to provide alternatives to higher tariff court orders and, in particular, custody (Kilkelly et al, 2021). The focus of the current review however is what might be termed 'front end' diversion which takes place at the gateway to the system. Diversion in this sense is generally distinguished from prevention in that the former is a response to particular episodes of lawbreaking whereas the latter is designed to address underlying '*needs or vulnerabilities ... to ... promote positive outcome*' and mitigate the risk that children will come to the attention of the youth justice system (Youth Justice Board, 2021a: 1).

Diversion is a central tenet of a child's rights approach to youth justice. The United Nations Convention on the Rights of the Child, for instance, endorses responses to children's offending which avoid juridical proceedings wherever appropriate (Kilkelly et al, 2021). There is moreover abundant evidence that diversion in this sense outlined above aligns closely to principles of effective practice. Research confirms that children who are diverted avoid the negative consequences of system involvement which include the acquisition of a criminal record, and hence 'labelling' as an offender (Bramley et al, 2019; Creaney, 2012) as well as interrupted education, training and employment. It also appears that formal contact with the justice system, particularly at an early age, can be criminogenic, deepening and extending the child's criminal career. Petrosino et al's (2010) systematic review of the effects of formal processing of children for offending concluded that formal processing appears to have no crime control effect but tends to '*increase delinquency*'. A review conducted by Wilson et al (2018) some years later, exploring the benefits of diversion, similarly determined that keeping children out of the criminal justice systems is associated with a significant reduction in future system contact. Summarising evidence from nineteen 'high-quality' studies, including 13 randomized controlled trials and six quasi-experimental studies, the authors found that diversion led to reductions in system contact by an average of six percentage points from a 50 percent baseline, compared with traditional processing methods that lead to a criminal sanction.

These findings mirror those from earlier meta- analyses of the research evidence on diversion (Gendreau et al, 2006; Wilson and Hoge, 2013) which confirmed that diversionary programmes reduced recidivism to a greater extent than formal criminal justice processing. Studies have found substantial differences in outcome between diversionary programmes, but this is unsurprising given the range of different approaches to diversion, the levels of risk associated with children participating in the programmes, whether or not intervention was offered and, if so, the nature of that intervention, as well as study design (Wong et al, 2016). While some studies have suggested that matching diversionary programmes to the levels of risk and need presented by participants is key to their effectiveness (see for instance, Gendreau et al, 2006), Wilson's (2018) study found that reductions in further system contact were achieved whether or not children are referred for some form of intervention, indicating that criminalisation itself increases the risk of further offending (Wilson et al, 2018). Research conducted in Canada similarly found that non-interventionist diversion, and diversionary interventions based on strengths based approaches, were both significantly more effective than formal processing (Belcuig et al, 2016).

The contention that diversion can be effective simply because it avoids the negative repercussions of criminalisation receives further support from the Edinburgh Study of Youth Transitions and Crime, a longitudinal research programme of 25 years standing (University of Edinburgh, undated). McAra and McVie (2015: 127) summarise that evidence in the following terms:

'Repeated and more intensive forms of contact with agencies of juvenile justice may be criminogenic, even within the confines of a predominantly welfare-based juvenile justice system'.

Indeed, *'far from nipping criminal careers in the bud'* (McAra and McVie, 2015: 128), the assumption on which New Labour's 1998 reforms of youth justice were premised (Home Office, 1997), children subject to formal criminal processes are five times as likely to receive a conviction as an adult than their peers with no sanctions. Moreover, at least some of this pattern could be explained as a function of labelling or targeting since children who had been charged or warned for offending in previous years were twice as likely to have received further sanctions by age 15 even where self-reported offending was controlled for (McAra and McVie, 2015); similarly 42 percent of children with juvenile justice referrals by age 12 received a custodial disposal post age 16 compared with nine percent of a control group (McAra and McVie, 2018).

Despite such compelling evidence that diversion yields better longer-term outcomes than formal sanctioning, youth justice policies have in most jurisdictions tended to favour the latter. As noted previously, data suggest that minority ethnic children have been less likely to benefit from diversionary mechanisms that have existing in the form of cautioning than their white peers (Youth Justice Board, 2023a). In recent years, as described in more detail below for England and Wales, contractions in youth justice populations across Europe, are indicative of increased diversionary activity (McAra and McVie, 2018) but as discussed below, this welcome reduction in criminalisation has not benefited all populations of children equally.

The rise of diversion: policy context 2010-present

While there is credible evidence for supposing that children's offending has fallen in recent years, it would be unrealistic to suppose that changes in youthful behaviour can fully explain the extent of the contraction of the youth justice system described in the previous paragraphs (Bateman, 2020). Indeed, it is clear that the decline in the number of children subject to formal criminalisation is, in large part, a reflection of changes in the way that agencies respond to children who come to attention for minor infractions of the law (McAra and McVie, 2017). In the case of England and Wales, such changes have been triggered in particular by the introduction of a government target in 2008 to reduce the number of children entering the youth justice system for the first time (so-called first-time entrants or FTEs), by 20% by 2020 (HM Government, 2008; Roberts et al, 2019). In the event, the target was met within 12 months of its adoption (Bateman, 2020). The decline in FTEs has continued in the interim period, falling by a further 78 percent between 2012 and 2022, from 36,987 to 8,016 children (Youth Justice Board, 2023a).

This dramatic policy shift in the treatment of children in conflict with the law initiated significant '*changes in policing practices*' (Sutherland et al, 2017: 4) associated, in large part, with a rapid expansion in the use of a range of informal outcomes. In their report on preventative intervention in youth justice, Stephen Case and colleagues (2022) trace some of those developments through an analysis of government Green and White papers, policies and legislation that have culminated, in the recent period of the adoption of a more child-centred, less punitive, approach to dealing with children's offending behaviour. The analysis describes a shift from a focus upon individual and familial risk factors to a more subtle understanding of vulnerability and trauma. It also marks a transformation from policies which focussed on the correction of the child's deficiencies and the inculcation of discipline to one that endeavours to work with the child's potential. Within this is a recognition that particular groups of vulnerable children are over-represented in the youth justice system and that special efforts should be made to address this over-representation. At the centre of this emerging philosophy is the idea that whenever and wherever possible the child in trouble should be diverted from the criminal justice system because of its tendency to worsen the problems to which it is the purported solution.

In 2010, the government published *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*, (Ministry of Justice, 2010), a Green paper largely concerned with

protecting the public and the justice system's role in punishing offenders, to reduce offending and where necessary remove them from the community. It proposed the

... robust and credible administration of punishment, less enforced idleness in prisons and the use of strenuous, unpaid work as part of a community sentence alongside tagging and curfews" (Case et al, 2022: 32).

However, the Green Paper also commended diversion into non-criminal justice services through risk-based early intervention to '*address reasons for offending*' and the simplification of out-of-court disposals. It favoured the use of restorative justice to make children '*pay back their victims and their communities*' and an increased use of parenting orders for parents who '*refuse to face up to their responsibilities*' (Case et al, 2022: 33. This was 'get tough' criminal justice, but with a less punitive pragmatic edge in its dealings with children

Two years later the *Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act* (Great Britain, 2012) sounded a very different note. The Act replaced the existing out-of-court diversion of final warnings and reprimands, which placed strict restrictions on the number of pre-court opportunities to children system with youth cautions, which could be used repeatedly if the case warranted it (Hart, 2012). Although it also contained a range of less progressive measures (Hart, 2012), the Act was seen to mark a significant move towards diversionary approaches by virtue of its focus on cautioning children and increasing the use of pre-court disposals to avoid criminalising them. (Haines and Case, 2015).

The *Youth Justice Strategy for Wales: Children and Young People First* (Youth Justice Board, 2014) focussed on a preventative, diversionary, multi-agency response to support children involved in crime in order to reduce offending and aid resettlement. The strategy involved partnerships with health, housing, education and social service agencies. The authors observed that although there was a fall in the numbers of children processed for offending in Wales, growing numbers of those entering the youth justice system had high levels of 'complex needs'. The strategy confirmed that wherever possible children should be dealt with by mainstream services rather than the youth justice system. It was this document that first floated the policy position that the child in trouble was a child first and foremost.

In 2015, the government commissioned Charlie Taylor to produce a review of the youth justice system in England and Wales, to consider developments since the creation of youth offending

teams through the Crime and Disorder Act in 1998 with a recognition that recommendations for 'extensive reform' were likely. Taylor's report (2016) was published the following year and it highlighted that while the numbers of children entering the youth justice system had been falling sharply for some time, reoffending rates for reoffending rates of this smaller group remained stubbornly high (Taylor, 2016). Moreover, this cohort of children comprised disproportionate numbers of children from minority communities, those with experience of being in care and children with complex mental and physical health problems and learning difficulties. The report argued that '*the failure of education, health, social care and other agencies to tackle these problems have (sic) contributed to their presence in the youth justice system*' (Taylor, 2016: 2). Taylor accordingly recommended that:

'there needs to be a shift in the way society, including central and local government, thinks about youth justice so that we see the Child First and the offender second. Offending should not mean forfeiting the right to childhood. If children who offend are to become successful and law-abiding adults, the focus must be on improving their welfare, health and education – their life prospects – rather than simply imposing punishment' (Taylor, 2016: 3).

In this context, it was argued diversionary approaches should be expanded and made more consistent. Significantly, Taylor proposed that in developing diversionary schemes police and local authorities should '*pay particular attention to the needs and characteristics*' of children from minority communities and '*should monitor the rates at which these groups are diverted from court and formal sanctions compared to other children*' (Taylor, 2016: 19), although he did not elaborate on why this might be necessary or what '*paying particular attention*' might mean in practice.

Taylor subsequently became chair of the Youth Justice Board whose Strategic Plan 2018-21 formally adopted a vision that saw '*children first and offenders second*' (Youth Justice Board, 2018b: 7). This position was further elaborated in the Plan published the following year which committed the Board to promoting:

'A youth justice system that sees children as children, treats them fairly and helps them to build on their strengths so they can make a constructive contribution to society. This will prevent offending and create safer communities with fewer victims' (Youth Justice Board 2019b: 6).

The strategy proceeds to delineate the key elements of a 'child first' youth justice, drawing on the

work Haines and Case (2015), augmented by aspects of the *Beyond Youth Custody* 'constructive resettlement' model (Bateman and Hazel, 2018). A child-first approach will:

- Prioritise the best interests of children, recognising their particular needs, capacities, rights and potential.
- Promote children's individual strengths and capacities as a means of developing their pro-social identity for sustainable desistance, leading to safer communities and fewer victims.
- Ensure that all work is constructive and future-focused, built on supportive relationships that empower children to fulfil their potential and make positive contributions to society.
- Encourage children's active participation, engagement and wider social inclusion. All work promotes desistance through co-creation with children.
- Promote a childhood removed from the justice system, using pre-emptive prevention, diversion and minimal intervention.
- Minimise criminogenic stigma from contact with the system.

