

Understanding the issues which may be contributing to racial disparity within Pre-court diversionary approaches in Wales for all groups of people, with a focus on Women and Children:

A Review of the Literature

Executive Summary

Author: **Mark Jones**

Director, Higher Plain Research & Education and
Visiting Professor for the Centre for Criminology,
University South Wales



Cyfiawnder Troseddol
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**Criminal Justice
in Wales**



Glasbrint Cyfiawnder
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The tragic death of George Floyd was felt across the world and highlighted our own challenges with racism in the UK and Wales. The protests that took place in Cardiff and in other cities in Wales, as part of the Black Lives Matter movement, led to a reflection in many parts of society by the institutions that shape and influence it, including the Criminal Justice System (CJS).

In response, Criminal Justice in Wales (CJIW) worked with all partners in the CJS across Wales to develop an anti-racism action plan through committed engagement with ethnic minority groups and communities across Wales to ensure that it was co-produced. The Anti-Racism Action Plan for the Criminal Justice System in Wales was published in September 2022 following the publication of the Welsh Government's, Anti Racist Wales Action Plan in May. The Welsh Government's plan and the CJS's plan align and support each other with an aim for a whole system approach to anti-racism and change across society.

The Anti-Racism Action Plan for the CJS in Wales (2022) has made seven commitments to the Welsh public and states that it will deliver the plan in keeping with Welsh Government's definition and understanding of anti-racism. The CJS action plan is therefore evidence based and has been informed by those with expertise in this space and importantly by and with experts who have lived experiences of the Criminal Justice System and/or are working in the field of anti-racism.

Research suggests that those with protected characteristics, including women and children from ethnic minority backgrounds can face a double disadvantage in their interactions with the CJS. Indeed, most academics and research in this area find the CJS to be racist at the personal, cultural, and institutional and structural level. In 2017, the Lammy Review shone an essential light on disparity in the treatment of, and outcomes for, ethnic minority people within the CJS. Ethnic minority defendants are consistently more likely to plead 'not guilty' than White defendants and consequently, if found 'guilty', they are then more likely to face more punitive sentences than if they had admitted guilt. Lammy highlighted that a lack of trust in the CJS is at the heart of this issue.

Whilst there has been some progress made, it is clear that there is still a very long journey ahead to address racism, overrepresentation, and poor treatment of ethnic minority people, and particularly those with additional protected characteristics and/or vulnerabilities such as women and young people, across the whole CJS.

The joint MoJ and Welsh Government Women's Justice Blueprint (2019) set out a vision to build on the transformation of services to improve the outcomes and experiences of women across Wales, through a whole system approach. The Women's Justice Blueprint (2019) has sought to promote the need to take a person-centred, trauma informed approach to the delivery and design of services for women. The Blueprint is focused on delivering across a number of thematic areas that reflect key stages of the criminal justice journey, within which, there is a specific focus on strengthening early intervention and prevention opportunities for women across Wales and building robust community-based options that meet women's needs. However, the Blueprint also recognises that there are key gaps in the evidence-base in relation to women from an ethnically minoritized background, that may be impeding on the ability to offer the right support. By not understanding the potential challenges faced by these individuals, the risk is that they may not be getting the support they need and/or they may be disengaging from the services that are available due to their needs not being fully understood.

The Youth Justice Blueprint (2019) in Wales highlights the importance of supporting children who have adverse childhood experiences (ACEs) with much higher risks of committing violence and ending up in prison than children that do not have ACEs. The Blueprint is primarily focused on preventing and minimising the impact of ACEs and supporting positive change in children. Like the Women Justice Blueprint, the aim is to achieve this through a whole-system approach using rights-based and trauma-informed practice and system. The main elements of the Youth Justice blueprint are: Targeted prevention, Pre-court diversion, and Community services with an emphasis on rolling out a trauma-based approach. However, the evidence suggests that although youth diversion is beneficial for the

children who go through it and has been shown to reduce re-offending there is disproportionality in access and engagement with it from ethnic minority children. Research strongly indicates that unequal treatment early in the CJS accumulates into larger disparities downstream (The Centre for Justice Innovation, 2021).

This reality has shaped the Anti-Racist Action for the CJS in Wales and aligns to several themes within the plan but relates directly to Commitment 7 regarding the anti-racist work that is needed within 'Prevention, Early Intervention and Rehabilitation' within the CJS. There is a commitment to 'work together to end the over representation of ethnic minority people who have committed a crime and defendants in the criminal justice system in Wales and that 'We will provide holistic, person centred and trauma-informed support to offenders and those at risk of offending so they can make informed life choices for employment, education, social relationships, and mental and physical health and well-being.' This means that work needs to be achieved to understand more about the lived experiences and needs of all ethnic minority groups experiences of pre-court diversion with a focus on Women and Children and this is the overarching aim of this project of work.

Anti-racist work is currently being developed across Wales and in Cardiff this was being governed and led by Cardiff's Race Equality Taskforce and this was supported by the office of the South Wales Police and Crime Commissioner. The Cardiff Taskforce had been tasked with identifying practical opportunities for anti-racist change to improve race equality in the city, finding new ways that could deploy local levers to improve experiences and outcomes for Ethnic Minority residents. The Taskforce worked together in partnership with communities, individuals with lived experience and expert organisations, to identify the problems and, most importantly, work together on solutions to address racial disparities. The Taskforce and the office of the South Wales Police and Crime Commissioner identified the need to address negative experiences of diversion that children, women, and men from ethnic minority backgrounds face within their communities.

It was therefore agreed that there was a need for a collaborative project between the Women's Justice Blueprint Team, the Youth Justice Blueprint Team, the Cardiff Race Equality Taskforce, and Criminal Justice in Wales, and other organisations across the CJS in Wales to explore and understand the experiences and needs of people from ethnic minority backgrounds who were or should be engaging with pre-court diversion. This project was facilitated by the office of the South Wales Police and Crime Commissioner specifically in the development of the specification and in terms of their support with coordinating this work. The intention is that the findings of this project will develop a set of recommendations that will contribute to broader learning across the CJS and inform future service design to prioritise prevention and diversion pathways.

Against this backdrop, the current research is being commissioned to provide insights and evidence to enable the Cardiff local criminal justice partnership to deliver the following recommendation:

Cardiff's local criminal justice partnership to develop and invest in tailored or alternative approaches to diversion for ethnic minority groups, including (but not limited to) women and children.

It is anticipated that the findings from this research will be shared with partners across Wales, via all Wales criminal justice governance arrangements to benefit and help to inform the design and response to services for those from minority ethnic communities across Wales.

This research will focus on early intervention and prevention decision making opportunities through pre-court diversion, for all ethnic minority groups and characteristics but with a focus on (but not limited to) women and children (aged 17 and under). As the work originated in Cardiff, this will be the geographical focus area for the latter applied nature of this research. However, learning will be disseminated across Wales, via the current pan Wales criminal justice governance arrangements and Blueprint Project Boards.

Research Approach and Design

This project will use a sequential mixed methods approach to meet the aims and scope of this proposal in four stages:

1. Desktop review of available literature to better understand current knowledge, practice, gaps, and recommendations for future practice development, including:

- i) Research, policy, evaluations, practice, and guides that already exist around pre-court diversion and prevention, including the use of OoCD's, and decision making in the system.
- ii) Review of relevant recent community engagement narratives and reports undertaken whilst co-producing the Anti-Racism Action Plan for the CJS in Wales focusing on experiences of the police and wider CJS.
- iii) Ensure highlighting of learning specific to racial trauma / Trauma Informed Practice.

2. Map the decision-making process in relation to pre-court diversion and diversion activity for all involved within the Cardiff Bay Police Hub:

- i) Understand the decision-making progress through the development of a decision-making flow chart.
- ii) Analyse and 'map' the data to the key decision-making points on the decision-making flow chart to better understand and explore opportunities to use data.
- iii) Identify who is responsible and explore through focus groups what contributes to key decisions in pre-court diversion.
- iv) Understand the experiences of organisations who provide diversion activities and interventions, people from ethnic minority backgrounds who has received pre-court diversion, and if possible lawyers and solicitors that provide advice in relation to accepting pre-court diversion and OoCDs.

- v) Case Study Report (short to facilitate community engagement and building blocks for final report)

3. Following stages 1-2 facilitate an appropriate and sensitive community engagement with key stakeholder groups with lived experiences of the CJS to test and challenge the recommendations and understandings.