From a diversionary perspective, the upshot of these shifts in the treatment of children in conflict with the law was to initiate significant '*changes in policing practices*' (Sutherland et al, 2017: 4) associated, in large part, with a rapid expansion in the use of a range of informal outcomes. Such disposals include, perhaps most importantly, community resolutions but also a range of other options such as where the police make a referral for action by another agency (Outcome 20) or defer prosecution to allow '*diversionary, educational or intervention activity*' to be undertaken (Outcome 22). These informal measures do not constitute criminal justice sanctions and, unlike youth cautions and convictions, are not captured in the figures for detected youth offending (Roberts et al, 2019; Sutherland et al, 2017; Youth Justice Board, 2021a).

Evolving practice by youth justice services has moreover adapted to, and reinforced, such developments. Whereas the Crime and Disorder Act 1998, which created youth offending teams (YOTs), envisaged those agencies as focused on delivering statutory functions to children subject to

formal criminal justice disposals, by 2017 it was estimated that at least 30 percent of youth justice practitioners' caseloads involved non-statutory work (Ministry of Justice / Youth Justice Board, 2017). A thematic inspection of out-of-court disposals in 2018 confirmed that pre-court work had expanded considerably beyond responding to children who were subject to youth cautions, with diversion schemes in most areas operating in a manner which exceeded, and not infrequently exceeded by some margin, expectations associated with the statutory framework of cautions and court orders (Criminal Justice Joint Inspections, 2018). By 2021, prevention and diversion cases accounted for 52 percent of youth offending teams' workloads in England and 72 percent in Wales, although these averages obscured substantial variation between areas, with the scope of diversionary and preventive work ranging from 85 percent to six percent (Youth Justice Board, 2021b; Youth Justice Board, 2023b).

Such large geographic differences in the scale of diversionary work are indicative of the fact that this changing landscape, wherein cautioning and prosecution has rapidly given way to informal mechanisms, has tended to evolve piecemeal with extensive local autonomy, leading to inconsistencies of practice and understanding (Acton, 2013). Guidance on the use of diversionary mechanisms, such as that published by the Ministry of Justice / Youth Justice Board (2013a) and the National Police Chiefs' Council (2022a), makes clear the high level of discretion that may be applied to decision-making in this context, with the former suggesting that *'any of the range of options can be given at any stage where it is determined to be the most appropriate action'* (Ministry of Justice / Youth Justice Board, 2013: 7) and the latter emphasising the role of the police in using *'professional judgement'* to determine when a community resolution might be used (National Police Chiefs' Council, 2022: 4).

Although informal outcomes are recorded by the police locally, there is no systematic national monitoring of community resolutions (Criminal Justice Joint Inspections, 2018), the use of Outcome 20 for children, or other informal options available at the local level. Published data are not broken down by age or ethnicity. The Youth Justice Board (2023b: 9) has for instance recently noted the lack of *'consistent definitions, assessment tool or data recording standards'* and the limited nature of *'national and local oversight and governance of prevention and diversion work'*. The Board's data recording requirements for youth justice services introduced a mandatory obligation on such services to report on informal diversionary outcomes where these involve a youth offending team intervention from April 2022. The stated purpose of such data collection is *'to ensure recording*

consistency ... [and] provide formal evidence and recognition of the work taking place and contribute to better consistency and research' (Youth Justice Board, 2022a: 7), but even after these changes provision of information on diversion where there is no intervention from youth justice services, will remain voluntary (Youth Justice Board, 2022a).

This absence of reliable statistical information notwithstanding, it is abundantly clear that the use of informal outcomes for children who come to police attention is of growing importance and has played a major part in the explanation of the large fall in the numbers of child arrests, which declined by 67 percent in the decade from 2012 (Youth Justice Board, 2023a) and the reduction, outlined above, in first time entrants to the youth justice system.

Diversion from the youth justice system and ethnic disproportionality

As indicated earlier in the review, there is ample evidence that reducing the criminalisation of children has significant advantages in terms of lowering rates of recidivism. At the same time, although the research base is under-developed, it is apparent that diversion shares with other youth justice mechanisms a tendency to manifest disproportionality. Research from the United States, for example, provides evidence that there are ethnic disparities in access to youth diversion. Schlesinger (2018: 68), for instance, contends that:

'a combination of racial differences in case characteristics, implicit bias, and racialized eligibility and program requirements work together to produce racial disparities in diversion intake and completion'.

She cites data from the 1990s onwards which confirm that, even where a range of relevant factors are controlled for, court officials are between 12 and 39 percent less likely to '*divert Black youth than they are legally and socially similar white youth*' (Schlesinger, 2018: 69). Schlesinger's concerns in relation to the discriminatory nature of eligibility criteria are echoed by Ericson and Eckberg (2016) but the latter also establish that, even where minority children do meet such criteria, they are less likely to be diverted in practice, particularly for cases involving theft. As a consequence, 'non white' children entered the formal youth justice system at an earlier stage than their white counterparts.

In combination, the consequence is that, in 2019, while 52 percent of delinquency cases in the United States involving white children were diverted, the equivalent figures were 40 percent for Black children, 44 percentage for children of Hispanic origin, 48 percent for both Tribal children and Asian-American children (Mendel, 2022).

While the issue has attracted more research attention in the United States, the North American experience is echoed by the available data for England and Wales. A study conducted in the early 1980s for instance confirms how long standing, and deeply entrenched is the overrepresentation of minoritised children at the gateway to the system. Landau and Nathan (1983: 128) reported that, in London, while legal variables, such as antecedent history and the nature of the current offence, played a major role in determining whether children were charged immediately or referred to the juvenile bureau for consideration of a caution, '*extra legal variables*', including area, age and race, also had a significant effect. In particular Black children were more likely to be

subject to immediate prosecution. Research conducted for the Youth Justice Board twenty years later established that, taking into account relevant case characteristics, Black boys and mixed heritage children were more likely to be prosecuted (Feilzer and Hood, 2004). May et al's (2010) study at the end of the same decade also established that children of mixed parentage were subject to higher rates of prosecution once offence related factors were controlled for.

As noted earlier in this review, recent analysis conducted for the Youth Justice Board has confirmed that Asian, Black and mixed heritage children were all less likely to receive an out of court disposal and more likely to be charged than their white peers. Demographics and offence related factors did '*not explain away the disproportionality*' (ZK Analytics, 2021: 63).

Each of the above studies focuses on diversion as the imposition of a formal out of court disposal - a youth caution or youth conditional caution under the current statutory framework - as an alternative to prosecution; none considers the extent to which informal diversionary mechanisms might be characterised by similar disparities. Given the dramatic growth in such outcomes, this lack of attention might be considered a significant gap in the evidence base. Reflecting on the implications of existing research for the domestic context, Carmen Robin-D'Cruz and Stephen Whitehead (2021: 1) caution that:

'while the emergence of diversion is a welcome development trend, if access to diversion is not evenly distributed, it can actually exacerbate racial disparities in criminal justice outcomes for young people'

Consideration of the latest statistics suggests that such reservations are indeed warranted. If the 'reinvention' of diversion (Smith, 2014), and the associated fall in children entering the youth justice system for the first time, are major factors in explaining the wider contraction of that system, it might also be inferred that they have played a role in exacerbating ethnic disparities over the same period. While first time entry has declined for all children (78 percent over the past decade), the fall has, as shown in Table 3, been noticeably more pronounced for white children than for those from minority communities: in 2022, the number of white children entering the youth justice system for the first time was 83 percent below that in 2012; the equivalent figure for Black children was 71 percent (Youth Justice Board, 2023a). As a consequence, it would appear that although the rapid expansion in diversionary outcomes has reduced the criminalisation of all children, the benefits have not been distributed equally since minority children have become

increasingly less likely to be diverted than the equivalent white population. A recent analysis of data from youth offending team inspections provides further evidence to support that suggestion. White children constituted a higher proportion of cases within the sample who received a community resolution by comparison with those attracting a court disposal: 73% compared to 66%. Conversely, just 14% of children receiving a community resolution were Black while such children accounted for 17% of court outcomes (Kenton and Moore, 2021).

Table 3:

Reduction in first time entry by ethnic background: 2012-2022

| | Asian | Black | Other | White | Minoritised children |
|-------------------------------|-------|-------|-------|-------|----------------------|
| Fall in FTEs 2012-2022 | 78% | 71% | 74% | 83% | 73% |

As Justin Russell, Chief Inspector of Probation, has argued in evidence to the Justice Committee:

‘The number of arrests of young people of all races has been coming down, as has the number cautions and the number of young people going into custody, but it has been coming down much quicker for white children than it has for BAME children, in particular for black boys. That is a real concern. Somehow the system seems to be better at diverting white children away from the formal criminal justice system than it is for BAME children and young people. That is the big thing that needs exploring, I think, going forward’ (House of Commons Justice Committee, 2020: paragraph 70).

Decision making at the gateway to the youth justice system determines which children enter the criminal justice process, whether they are subject to formal sanctions and acquire criminal records. Any disparities at that juncture will thus be reflected, and potentially amplified, within the system itself (Uhrig, 2016; May et al, 2010, Bateman, 2012). To the extent that such decisions disadvantage minority ethnic children by comparison with their white counterparts, so that the former are less likely to avoid criminalisation, it might thereby be argued that the discretionary processes which have emerged to support the expansion in diversion are responsible, for at least some of, the increasing ethnic disparities captured in youth justice statistics over recent years (Bateman, 2020). In this context, given that relatively little is known about the nature or operation of informal diversion, it is important that a better understanding of the nature of diversionary

mechanisms should inform any strategies for reducing ethnic disproportionality within the youth justice system.

The current state of diversion in England and Wales

Traditionally discussions of diversion have referred primarily to the use of formal out-of-court disposals such as reprimands, final warnings and more recently youth cautioning (see for example, Goldson, 2000). There are currently two statutory out-of-court disposals for children: youth cautions and conditional youth cautions, both of which were introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Cautions are formal sanctions and result in a criminal record. They can only be administered where: the police determine that there is sufficient evidence to secure a conviction if the case went to court; the child admits the offence; and the police the child should be prosecuted (Ministry of Justice / Youth Justice Board, 2013b). Youth conditional cautions differ in that they require the child to comply with conditions which may be rehabilitative, reparative or punitive and can include financial penalties. A failure on the part of the child to comply with the requirements within a specified time frame can render them liable to prosecution for the offence (Ministry of Justice, 2013). More serious offences, that would be likely to attract a high end or custodial sentence are not generally regarded as suitable for cautioning. Guidance suggests that the police should take care before administering a youth caution for a sexual, serious violent offence or possession of an offensive weapon (Ministry of Justice / Youth Justice Board, 2013b).