- i) Key stakeholder focus groups to be facilitated by those with lived experiences of the CJS from ethnic minority backgrounds now working in support services in the CJS and or allied health professions.

4. Produce a final report that captures the work of stages 1-3 ensuring that the main literature themes, focus group findings, recommendations for best practice and understandings of decision making have been supported / agreed by the stakeholder groups.

All the above should contribute to the production of a set of recommendations/considerations (with specific attention given to women and children) that will contribute to the development of:

Tailored or alternative approaches to diversion for Ethnic Minority groups that are also trauma informed. This is to ensure that there is equal opportunity to be diverted away from the CJS and into support-based services.

This report is the completion of stage one of this project and the findings and recommendations from the extensive review of the literature is shared within this executive summary.

The literature review's needs were extensive and therefore had five main themes to explore and these were:

 **1** Evaluating the success and impact of OoCDs and Diversion programmes.

 **2** A more detailed analysis of pre-court diversion programmes in the CJS.

 **3** Supporting and meeting the needs of women in the CJS and more specifically those from ethnic minority backgrounds within the use of pre-court diversion and intervention.

 **4** Children from ethnic minority backgrounds experiences of the YJS and diversion.

 **5** Using Learning theory and practice in developing diversionary approaches.

Each of these themes offered useful learning and recommendations for future consideration in the development of pre-court diversion.



Evaluating the success and impact of OoCDs and Diversion programmes.

Out of Court Disposals (OoCDs) allow the police to deal with lower level and often first-time offending behaviour by using an appropriate disposal order without the need to go through a court prosecution process. There are a range of six different types of OoCDs in England and Wales and these include; Cannabis Warning's, Community Resolution's, Conditional Caution's, Khat Warning's, Penalty Notice's for Disorder (PNDs), and Simple Caution's. All OoCDs should also where appropriate, and with consent, support the victim's voice to be heard and to be part of the decision-making process, for example, the person who offended to make an apology and engage with an education programme to support rehabilitation (Gibson, 2021).

However, the number of different OoCDs types have been criticised for being overly complex and that a simplified OoCD approach could offer simplicity of application and use for professionals and for the wider public to understand. Due to these criticisms a pilot project was implemented in 2014 in England to test a more simplified two-tier approach with an additional focus of those that are given an OoCDs take greater responsibility and action with their disposal orders. South Wales Police force moved to a two-tier model in 2021 but this was not part of the pilot project in England. The two-tiered approach is more alike to Restorative Justice (RJ) practice and many would suggest that it challenges the causes of the behaviour and is a better solution for the victim, offender, and society (Bowen and Slade, 2020; Gibson, 2021) and makes the victim more central to the process and system (Gibson, 2021).

Following reviews of the pilot programme and ongoing evaluation and learning from additional sites that tested the new approach the UK Government released its White Paper, 'A Smarter Approach to Sentencing,' in 2020 which proposes adopting the two-tiered framework nationally and this certainly appears to be what will happen in 2023 at the time of writing this critical review. This new national framework will introduce two-tier framework for OoCDs with the use of a diversionary caution or a community caution. Police forces will likely be able to continue to use non-statutory disposals such as the Community Resolution. The new diversionary caution will replace, but is similar to the conditional caution, and will have a rehabilitative, reparative or punitive condition attached with a timeframe and the consequence of prosecution if not fulfilled (Centre for Justice innovation, 2022).

Therefore, the evaluations of the use of OoCDs in general, and of the new two-tier framework pilot by Ames et al (2018), Neyroud (2018), Gibson (2021), Cordis Bright (2019), and The Centre for Justice Innovation (2022), and the review of the revised conditional caution framework by Rowe et al (2022) suggest that to fully understand and better implement a two-tiered OoCDs framework across all of policing in England and Wales there are some key considerations and recommendations to ensure better practice and outcomes for all stakeholders.

These include:

1. At least a six-month implementation period to support effective delivery.
2. Greater transparency and accountability in police force decision making in respect of both victim and offender protected characteristics.
3. Appropriate IT infrastructure and capability to support timely and effective eligibility screening, monitoring, and analysis.
4. Effective engagement, inclusion of and communication with victims throughout and after outcome.
5. Appropriate resource for police and intervention providers to deliver higher workload especially relating to education and training, compliance monitoring, and assessment of more complex cases.
6. Effective Evaluations with all OoCDs.
7. Greater understanding and monitoring of the impact of using OoCDs with Domestic Violence and hate crime offenders with a larger sample of offenders to offer the opportunity for such a detailed understanding.
8. Tailored individual approaches to support needs and positive change in those engaged.