There has been a significant reduction in the use of cautions as a proportion of formal sanctions for children's offending over the recent past. In 2012, cautions accounted for 25 percent of proven offending by children but that by 2022, that figure had fallen to 16 percent, indicating that while the number of children formally sanctioned has declined, those who enter the youth justice system are more considerably more likely to be prosecuted than previously (Youth Justice Board, 2023a). This trend is in part a predictable consequence of the rise in the use of informal diversionary mechanisms which are not recorded in the data for proven offending: as the number of first-time entrants decline, those children who do enter the system are potentially more likely to have committed more serious offences since minor matters will increasingly be filtered out. It may also reflect the fact that some children become first time entrants because they do not admit the offence at the police station, thereby rendering them ineligible for a formal pre-court sanction. Nonetheless, it has been suggested that the scale of the shift for this group of children from caution to conviction, may provide evidence that a growing '*proportion of children with no criminal record are 'skipping' the caution stage*' (Bateman and Wigzell, 2019: 15).

The growth of informal measures in recent years has led to a shift in how the term diversion is understood. The Youth Justice Board (2021a), for instance, has recently published a definition which suggests that diversionary outcomes are those outside of the statutory framework which avoid the child acquiring a criminal record, thereby excluding youth cautions. The definition clarifies that while such diversionary disposals may consist of an informal warning alone, there is an expectation that they will more often involve the child in some intervention.

'Diversion is where children with a linked offence receive an alternative outcome that does not result in a criminal record, avoids escalation into the formal youth justice system and associated stigmatisation. This may involve the YJS delivering support / intervention that may or may not be voluntary and/or signposting children (and parent/carers) into relevant services' (Youth Justice Board, 2021a: 2).

The Board identifies a range of such diversion options which it describes in the following terms:

- 'Community Resolution: A diversionary police outcome that can only be used when children have accepted responsibility for an offence. It is an outcome commonly delivered, but not limited to, using restorative approaches (National Police Chiefs' Council, 2022a)
- No Further Action: An outcome used when the police decide not to pursue an offence for various reasons. This may be because there is not enough evidence, or it is not in the public interest. Voluntary support may be offered to children to address identified needs
- No Further Action – Outcome 22: A diversionary police outcome that can be used when diversionary, educational or intervention activity has taken place or been offered, and it is not in the public interest to take any further action. An admission of guilt or acceptance of responsibility is not required for this outcome to be used (National Police Chiefs' Council, 2022b)
- No Further Action – Outcome 21: A diversionary police outcome used when further investigation, that could provide sufficient evidence for charge, is not in the public interest. This includes dealing with sexting offences without criminalising children (Youth Justice Board, 2021a: 2).

This list may not be exhaustive. It does not, for instance, include, at least explicitly, Outcome 20 where no further action is recorded on the basis that '*[f]urther action resulting from the crime report will be undertaken by another body or agency*' (Home Office, 2021: 5). Although not restricted to children, and data is not disaggregated by age, Outcome 20 was introduced as a

response to a recommendation of the All Party Parliamentary Group for Children (2015) who argued that the inability of the police to record such activity as a crime outcome was limiting the potential for informal diversion.

It is moreover clear that the range described does not fully capture the options that may be available at the local level, although the efforts of the Youth Justice Board may be likely to lead to great consistency over time. For instance, the 'Bureau' model first developed in Swansea and subsequently adopted in other parts of Wales, is explicitly predicated on an adherence to a Child First approach (Case and Hazel, 2023) which seeks to '*normalise youth offending*' by diverting children into support services that improve access to their entitlements (Haines et al, 2013: 167). In Surrey, most cases leading to an out-of-court disposal, around 90 percent, result in what is referred to locally as a '*youth restorative intervention*' (YRI), an informal outcome that avoids a formal criminal record and accords with principles of '*inclusion, integration and participation*' (Byrne and Brookes, 2015: 10). Service delivery is integrated so that the same case worker is able to oversee the YRI and continue to work with the child as a user of Family Services, should that be required, once the intervention is completed (Criminal Justice Joint Inspections, 2018). An evaluation of the initiative, published in 2014, credited the YRI with contributing towards Surrey having '*the lowest FTE figures in England and Wales*' at the time (Mackie et al, 2014: 25).

Little is known about the relative distribution of informal disposals for children, the circumstances in which each is used, or the nature of interventions attached to them (Youth Justice Board, 2023b; Criminal Justice Joint Inspections, 2018; Marshall et al, 2023). Nonetheless, it is clear that the use of such outcomes is growing rapidly – both in terms of absolute numbers and as a proportion of all crime outcomes (Kenton and Moore, 2021). As noted previously figures are not broken down by age but, as indicated in Table 4, whereas in 2017 community resolution and Outcomes 20, 21 and 22 accounted for 4.1 of police recorded outcomes, that figure had risen to 5.2 percent by 2022.

Table 4:**Selected crime outcomes year ending 2017 and 2022 (adults and children)**

| | Community resolution - Number (%) | Outcome 20- Number (%) | Outcome 21- Number (%) | Outcome 22 - Number (%) |
|-------------|--|-------------------------------|-------------------------------|--------------------------------|
| 2017 | 104,476 (2.4%) | 32,613 (0.8%) | 37,960 (0.9%) | Not available until 2019 |
| 2022 | 128,010 (2.4%) | 61,914 (1.2%) | 52,093 (1%) | 29,402 (0.6%) |

Research has confirmed that the expansion of diversionary mechanisms encompasses a range of different practices, at the local level, in the nature of interventions available, the population of children to whom they are given, the philosophical rationale which underpin them and their effectiveness - whether in terms of achieving higher levels of decriminalisation, reducing reoffending, or directing children to appropriate networks of support that enhance their wellbeing (Smith, 2014; Kelly and Armitage, 2015). Such variability is reflected in a lack of *'standardisation of decision making, assessment, planning and delivery'* (Kenton and Moore, 2021:4). The Youth Justice Board has yet to produce revised Case Management Guidance for-out-of-court disposals (Youth Justice Board, 2022b) but elsewhere (Youth Justice Board, 2021a: 2) the Board argues that all support provided in conjunction with an informal outcome should *'be proportionate, aimed at addressing unmet needs and supporting pro social life choices'*. Whether this aspiration is met in practice remains to be established.

Research conducted by HM Inspectorate of Probation has found that out-of-court work delivered by youth justice services compares unfavourably with that delivered to children subject to statutory interventions. The absence of a clear framework for managing diversionary cases in some areas had resulted in poor communication between the police and youth offending services, and a failure to record the rationales behind decision-making and assessments not being undertaken (Kenton and Moore, 2021). Where practice was less well developed, interventions tended to be generic rather than tailored to the child's particular circumstances. In some cases, where a child was known to children's services, it was assumed that this agency would be taking the lead on ensuring that child's wellbeing and safety rather than intervention being planned on an inter-agency basis to ensure that appropriate provision was in place (Kenton and Moore, 2021).

A mapping exercise of point of arrest diversion schemes for children, conducted by the Centre for Justice Innovation in 2019, confirmed that diversion was '*widely but variably practised*' (Robin-D'Cruz and Tibbs, 2019: 4). Thirty nine percent of responding youth justice services reported that only low-level offences were eligible for an informal outcome; conversely 32 percent of respondents indicated that decisions were taken on a case by case basis. The approach taken to previous offending was similarly varied: more than a quarter of schemes restricted diversion to children with between zero and two offences while 41 percent of respondents relied on case by case assessment. There was a similar lack of consistency in terms of whether children were required to admit the offence in order to access diversion. More than one third of those responding (35 percent) reported that interventions typically lasted three months or longer 25 percent indicated that programmes were generally of a shorter duration (Robin-D'Cruz and Tibbs, 2019). The authors of the review note that while the mapping exercise highlights the growth in approaches that are likely to generate better outcomes for children, capacity to monitor diversionary activity remains constrained, there is a lack of funding at the local level of support diversionary work and it is currently not possible to ascertain the number, or nature, of children who are being diverted from formal sanctions (Robin-D'Cruz and Tibbs, 2019).

A recent study of the role of youth offending services in the delivery community resolutions (CRs) imposed on children provides further evidence of the wide variation '*in types of offences eligible for a CR, the types of interventions delivered, and the length of the CRs differed across and within local authority areas*' (Marshall et al, 2023: 5). Local guidance in most areas indicated that cases resulting in community resolutions should be referred to the youth justice services, but application of such guidelines was inconsistent and respondents provided examples where that had not occurred. In other localities policy provided for the police to deliver up to two community resolutions on a child without referral, suggesting a high degree of police autonomy in relation to decision-making given that more than 90% of children receiving such a disposal have one or no previous sanctions (Kenton and Moore, 2021). There was a lack of clarity about the circumstances in which a community resolution was appropriate rather than Outcome 22, although staff interviewed for the study noted an increase in the latter disposal which they associated with the greater flexibility of that outcome, in particular the absence of any requirement on the part of the child to admit the offence (Marshall et al, 2023). Some youth justice professionals were concerned at the voluntary nature of informal diversionary measures, regarding them as a '*lenient option*'

with no enforcement potential that could undermine victim satisfaction. One respondent opined that this undue leniency would result in *'much higher rates of serious youth crime in the coming years'*. Another interviewee contended that the introduction of community resolutions had *'complicated our landscape rather than simplified and improved it'* (Marshall et al, 2023: 24).

A range of interventions had been developed to support community resolutions which most professionals described as being trauma informed and underpinned by a Child First philosophy. However, it was equally, and somewhat paradoxically clear, that offence related work remained central to delivery, typically including sessions on victim awareness, consequential thinking, peer group pressure, violent crime and knife crime awareness, content that might readily form part of a court ordered sanction. Some respondents maintained that to maximise impact, community resolutions should involve an element of reparation. Reoffending rates were described by participating services as being central to measuring the effectiveness of community resolutions. However, it was *'not clear what data was being used for their measurement or how it was being used'* (Marshall et al, 2023: 32). In one area for instance, the intervention was counted as a success if the child did not come to police attention again while the community resolution was in force. The research team highlight the need for publication of better, and consistent, data recording.

Although all the participating youth justice services had scrutiny panels to monitor out-of-court disposals, the research team was not able to establish reliable data on the use of community resolutions and it was not clear that panels routinely investigated disproportionality. The report highlights a firm consensus that the number of community resolutions had increased sharply in recent years and in some areas constituted between 60 and 80% of out-of-court disposals but no data on the ethnic background of children subject to community resolutions is provided.

Roger Smith has argued that the reinvention of diversion, while welcome, establishes a relatively *'limited frame of legitimacy'* for this form of intervention, since it does not allow multiple second chances and it fails to challenge the criminalisation of children whose offending is serious or persistent. In other words, the process is still one that allocates individual responsibility to children for their behaviour, who continue to be seen as *'the problem'*, rather than providing non-stigmatising support to disadvantaged children as a matter of rights and social justice (Smith, 2020: 27). It is certainly true, in this context, that guidance emphasises that community resolutions are generally only suitable where the offending is minor and may be inappropriate where there are

previous offences in the past 12 months (National Police Chiefs' Council, 2022). Earlier guidance specific to children did allow that an informal outcome might be given whatever the child's previous offending history, so that '*any of the range of options can be given at any stage where it is determined to be the most appropriate action*', but this potentially radical sentiment was somewhat tempered by the expectation that community resolutions should generally be reserved for 'first time offenders' (Ministry of Justice/ Youth Justice Board, 2013a: 7). In a similar vein, Kelly and Armitage's (2015) research suggested that increased informality did not necessarily imply a rejection of the risk paradigm, both could co-exist with it as demonstrated in areas where interventions associated with out-of-court disposals were offence-focused and similar in nature to those with which children subject to court orders were expected to comply.

The lack of detailed information about the use of out-of-court disposals for minoritised children is a constant theme in the literature. A thematic inspection of the experience of Black and mixed heritage children in the youth justice system, published in 2021, found that information in respect of 'street community resolutions' was rarely shared between the police and youth offending services so it was not possible to assess potential levels of disparity. The quality of work with Black and mixed heritage boys who had received out-of-court disposals was poorer than that delivered to such children subject to statutory court orders. In 40 percent of cases resulting in informal diversion (where this was recorded), children had previously experienced racial discrimination but this was rarely addressed by youth justice interventions which inspectors described as a missed opportunity to '*get under the surface*' and understand the challenges they faced as would be required by a Child First and trauma informed approach (HM Inspectorate of Probation, 2021a: 9). Over half of assessments of Black and mixed heritage boys referred for informal sanctions were inadequate and diversity issues were addressed appropriately in just one quarter of cases. Insufficient attention was paid to identifying structural challenges in the child's life and as a consequence appropriate support to overcome such barriers was frequently not provided (HM Inspectorate of Probation, 2021). Moreover, where assessments did identify need, services to meet them were not always put in place. For instance, while mental health needs were assessed as being present in 15 out of 59 inspected cases, interventions to address that need were provided in just five cases; the equivalent figures for self-identity were 25 and nine respectively; and for discrimination, 15 and six (HM Inspectorate of Probation, 2021a).

Explanations of ethnic disparities in diversion

There is a limited literature exploring why children from minority ethnic backgrounds may be less likely to access diversionary options (Wilson et al, 2018). Inequalities outside of the youth justice system clearly play an explanatory role but it is evident too that decision making and practices within that system can amplify such effects.

For instance, eligibility criteria that focus on the gravity of the index offence, exclude certain forms of offending or restrict access to diversion on the basis of previous offending have the potential to disadvantage children from minority ethnic backgrounds (Farinu et al, 2019). The differential impact of police stop and search is significant here. Concerns over the potential of discriminatory policing to aggravate disparities within the criminal justice system are long standing. Lord Scarman's 1981 report into the Brixton riots of that year, for instance, noted that the evidence was unequivocal that *'racialism and discrimination against black people - often hidden, sometimes unconscious - remain a major source of social tension and conflict'* and that policing was influenced by such phenomena just as other elements of society (Scarman, 1981: 110). The MacPherson report into the murder of Stephen Lawrence, published in 1999, went further concluding that the police were *'institutionally racist'*, a term which aimed to capture both explicit manifestations of racism in policy and practice but also *'unwitting discrimination at the organisational level'* (MacPherson, 1999: paragraph 6.15). Baroness Casey's review (2023: 327) of the Metropolitan Police noted that within that force there was *'an unwillingness ... to interrogate whether there are broader issues around race, desensitisation and systemic bias towards Black children'*.

As noted earlier in the review, levels of stop and search are significantly higher for minoritised children. There is no evidence to suggest that minority populations are disproportionately involved in criminality associated with stop and search enforcement and the impact of stop and search is *'marginal at best'* (Nickolls and Allen, 2022: 38). It is accordingly difficult to provide any legitimate justification for the pattern shown in the figures. Moreover, missing data on ethnicity means that reported differentials are likely to be an under-estimate (Nickolls and Allen, 2022). Analysis by HM Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS) indicates that one third of searches had weak grounds recorded for them. In particular,

'drug searches on Black people, and particularly possession-only drug searches, had a higher rate of weak recorded grounds than equivalent searches on White people, and fewer drug searches of Black people resulted in drugs being found' (HMICFRS, 2021: 36).

Children from minority ethnic backgrounds are accordingly more heavily policed and subject to enhanced surveillance. This inevitably leads to '*repeat offences being recorded*' against that cohort and a corresponding increased prospect that diversionary avenues will be blocked (Ofori et al, 2021: 12; see for similar findings in the United States, Bishop, 2005). Higher levels of stop and search will also result in amplified identification of children carrying knives or other offensive weapons, offences which are less likely to attract informal responses because of concerns in relation to knife crime and the introduction of mandatory sentencing in such cases (Kinsey, 2019; Farinu et al, 2019). An Action Plan published by the Mayor of London (2019) has similarly noted the potentially negative impact on minority communities on the introduction of Knife Crime Prevention Orders, established by the Offensive Weapons Act 2019. Such factors no doubt help to explain the disproportionate level of arrests of minoritised children, who in the year ending March 2022 accounted for 27% of arrests although this group constitutes only 18% of the child population (Youth Justice Board, 2023a).

The fact that a diversionary outcome frequently requires an admission of guilt can also generate disproportionate outcomes (Lammy, 2017), an issue recognised by Landau and Nathan (1983) as being problematic some forty years ago. Accepting responsibility for the criminal behaviour as a prerequisite of eligibility for an informal sanction is sometimes justified on the grounds that it provides an indication of the likelihood of engagement with supportive interventions and that, where diversionary programmes involve elements of restorative justice, the child is less likely to manifest remorse to the victim unless they accept that they have caused harm (Ofori, et al, 2021). Research by the Centre for Court Innovation however questions such assumptions, confirming that while engagement is correlated with successful intervention, readiness to change may not be predicated on acceptance of responsibility (Ofori et al, 2021). Cushing (2014) has also argued that the requirement for an admission limits the scope for diverting children from the justice system, particularly for very young children who have committed very minor offences. Practitioner assessments of remorse and acceptance of responsibility may moreover be subjective '*shaped by broader assumptions shaped by age, race/ethnicity, gender, and class*' (Ofori et al, 2021: 11). As one solicitor cited in the research argued, minority ethnic children, in particular, may struggle to come across '*the way that they ... need to come across*' (Ofori et al, 2021: 11).

There is, in any event, long standing evidence that children from minority backgrounds are less

likely to offer an admission at the point where decisions about diversion are made (Landau and Nathan, 1983; Lammy, 2017). Such differentials are commonly explained as the consequence of a lack of trust in the police and other authority figures. The Independent Office for Police Conduct (2022) argues that given the disproportionate use of stop and search to which minority communities are subject, it is scarcely surprising that individuals from those communities believe themselves to be unfairly targeted and may as a consequence feel anxious when they are approached by police.

The College of Policing acknowledges that the impact on children may be particularly likely to be traumatised by experiences of stop and search which '*may have long-term effects on their perceptions of the police*' (College of Policing, 2017). Such feelings may be compounded by the historical experience of minority populations over generations, engendering '*a collective impact*' (Nickolls and Allen, 2022: 38). Casey (2023) too highlights that lack of trust is intergenerational: as she puts it: '*While many families teach their children that police are there to keep you safe, many Black Londoners have to teach their children something different: that they should avoid contact with the police in case they are stopped or searched without cause. With each generation, that mistrust deepens*' (Casey, 2023: 327).

Government figures confirm that Black people in particular have significantly lower than average rates of confidence in their local police force, at 64 percent compared with an average of 74 percent of people overall (Nickolls and Allen, 2022). Moreover this gap is more pronounced among young people (Home Affairs Committee, 2021). More recent research (Evans et al, 2022) found similar differences in the police by children from different ethnic backgrounds: 37 percent of Black children reported that they 'completely distrust' or 'somewhat distrust' the police compared with 11 percent of white children. Moreover, while historically studies have suggested that children are more likely to trust authority than adults: '*What makes these findings so startling is that ... for Black children, levels of trust in the police are even lower than for Black adults*' (Evans et al, 2022: 54). Differences between the views of minoritised and white children were explained in part by the fact that levels of trust were considerably lower (58% compared to 74%) among children who had been stopped and searched. Trust will inevitably be further undermined by the fact that when children are arrested, those from minority backgrounds are much more likely to be subject to strip searches. Between 2018 and 2022, more than half of children who were strip searched by the police were from minoritised communities (officer defined ethnicity). Black children were more

than six times as likely to be subject to this humiliating procedure compared to national population figures while white children around half as likely to be searched as would be anticipated given the make up of the general population (Children's Commissioner, 2023). Despite the traumatic impact on a child being stripped by adults, support was frequently not offered. Only 17% of strip searches on children result in a safeguarding referral (Children's Commissioner, 2023). As one child interviewed for the research put it:

'I got out of the police station. I then disengaged from my family. I then disengaged from school. I then disengaged from everyone and turned straight to drugs.... all from how I felt the police treated me and how I felt my school treated me. It was a very humiliating situation' (Children's Commissioner, 2023: 42-43).

Research by the Centre for Justice Innovation recognises that a lack of trust in the system on the part of minority children is one of the most powerful barriers to diversion. As one police officer interviewed for the study put it:

'I'm very aware of all the evidence to do with Black and other ethnic minorities not necessarily trusting the criminal justice system or police, and not making admissions and therefore entering the criminal justice sooner than white people might do because they might be more trusting, more open to making admissions... we have a lot of Gypsy and travellers that don't necessarily make admissions, it's just the standard "No comment"' (Ofori et al, 2022: 11).

Given the potentially problematic nature of strict eligibility criteria for accessing diversion, it is perhaps unsurprising that many commentators have called for higher levels of discretion in decision-making at the gateway to the youth justice system. Ofori and colleagues (2022) for instance note that many practitioners interviewed for their study thought that increased flexibility might be a key to reducing disparities. As indicated earlier in the review, however, it is equally arguable that the high levels of local discretion associated with the emergence of informal diversion have promoted inconsistency and have proved to be an obstacle to transparency. In the context of the United States, while recognising the limitations of overly rigid regulations for accessing diversionary programmes, Mendel also points to the shortcomings of approaches that maximise discretion:

'Clear criteria for making diversion decisions are seldom spelled out in state laws, juvenile court procedures or probation department policy manuals. Instead, with little oversight and

few objective guidelines, diversion decisions are highly subjective, making this stage of the process especially prone to disparities and geographic variations' (Mendel, 2022: 2).

Within England and Wales, Landau and Nathan (1983) have argued that a formalised set of decision-making criteria were required to reduce the potential for discrimination. The Home Affairs Committee (2021) has identified police discretionary decision making as a site where institutional racism and unconscious bias can lead to disproportionate outcomes. HMICFRS (2017: 13) spelled out how such influences might operate in practice:

'Personal biases are influenced by factors including people's background, personal experiences and occupational culture, and these can affect our decision making. When people have to make quick decisions these biases can, without them realising, cause them to put particular groups of people at a disadvantage'.

One mechanism through which bias manifests itself is 'adultification' (for an early discussion see Burton, 2007), where

'notions of innocence and vulnerability are not afforded to certain children. This is determined by people and institutions who hold power over them. When adultification occurs outside of the home it is always founded within discrimination and bias. There are various definitions of adultification, all relate to a child's personal characteristics, socio-economic influences and/or lived experiences. Regardless of the context in which adultification take place, the impact results in children's rights being either diminished or not upheld' (Davis and Marsh, 2020, cited in Davis, 2022: 5).

Jahnine Davis (2022) maintains that Black children are most likely to experience adultification bias because of the legacy of slavery and racism which has perpetuated negative, stereotypical, perceptions of Black adolescents. As a result Black children are considerably more likely to be understood as more mature and less vulnerable than their chronological age would suggest and as Davis (2022: 5) puts it more likely *'to be met with suspicion, assumed deviance and culpability'*. Professional responsibilities for safeguarding such children are thus attenuated and, as a consequence, there is a greater prospect of them being treated as adults by the agents of criminal justice systems, and a corresponding lessening of opportunities for diversion. Adultification hit the headlines in June 2022 with the case of Child Q, a 15 year-old Black schoolgirl who was strip-searched by two female police officers in 2020 after she was wrongly suspected of carrying

cannabis at her east London school. Davis (2022: 10) argues that the case provides an example of how potential substance misuse concerns were not addressed from a perspective that prioritised the child's wellbeing, but were framed through a lens of *'suspicion and assumed deviance by both education professionals and the police'*. The Children's Commissioner (2022) and the Casey review of Metropolitan Police Service (2023) have both confirmed that the case provides evidence that adultification is a factor in determining police conduct towards minoritised children and recommended that training to mitigate its impact be rolled out to all officers who deal with children.

Even where diversion is achieved, there is the potential for adultification to impact on the forms of intervention with which children might be expected to comply. A US study for instance found that (court ordered) intervention packages for minoritised children were more likely to include a physical aspect, such as bootcamps, while interventions for their white counterparts were more likely to include elements such as counselling or substance misuse support (Fader et al, 2014).

In a 2022 report, the Centre for Justice Innovation notes that adultification is inherently contrary to Child First principles and that commonly used language can reinforce its potential negative consequences since *'commonplace descriptions such as 'streetwise' can reinforce negative stereotypes and undermine the recognition of children and young people's vulnerability'* (Ofori et al, 2022: 6).

A further mechanism through which bias can insinuate itself into decision-making at the gateway to the youth justice system is through assumptions about the family backgrounds of minority children, a phenomenon noted by Landau and Nathan decades ago (1983). Research in the United States has also found that children's opportunities for diversion may be restricted by decision-makers' *'assumptions about the role of family in the completion of diversion requirements which create indirect disadvantages by race'* (Love and Morris, 2019: 33). In this context, the relatively low level of diversion of African-American children is explained, in part, by the fact that such children are more likely to live in alternate family arrangements than their white counterparts. Moreover, the assumptions about the impact of family dynamics, on which decisions as to the likely success of diversion are based, are themselves without evidential foundation. Leiber and Peck (2013, cited in Mendel, 2022) found that case records of children from minority backgrounds were more likely to feature assessments that families were uncooperative or unable to supervise

their children which the researchers concluded was an indication of cultural stereotyping. Earlier studies confirm opportunities for diversion are more frequently denied where authorities deem parents for be uncooperative or unable to exert a positive influence (Bishop and Frazier, 1996).

Stereotypical assumptions and, what Lammy (2017) refers to as, the 'trust deficit' may also be exacerbated by communication difficulties between families of minority children who typically derive from lower income, disadvantaged, communities, and youth justice professionals. A study exploring the over-representation of African American children among those who 'crossed over' from the child welfare to the criminal justice system found that when such children, or their families, employed language and behaviours in face to face communications with which professionals were not comfortable, the latter tended to make negative assumptions about them and sanction them more severely than their offences might otherwise warrant (Marshall and Haight, 2014). The authors argue that '*understanding patterns of communication, power and race relations*' are accordingly crucial to explaining disparities in the treatment of children in trouble (Marshall and Haight, 2014: 82).

Practitioner assessment can disadvantage children from minority backgrounds in other ways which disclose unconscious bias. An American study of probation officer recommendations to court for convicted children identified a tendency to explain white children's criminal behaviour in environmental terms whereas Black children's lawbreaking was more often represented in terms of negative attitudes, personal failings or criminal lifestyle. The latter form of explanation was frequently associated with outcomes that did not allow of leniency (Bridges and Steen, 1998).

Children's Experiences of Diversion

The evidence from the above review is helpfully supplemented by a recent exploration of children's experience of diversion undertaken by the Centre for Justice Innovation (Ofori et al, 2022) which sheds further light on the nature of disparities at the gateway to the youth justice system. The sample of eleven children were aged 12 – 16 years and came from a range of ethnic backgrounds: four identified as Mixed Heritage, three as Black British, three as Asian and one as white (other). Four of the participants were girls. All of them had had some contact with youth justice services.

Children's views of the police mirrored some of the dynamics identified in other research described above. Interviewees for the most part demonstrated a distrust of the police and there was a consensus among respondents that children from minority ethnic backgrounds were treated less favourably by that agency, even if individual children did not identify discrimination as a problem for themselves. As one put it: *'I don't think that's an issue for me personally but I feel like I have seen police target people based on their ethnicity'* (Ofori et al, 2022: 12). Another felt that had he been *'a white boy it would be different...Probably better. Things would probably have been better'* (Ofori, 2022: 4). A third respondent recounted an experience which might be understood as an instance of adultification, although she did not, unsurprisingly, describe it in those terms. The police, on her account thought:

'Oh she is a Black girl and she is getting angry. We need to detain her or arrest. They don't understand there is a back story, like she has got anxiety and stuff. There is just me calming her down' (Ofori, 2022: 12).

Such perceptions of the police were not however shared by all the sample. Some respondents reported positive experiences which involved them feeling that they had been listened to and treated with respect.

Children's experience of legal representation was mixed. Several of the respondents made it clear that they did not fully understand the solicitor's role, a significant concern given the important part that one might anticipate advocacy would play in terms of whether an outcome at the police station was diversionary or otherwise. At least one respondent had been advised to make a 'no comment' interview by the legal representative suggesting a lack of awareness on the latter's part that to do so would potentially exclude the child from diversionary options. However, it was also

apparent that other children were, in any event, reluctant to provide the police with any information because *'you shouldn't talk to the police'* even if that increased the likelihood of a formal sanction (Ofori, 2022: 14).

Some of the sample demonstrated a limited understanding of the processes to which they had been subject, the nature of the outcomes which they had received or the obligations to which they were subject as a result. In some cases, children gave a sense of simply 'going along' things without appreciating their choices or the implications of decisions that were being made about them. As one put it:

'I don't know what offence had what outcome, and what one I'm still working on because they've all come and it's very confusing and stuff. So one day I was being told "You're coming for a case closure" and the next day it's like "The case reopened, this and that...." I just listen to what they tell me I've got to do on the phone and that. "You've got to go see these people. You've got to talk to these people" and I was just like "Yes, I'll go to that now"' (Ofori, 2022: 14).

Similarly some respondents were mistakenly of the view that they could avoid a criminal record if they complied with the expectations of a caution. By contrast, other children were able to give a clear account of the outcomes they had received, the expectations upon them and the consequences of non-engagement. In such cases, respondents attributed their understanding to the manner in which options had been communicated to them by police or youth justice workers. Some interviewees were moreover able to describe the advantages of diversion and appreciate how such an outcome was beneficial to them in the longer term. Such variations in the way that children are supported, or not, through the decision-making process has important implications for what subsequently happens to them and allows for considerable disparity in outcomes for children who might otherwise in similar situations.

There was evidence that in order to benefit fully from the opportunities that diversion might afford, children needed to be put at their ease since many described feeling extremely anxious during the decision making process, anxieties that could be allayed where professionals were sensitive and reassuring being *'nice about it'* rather than simply *'hammering you with questions'* (Ofori, 2022: 14).

One important message from children subject to diversionary programmes, which echoed findings described earlier that out-of-court interventions may simply replicate offence-focused work traditionally associated with court orders (Kelly and Armitage, 2015), was that engagement was less likely unless what was offered matched their specific needs and circumstance. One child for example was expected to participate in a knife crime reduction programme although this was not an offence he had committed. As he put it, :

'[I]...went to a virtual reality session. It was about knife crime... it wasn't really useful. I don't business with knives' (Ofori, 2022: 15).

Other children were critical of the fact that interventions were frequently online, expressing a preference for one-to-one sessions with their worker. Where face-to face encounters were offered, children particularly appreciated the benefits of, engaging in leisure activities or valued the opportunity to shape the programme in ways that had relevance for them:

'There was a choice, so if I wanted to talk about family, or staying safe. There were a few things you could talk about, and each session was something new' (Ofori, 2022: 16).

Research on the operation of community resolutions (Marshall et al, 2003) found that children were largely positive about the benefits of interventions with many highlighting good relationships with youth justice staff. However, some also critical of the repetitive nature of some of the work and in some instances described taking part in sessions that appeared to rely on deterrence and a 'scared straight' rationale (Marshall et al, 2023).

Clear communication with children about nature of the decision-making process, their options and the consequences for them, combined with the offer of meaningful support that meets children's individual circumstances and has clear benefits for them, are clearly prerequisites of reducing disparities in diversion.

Promising practice: reducing disparities in diversion

Given the above overview, Mendel's (2022) contention, albeit in an American context, that *'renewed efforts to expand and improve diversion have most often lacked one essential ingredient: an explicit and determined focus on reducing racial and ethnic disparities'* is difficult to disagree with. Revised Case Management guidance (Youth Justice Board, 2022c) includes for the first time a section on *'How to adapt for a child's race and ethnicity'*, which draws heavily on an effective practice guide on working with Black and mixed heritage boys, produced by HM Inspectorate of Probation (2021b). Key to the guidance is the idea that services know and understand *'what is driving disproportionality'* at the local level. It is evident from the literature that, insofar as diversion is concerned, such understanding is at best limited and knowledge of decision-making processes at best circumscribed. In this context, it is clear that improved data and monitoring is a prerequisite of addressing disparities in diversion and that research directed at understanding decision-making processes, and how they might disadvantage minority children, is key to holding agencies to account. Ofori and colleagues (2022: 18) suggest that local data should be used by youth justice providers to:

'assess the nature and extent of racial disparity in accessing diversion in their local area by comparing the profile of children and young people being diverted for a given offence type with that of children and young people who receive statutory disposals for similar offences. This can enable them to identify which, if any, ethnic groups, are less likely to be diverted and consider a targeted response'.

Monitoring should also identify cases where children who might legitimately have been diverted children have been charged, alongside the development of mechanisms that allow reconsideration of the potential for diversion in appropriate cases (Ofori et al, 2022).

There is some debate about what forms of eligibility criteria are most likely to reduce disparity. The Centre for Justice Innovation maintains that focussing primarily on the severity or type of offence can unduly restrict the scope for diversion since such factors are not necessarily good predictors of future risk (Farinu et al, 2019). The authors propose a more flexible approach that allows for professional discretion on a case by case basis. Other commentators, however, point to the potential for bias to inform subjective assessments of suitability for diversion such as those which seek to identify potential for engagement, willingness to change or supportive family backgrounds (see for example, Landau and Nathan, 1983; Love and Morris, 2019; Cabaniss et al, 2007). Some

studies also caution against police being able to make decisions without consulting with other agencies (Kenton and Moore, 2021; Samuels-Wortley, 2019).

As noted earlier in the review, Roger Smith (2020) is critical of current arrangements which do not allow for multiple second chances. The limited available information confirms that antecedent history is a significant factor taken into account when determining eligibility for an out-of-court disposal (Marshall et al, 2023; Kenton and Moore, 2021). Schlesinger (2018: 64) contends that focusing on prior contact with the youth justice system is not race neutral since it assumes that previous records of offending are an accurate indicator of criminal behaviour rather than aggregations of '*experiences of racial discrimination*'. She accordingly advocates measures which '*hold the least accumulated racial discrimination*' such as arrests for violent crime or previous offending sufficiently serious to lead to imprisonment (Schlesinger, 2018: 64). The Centre for Justice Innovation also highlights the criminogenic effect of formal criminal justice processing, which can undermine the natural processes of growing out of crime and maintains, on this basis, that good practice is not served by using previous system contact or diversionary interventions as an automatic bar to further informal outcomes, suggesting again that decisions should be made on a case by case basis (Farinu et al, 2019).

The literature suggests that the requirement for a formal admission of guilt in order to access at least some forms of diversionary measures militates against minority children benefiting from out-of-court disposals. In different jurisdictions, Schlesinger (2018) and Lammy (2017) highlight the highly racialised assumptions that admission is an indicator of remorse and willingness to comply with the expectations of diversionary interventions. Farinu et al (2019: 4) propose a more flexible criterion of '*accepting responsibility*' rather than a formal admission but it might be contended that this would still disadvantage children whose mistrust in authorities makes it less likely that they will respond to questions about their involvement in criminal activity. Moreover, the fact that some measures, such as Outcome 22, do not require an admission might be thought to imply that prior acceptance of responsibility need not be a prerequisite of diversion through other non-statutory mechanisms.

Increasing trust of minority children in youth justice processes is clearly important in its own right and in the context of minimising disparity at the gateway to the system. There is a general acceptance that engagement based on high quality relationships is key in this regard (Wigzell,

2021). It is also evident that increased trust is contingent on children being given information in a form that allows them to understand the processes to which they are subject and enabling them to make informed decisions. In this context, it is important too that police and youth justice professionals clearly understand the implications for children of different diversionary pathways. Evidence suggests that this understanding is not always present (Ofori et al, 2022).

Ensuring that staff have the confidence to assess the impact of prior experiences of discrimination and develop plans that address that impact, and support children to overcome structural barriers, is important both in the delivery of legitimate decision making and increasing children's recognition that interventions are relevant to their needs (Youth Justice Board, 2022c). Encouraging practice that is informed by Child First principles can help to mitigate against the potential to adultification of children from minority backgrounds (Ofori et al, 2022).

Finally, if David Lammy's (2017: 69) suggestion that decision-making within the criminal justice system should be transparent and subject to scrutiny in order to encourage '*individuals to check their own biases*' a better understanding of the nature of that decision-making is required.

References

- Acton, E (2013) 'Restorative justice a postcode lottery? – availability and quality of Service' in *Safer Communities* 14(3): 120-125
- All Party Parliamentary Group for Children (2014) *'It's all about trust': building good relationships between children and the police*. London: National Children's Bureau.
[appgc children and police report - final.pdf \(familylaw.co.uk\)](#)
- All Party Parliamentary Group for Children (2015) *Building trust: one year on. Progress in improving relationships between children and the police*. London: NCB. [basw 122120-5 0.pdf](#)
- Bateman, T (2011) 'Punishing poverty: The 'Scaled Approach' and youth justice practice', *Howard Journal of Crime and Justice*, 50(2): 171-183
- Bateman, T (2012) 'Who Pulled the Plug? Towards an Explanation of the Fall in Child Imprisonment in England and Wales' in *Youth Justice* 12(1): 36-52
- Bateman, T (2020) *The state of youth justice 2020*. London: National Association for Youth Justice.
[state-of-youth-justice-2020-final-sep20.pdf \(thenayj.org.uk\)](#)
- Bateman, T and Hazel, N (2018) 'Promoting shifts in personal narratives and providing structures of support : transitions of incarcerated children in England and Wales' *Incarcerated Youth Transitioning Back To Community: International Perspectives*. Singapore: Springer, 167-185.
- Bateman, T and Wigzell, A (2019) 'Exploring recent trends in youth justice reconvictions: a challenge to the complexity thesis' in *Youth Justice* 20(3), 183-198
- Belciug, C, Franklin, C, Bolton, KW, Jordan, C, and Lehmann, P (2016) 'Effects of goal commitment and solution building on the completion rates for a juvenile diversion program' 43(7) *Criminal Justice and Behavior* 43(7), 923-926
- Bishop, DM and Frazier, CE (1996) 'Race effects in juvenile justice decision-making: findings of a statewide analysis' in *The Journal of Criminal Law and Criminology* 86(2), 392-414
- Bishop, DM (2005) 'The Role of Race and Ethnicity in Juvenile Justice Processing' in Darnell, F, Hawkins, DF and Kempf-Leonard, K (eds) *Our children, their children: confronting racial and ethnic differences in American juvenile justice*. Chicago: University of Chicago Press, 23-82
- Bramley, R, Hall, MA, Ely, C and Robin-D'Cruz, C (2019) *Youth diversion evidence and practice briefing: minimising labelling*. London: Centre for Justice Innovation. [Youth diversion evidence and practice briefing: minimising labelling | Centre for Justice Innovation](#)
- Bridges, GS and Steen, S (1998) 'Racial disparities in official assessments of juvenile offenders: attributional stereotypes as mediating mechanisms' in *American Sociological Review* 63(4), 554-570
- Bowling, B and Philips, C (2002) *Racism, crime and justice*. Harlow: Longman

Burton, L (2007). 'Childhood adultification in economically disadvantaged families: a conceptual model', in *Family Relations* 56(4), 329–345

Byrne, B and Brookes, K (2015) 'Post-YOT youth justice. Howard League What is Justice?' *Working Papers* 19/2015. London: Howard League. - (howardleague.org)

Cabaniss, ER, Frabutt, JA, Kendrick, MH and Arbuckle, MB (2007) 'Reducing disproportionate minority contact in the juvenile justice system: Promising practices'. *Aggression and Violent Behavior* 12 393–401.

Case, S and Haines, K (2015) 'Children First, Offenders Second. Positive Promotion: Reframing the Prevention Debate', in *Youth Justice* 15(3): 226–239

Case, S and Hazel, N (2023) *Child first: developing a new youth justice system*. London: Palgrave MacMillan

Case, S, Sutton, C, Monaghan, M, Greenhalgh, J and Wright, J (2022) *Understanding preventative intervention in youth justice: identifying and analysing programme theories*. Loughborough: Loughborough University. [NUPI Identifying and analysing programme theories Phase1Report.pdf](#)

Casey, Baroness (2023) *An independent review into the standards of behaviour and internal culture of the Metropolitan Police Service*. London: Casey review. [BARONESS CASEY REVIEW Final Report \(met.police.uk\)](#)

Children's Commissioner for England (2023) *Strip search of children in England and Wales – analysis by the Children's Commissioner for England*. London: Office of the Children's Commissioner. [CC A4 HEADER \(childrenscommissioner.gov.uk\)](#)

College of Policing (2017) *Authorised Professional Practice: stop and search*. London: College of Policing. [Stop and search | College of Policing](#)

Creaney, S (2012) 'Targeting, labelling and stigma: challenging the criminalisation of children and young people', in *Criminal Justice Matters* 89, September 2012: 16-17

Criminal Justice Joint Inspections (2018) *Out-of-court disposal work in youth offending teams*. London: HM Inspectorate of Probation. [Out of court disposal work in youth offending teams \(justiceinspectorates.gov.uk\)](#)

Cushing, K (2014) 'Diversion from prosecution for young people in England and Wales. Reconsidering the mandatory admission criteria', in *Youth Justice* 14(2), 140–153

Davis, J (2022) *Adultification bias within child protection and safeguarding*. Academic Insights 2022/06. London: HM Inspectorate of Probation. [Adultification bias within child protection and safeguarding \(justiceinspectorates.gov.uk\)](#)

Development Services Group (2014) *Disproportionate Minority Contact*. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention. [Disproportionate Minority Contact \(DMC\) Literature Review \(ojp.gov\)](#)

Ericson, RD and Eckberg, DA (2016) 'Disparity in juvenile diversion: the impact of focal concerns and organizational coupling' in *Race and Justice* 6(1), 35-56

Evans, P, Olajide, I, Ross, J Clements, A (2022) *Forgotten voices: policing, stop and search and the perspectives of Black children*. London: Crest Advisory. [Crest Advisory stop and search report 2 \(usrfiles.com\)](#)

Fader, JJ, Kurlychek, MC and Morgan, KA (2014) 'The color of juvenile justice: racial disparities in dispositional decisions' in *Social Science Research* 44, 126-140

Farinu M, Robin-D'Cruz C, Waters R and Whitehead S (2019) *Youth Diversion Briefing: Eligibility Criteria*. London: Centre for Justice Innovation. [eligibility criteria briefing.pdf \(justiceinnovation.org\)](#)

Feilzer, M and Hood, R (2004) *Differences or discrimination*. London: Youth Justice Board <http://cjjr.georgetown.edu/wp-content/uploads/2018/07/ImprovingYouth-Outcomes-at-Referral.pdf>.

Goldson, B (2000) 'Wither diversion? Interventionism and the new youth justice' in Goldson B (ed) *The New Youth Justice*. Lyme Regis: Russell House Publishing, 35–57

Great Britain (2012) *Legal Aid, Sentencing and Punishment of Offenders Act 2012*. Elizabeth II. Chapter 10. London: [The Stationery Office. Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(legislation.gov.uk\)](#)

Gendreau, P, Smith, P and French, S A (2006) 'The theory of effective correctional intervention: Empirical status and future directions' In Cullen, F, Wright, J and Coleman, M. (Eds.) *Taking stock: the status of criminological theory*. Piscataway, NJ: Transaction Press, 419-446

Greenhalgh, T., Thorne, S. and Malterud, K. (2018) 'Time to challenge the spurious hierarchy of systematic over narrative reviews?', *European journal of clinical investigation*, 48(6), pp1-6

Haines, K and Case, S (2015) *Positive youth justice. Children first, offenders second*. Bristol: Policy press

Haines, K, Case, S, Davies, K and Charles, A (2013) 'The Swansea Bureau: a model of diversion from the youth justice system' in *International Journal of Law, Crime and Justice* 41(2): 167-187

Hart, D (2012) *Legal Aid Sentencing and Punishment of Offenders Act 2012: implications for children*. London: National Association for Youth Justice. [2012-LASPO-Act.pdf \(thenayj.org.uk\)](#)

HM Inspectorate of Constabulary and Fire and Rescue Services (2021) *Disproportionate use of police powers A spotlight on stop and search and the use of force*. London: HMCFRS. Disproportionate use of police powers: A spotlight on stop and search and the use of force ([justiceinspectorates.gov.uk](#))

HM Inspectorate of Probation (2021a) *The experiences of black and mixed heritage boys in the*

youth justice system. London: HMIP. [The experiences of black and mixed heritage boys in the youth justice system \(justiceinspectorates.gov.uk\)](https://www.justiceinspectorates.gov.uk/the-experiences-of-black-and-mixed-heritage-boys-in-the-youth-justice-system/)

HM Inspectorate of Probation (2021b) *Effective practice guide. Black and mixed heritage boys in the youth justice system*. London: HMIP. [Effective practice guide: Black and mixed heritage boys in the youth justice system \(justiceinspectorates.gov.uk\)](https://www.justiceinspectorates.gov.uk/effective-practice-guide-black-and-mixed-heritage-boys-in-the-youth-justice-system/)

HM Government (2008) *Youth crime action plan*. [\[ARCHIVED CONTENT\] \(nationalarchives.gov.uk\)](https://www.nationalarchives.gov.uk/archived-content/youth-crime-action-plan/)

Home Affairs Committee (2007) *Young Black people and the criminal justice system*. London: House of Commons. [House of Commons - Home Affairs - Second Report \(parliament.uk\)](https://www.parliament.uk/publications/54200/hmc-2007-07-12-young-black-people-and-the-criminal-justice-system/)

Home Affairs Committee (2021) *The Macpherson Report: twenty-two years on*. London: House of Commons. [The Macpherson Report: twenty-one years on \(parliament.uk\)](https://www.parliament.uk/publications/54200/hmc-2021-07-12-the-macpherson-report-22-years-on/)

Home Office (1997) *No more excuses: a new approach to tackling youth crime in England and Wales*. London: The Stationery Office

Home Office (2021) *Crime outcomes England and Wales: technical annex*. London: Home Office. [Crime outcomes in England and Wales: Technical Annex - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/94444/crime-outcomes-technical-annex-2021.pdf)

Home Office (2022) *Police powers and procedures: Stop and search and arrests, England and Wales, year ending 31 March 2022*. London: National Statistics. [Police powers and procedures: Stop and search and arrests, England and Wales, year ending 31 March 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/104444/police-powers-and-procedures-stop-and-search-and-arrests-england-and-wales-year-ending-31-march-2022.pdf)

House of Commons Justice Committee (2020) *Children and Young People in Custody (Part 1): Entry into the youth justice system*. London: House of Commons. <https://committees.parliament.uk/publications/3399/documents/32490/default/>

Independent Office for Police Conduct (2022) *National stop and search learning report*. London: IOPC. [OFFICIAL IOPC National stop and search learning report 20 April 2022.pdf \(policeconduct.gov.uk\)](https://www.iopcc.gov.uk/publications/54200/iopc-2022-07-12-national-stop-and-search-learning-report-20-april-2022.pdf)

Kelly, L and Armitage, V (2015) 'Diverse diversions: Youth justice reforms, localized practices, and a 'New Interventionist Diversion'? In *Youth Justice* 15(2): 117–133

Kenton, O and Moore, R (2021) *The quality of delivery of out-of-court disposals in youth justice*. London: HM Inspectorate of Probation. [The quality of delivery of out-of-court disposals in youth justice \(justiceinspectorates.gov.uk\)](https://www.justiceinspectorates.gov.uk/the-quality-of-delivery-of-out-of-court-disposals-in-youth-justice/)

Kilkelly, U, Forde, L, Hurley, E, Lambert, S, Swirak, K, Kelleher, D and Buckley, S (2021) *Ensuring the collaborative reform of youth justice in Ireland in line with international research and evidence based approaches*. Cork: University College Cork. [KilkellyetalEnsuringtheCollaborativeReformofYouthJustice.pdf \(ucc.ie\)](https://www.ucc.ie/~ucckel/EnsuringtheCollaborativeReformofYouthJustice.pdf)

Kinsey, L (2019) *Youth knife crime' in context: adolescents beyond objects of concern*. London: National Association for Youth Justice. [Youth-knife-Crime-Briefing-May-191.pdf \(thenayj.org.uk\)](https://www.thenayj.org.uk/wp-content/uploads/2019/05/Youth-knife-Crime-Briefing-May-191.pdf)

- Lammy, D (2017) *The Lammy Review: An Independent Review into the Treatment of, and Outcomes for, Black, Asian and Minority Ethnic Individuals in the Criminal Justice System*. London: Ministry of Justice. [Lammy review: final report - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/626232/lammy-review-final-report.pdf)
- Landau, SF and Nathan, G (1983) 'Selecting delinquents for cautioning in the London Metropolitan area' in *British Journal of Criminology* 23(2), 128-149
- Leiber, MJ and Fix, R, (2019) 'Reflections on the impact of race and ethnicity on juvenile court outcomes and efforts to enact change', *American journal of criminal justice*, 44, pp.581-608
- Love, TP and Morris, EW (2019) 'Opportunities diverted: intake diversion and institutionalized racial disadvantage in the juvenile justice system' in *Race & Social Problems* 11: 33-44
- Mackie, K, Cattell, J, Reeder, N and Webb, S (2104) *Youth restorative intervention evaluation: final report*. London: Social Impact Analytics
- Maclure, R., Campbell, K. and Dufresne, M. (2003) 'Young offender diversion in Canada: tensions and contradictions of social policy appropriation', *Policy Studies* 24(2-3), 135-150
- Macpherson, W (1999) *The Stephen Lawrence Inquiry*. London: Home Office
- Marshall, D, Nisbet, A and Gray, P (2023) *The implementation and delivery of community resolutions: the role of youth offending services*. London: HM Inspectorate of Probation. [The implementation and delivery of community resolutions: the role of youth offending services \(justiceinspectorates.gov.uk\)](https://www.justiceinspectorates.gov.uk/hmipr/reports/implementation-and-delivery-of-community-resolutions-the-role-of-youth-offending-services/)
- Marshall, M and Haight, W (2014) 'Understanding racial disproportionality affecting African American Youth who cross over from the child welfare to the juvenile justice system: communication, power, race and social class' in *Children and Youth Services Review* 42, 82-90
- May, T, Gyateng, T and Bateman, T (2010) *Exploring the needs of young Black and Minority Ethnic offenders and the provision of targeted interventions*. London: Youth Justice Board. [Exploring the needs of young Black and Minority Ethnic Offenders and the provision of targeted interventions \(ioe.ac.uk\)](https://www.ioe.ac.uk/research/young-black-and-minority-ethnic-offenders/)
- May, T, Gyateng, T and Hough, M (2010) *Differential treatment in the youth justice system*. London: Equality and Human Rights Commission. [differentialtreatment youthjusticesystem report50 cover.indd \(equalityhumanrights.com\)](https://www.equalityhumanrights.com/en/youth-justice/differential-treatment-youth-justice-system-report-50)
- Mayor of London (2021) *Action plan: tackling ethnic disproportionality in youth justice*. London: Mayor of London Office for Policing and Crime. [tackling ethnic disproportionality in youth justice - action plan.pdf \(london.gov.uk\)](https://www.london.gov.uk/asset-upload/2021/09/tackling-ethnic-disproportionality-in-youth-justice-action-plan.pdf)
- McAra, L and McVie, S (2015) 'The case for diversion and minimum necessary Intervention' in Goldson, B and Muncie, J. (eds) *Youth Crime and Justice, 2nd Edition*. London: Sage, 119-136

McAra, L and McVie, S (2017) 'The shrinking youth justice population: a change in behaviour or a change in the system?' in *Scottish Justice Matters* 5(1): 38-39.

McAra, L and McVie, S (2018) 'Transformations in youth crime and justice across Europe: evidencing the case for diversion. In B. Goldson (Ed) *Juvenile justice in Europe: past, present and future*. Abingdon: Routledge, 73-103

Mendel, R (2022) *Diversion: a hidden key to combating racial and ethnic disparities in juvenile justice*. Washington DC: The Sentencing Project. [Diversion-A-Hidden-Key-to-Combating-Racial-and-Ethnic-Disparities-in-Juvenile-Justice.pdf \(sentencingproject.org\)](https://www.sentencingproject.org/publications/diversion-a-hidden-key-to-combating-racial-and-ethnic-disparities-in-juvenile-justice)

Ministry of Justice (2013) *Code of Practice for Youth Conditional Cautions*. London: Ministry of Justice. [Code of Practice for Youth Conditional Cautions \(justice.gov.uk\)](https://www.justice.gov.uk/publications/youth-conditional-cautions)

Ministry of Justice (2017) *Government Response to the Lammy Review on the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System*. London: Ministry of Justice. [Government Response to the Lammy Review on the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/625441/government-response-to-the-lammy-review-on-the-treatment-of-and-outcomes-for-black-asian-and-minority-ethnic-individuals-in-the-criminal-justice-system.pdf)

Ministry of Justice / Youth Justice Board (2013a) *Youth Out-of-Court Disposals guide for Police and Youth Offending Services*. London: Youth Justice Board. [Youth Out-of-Court Disposals: Guide for Police and Youth Offending Services \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/625441/youth-out-of-court-disposals-guide-for-police-and-youth-offending-services.pdf)

Ministry of Justice / Youth Justice Board (2013b) *Youth Cautions Guidance for Police and Youth Offending Teams*. London: Youth Justice Board. Youth Cautions - Guidance for Police and Youth Offending Teams ([publishing.service.gov.uk](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/625441/youth-cautions-guidance-for-police-and-youth-offending-teams.pdf))

Ministry of Justice / Youth Justice Board (2017) *Summary of responses to the MOJ and YJB survey on youth justice: prevention of offending*. London: Ministry of Justice.

Moore, LD and Padavic, I (2010) 'Racial and ethnic disparities in girls' sentencing in the juvenile justice system', *Feminist Criminology*, 5(3), 263-285

Moore, LD and Padavic, I (2011) 'Risk assessment tools and racial/ethnic disparities in the juvenile justice system' in *Sociology Compass* 5(10), 850-858

National Police Chiefs' Council (2022a) *Community Resolutions Guidance*. London: NPCC. [Microsoft Word - New Community Resolution Guidance Document V4 \(college.police.uk\)](https://www.college.police.uk/npcc-community-resolutions-guidance)

National Police Chiefs' Council (2022b) *Outcome 22 (O22) Guidance 2022*. London: NPCC

Nickolls, L and Allen, G (2022) *Police powers: stop and search*. London: House of Commons Library. [SN03878.pdf \(parliament.uk\)](https://www.parliament.uk/publications/2022/03/stop-and-search/)

Ofori, A, Cox, A, Jolaoso, B, Robin-D'Cruz, C and Whitehead, S (2021) *Equal diversion? Racial disproportionality in youth diversion*. London: Centre for Justice Innovation. [CJI Exploring-disproportionality.pdf \(justiceinnovation.org\)](https://www.justiceinnovation.org/publications/equal-diversion-racial-disproportionality-in-youth-diversion)

- Ofori, A, Robin-D'Crum, A, Jolaoso, B and Whitehead, S (2022) *Children and young people's voices on youth diversion and disparity*. London: Centre for Justice Innovation. [Children and young people's voices on youth diversion and disparity \(justiceinnovation.org\)](https://justiceinnovation.org/children-and-young-peoples-voices-on-youth-diversion-and-disparity)
- Petrosino, A, Turpin-Petrosino, C and Guckenburg, S (2010) *Formal system processing of juveniles: effects on delinquency*. Oslo: The Campbell Collaboration. <https://onlinelibrary.wiley.com/doi/pdf/10.4073/csr.2010.1>
- Pitts, J (1988) *The Politics of Juvenile Crime*. London, Sage
- Pitts, J (1993) 'Thereotyping: Anti-racism, criminology and black young people' in Cook, D, Hudson, B (eds) *Racism & Criminology*. London: Sage, 96–117
- Roberts, M, Buckland, G and Redgrave, H (2019) *Examining the youth justice system: What drove the falls in first time entrants and custody, and what should we do as a result?* London: Crest Advisory. [Examining the YJS: What drove the falls in first time entrants and custody? | Crest Advisory](#)
- Robin D'Cruz, C and Tibbs, E (2019) *Mapping Youth Diversion in England and Wales*. London: Centre for Justice Innovation. [mapping-youth-diversion-in-england-and-wales-final.pdf \(justiceinnovation.org\)](#)
- Robin-D'Cruz and Whitehead, S (2021) Disparities in youth diversion – an evidence review. London: Centre for Justice Innovation. [Disparities in youth diversion – an evidence review | Centre for Justice Innovation](#)
- Samuels-Wortley, K (2019) 'Youthful discretion: police selection bias in access to pre-charge diversion programs in Canada' in *Race and Justice*, 12(2), 387–410
- Scarman, Lord (1981) *The Brixton Disorders, 10–12th April 1981*. London: HMSO
- Schlesinger, T (2018) 'Decriminalizing racialized youth through juvenile diversion' in *The Future of Children* 28(2), 59-81
- Smith, R (2014) 'Re-inventing diversion' in *Youth Justice* 14(2):109-121
- Smith, R (2020) 'Diversion, rights and social justice' in *Youth Justice* 21(1): 18-32
- Smyth, P. (2011) 'Diverting young offenders from crime in Ireland: The need for more checks and balances in the exercise of police discretion' *Crime Law Societal Change*, 55, 153–166.
- Spacey, M and Thompson, N (2022) 'Beyond individual trauma: towards a multi-faceted trauma-informed restorative approach to youth justice that connects individual trauma with family reparation and recognition of bias and discrimination', *British Journal of Community Justice*, 18(1), 18-35
- Sutherland, A, Disley, A, Cattell, J and Bauchowitz, S (2017) *An analysis of trends in first time entrants to the youth justice system*. London: Ministry of Justice. [An analysis of trends in first time](#)

[entrants to the youth justice system \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

Taylor, C (2016) *Review of the youth justice system in England and Wales*. London: Ministry of Justice. [Review of the Youth Justice System \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

Uhrig, N (2016) *Black, Asian and minority ethnic disproportionality in the criminal justice system in England and Wales*. London: Ministry of Justice. [Black, Asian and Minority Ethnic disproportionality in the Criminal Justice System in England and Wales \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

University of Edinburgh (undated) *Edinburgh Study of Youth Transitions and Crime: about the study. About the Study - | Edinburgh Study of Youth Transitions and Crime*, accessed 7 March 2023

Waltham Forest Safeguarding Children Board (2020) *Serious Case Review Child C a 14 year old boy*. Final Report, May 2020. [WFSCB - SCR Child C May final .pdf \(walthamforest.gov.uk\)](https://walthamforest.gov.uk)

Warner B, Spivak B, Ashford L, Fix R, Ogloff J and Shepherd S (2022) 'The impact of offender–victim cultural backgrounds on the likelihood of receiving diversion', *Criminal Justice Policy Review* 33(3), 298-316

Wigzell, A (2021) *Explaining desistance: looking forward, not backwards*. London: National Association for Youth Justice. [explaining-desistance-briefing-feb-2021-final.pdf \(thenayj.org.uk\)](https://thenayj.org.uk)

Wilson, HA and Hoge, RD (2013) 'The effect of youth diversion programs on recidivism: A meta-analytic review' *Criminal Justice and Behavior* 40(5), 497-518

Wilson, D, Brennan, I, and Olaghere, A (2018) *Police-initiated diversion for youth to prevent future delinquent behavior*. Oslo: Campbell Collaboration. <https://doi.org/10.4073/csr.2018.5>

Wong, JS, Bouchard, J, Gravel, J, Bouchard, M and Morselli, C (2016) 'Can at-risk youth be diverted from crime? A meta-analysis of restorative diversion programs' in *Criminal Justice and Behavior* 43(10), 1310-1329

Youth Justice Board (2014) *Youth Justice Strategy for Wales: Children and Young People First*. London, Youth Justice Board. [\[Withdrawn\] Youth justice strategy for Wales: children and young people first - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

Youth Justice Board (2018a) *YJB Case Level Ethnic Disproportionality Toolkit pilot: a process evaluation*. London: Youth Justice Board. [Microsoft Word - FINAL Lammy evaluation report 31.10.18.DOCX \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

Youth Justice Board (2018b) *Strategic plan 2018-2021*. London: Youth Justice Board. [Microsoft Word - 201804_YJB Strategic Plan 2018 21_Final.docx \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

Youth Justice Board (2019a) *The journey of the child*. London: Youth Justice Board. [\[Withdrawn\] The journey of the child - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

Youth Justice Board (2019b) *YJB Strategic Plan 2019-2022*. London: Youth Justice Board. [Microsoft Word - 190509 Annex A_YJB Strategic Plan_final.DOCX \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

Youth Justice Board (2021a) *Definitions for Prevention and Diversion*, London, Youth Justice Board. [Definitions for Prevention and Diversion - Youth Justice Board \(2021\) - Youth Justice Resource Hub \(yjresourcehub.uk\)](#)

Youth Justice Board (2021b) *Summary of prevention and diversion scoping survey*. London: Youth Justice Board. [Summary of Prevention and Diversion Scoping Survey - May 2021 \(yjresourcehub.uk\)](#)

Youth Justice Board (2022a) *Data Recording Requirements for Youth Justice Services in England and Wales April 2022 to March 2023*. London: Youth Justice Board. [Data Recording Requirements for Youth Justice Services \(April 2022 to March 2023\) - Youth Justice Resource Hub \(yjresourcehub.uk\)](#)

Youth Justice Board (2022b) *Case management guidance: how to use out-of-court disposals*. London: Youth Justice Board. [Case management guidance - How to use out-of-court disposals - Guidance - GOV.UK \(www.gov.uk\)](#)

Youth Justice Board (2022c) *Case management guidance: how to adapt for a child's race and ethnicity*. London: Youth Justice Board. [Case management guidance - How to work with children - Guidance - GOV.UK \(www.gov.uk\)](#)

Youth Justice Board (2023a) *Youth justice annual statistics 2021/2022 – England and Wales*. London: Youth Justice Board [Youth justice statistics: 2021 to 2022 - GOV.UK \(www.gov.uk\)](#)

Youth Justice Board (2023b) *Prevention and Diversion project: final report* London: Youth Justice Board. [https://yjresourcehub.uk/images/YJB/Prevention and Diversion Project Final Report YJB Feb 2023.pdf](https://yjresourcehub.uk/images/YJB/Prevention_and_Diversion_Project_Final_Report_YJB_Feb_2023.pdf)

ZK Analytics (2021) *Ethnic disproportionality in remand and sentencing in the youth justice system Analysis of administrative data*. London: Youth Justice Board. [Microsoft Word - BAME research report final v4.docx \(publishing.service.gov.uk\)](#)