A more detailed analysis of pre-court diversion programmes in the CJS

Gibson (2021) highlights that where rehabilitative conditions are given it can successfully reduce reoffending and refers to Project CARA working with domestic abuse perpetrators in Hampshire (Strang et al, 2017); Checkpoint in Durham (Weir et al., 2021;) and Turning Point in the West Midlands (Neyroud and Slothower, 2013). Weir et al. (2021) highlights the review carried out by Blakeborough and Pierpoint in 2007 indicates that pre-court interventions using conditional cautioning supported people who had offended to address the causes of crime across six UK police forces. Towler (2017) found that diversion approaches using restorative practice with young adults aged 18-25 in south Wales was successful in challenging offending behaviour and supporting wider needs related to ACE's. Holloway, Williams, and Brayford (2017) and Cordis Bright (2021 and 2022) also found within a Welsh context that a women's specific approach has good success in supporting diversion away from the CJS and this is contained within the women's specific section later on in this review. However, Wier et al (2021) found that the research to assess the effectiveness of caution and diversionary schemes in the UK is very limited (Supported by Cordis Bright, 2019) with more needing to be done to better understand how and why such approaches may work and the Centre for Justice Innovation (2022) also highlighted this in their findings in this area of work.

When referring to other global understandings of where diversionary and deferred prosecution approaches are also used Harvey et al (2007) undertook a detailed systematic review of 20 projects, of which 19 were diversionary, from studies in North America and Australia. Harvey et al. (2007: 385) found that there were some positive outcomes in reducing offending using such models and approaches but that real understanding of how and why such programmes worked were limited due to "poor methodological quality and inadequate reporting of study details." A limitation with this work by Harvey et al. (2007) is that it considers only diversionary projects that have been delivered with adults who have substance use issues. Weir et al. (2021) agrees and states that the lack of quantitative studies that offer comparative understandings between diversionary and more formal approaches with similar cohort characteristics (age, ethnicity, gender, etc) is severely lacking and is a significant challenge to those involved in developing effective diversionary and rehabilitative OoCD policy because it is not fully understood what works and the how and the why it may work.

From the review and evaluation of recent OoCDs and other diversion / pre-court intervention programmes there are some useful areas of learning for general populations, meaning those that are dominated by people of White British ethnicity and largely with men. The common characteristics of the reviewed programmes offer some commonality and areas for learning to support future development of such programmes. The common features that supported success and positive outcomes in diversion programmes or common recommendations that their evaluations made include:

1. Consistency of practice across all delivery and that a network is created with delivery partners to share data, experiences, good practice, monitoring and evaluation.
2. Strong partnership relationships are needed to effectively deliver pre-court diversion projects especially between the Police and intervention providers who should work closely in decision making and eligibility assessment of clients.
3. Quick processing of pre-court diversion is essential to support client commitment and motivation to engage.
4. High quality awareness raising and training is needed for all partners to support understanding and development of skills needed to support the approach and model of practice. This is particularly important for Police staff who are used to working within more punitive and formal prosecution processes and are less used to working in more therapeutic and needs led approaches, and this includes training on restorative justice approaches.
5. Training should be co-produced and delivered by those with lived experiences of the CJS and pre-court approaches.
6. Pre-court diversion practice should seek to build strong positive relationships with clients at the point of arrest and throughout their engagement with the project. There should be focus on the development of mutual trust and respect, positive role modelling from the practitioner and

interventions that support discussion to increase self-agency, informed choice, problem solving development and use trauma-informed practice. Clients should not be made to feel the damaging stigma and label of 'being a criminal' and rather the project is about supporting them to lead healthier and more positive lives.

7. Pre-court Intervention and support plans should be led by practitioners that are independent of the CJS who work with clients to develop support to meet their needs and should not create plans that are too onerous and have a large number of conditions. Three to four conditions seem to be a common and useful approach.
8. Interventions should be individually tailored and are commonly needed to support negative experiences relating to mental health, substance use, unhealthy relationships, emotion and behaviour management, ACE's, overall well-being.
9. Interventions should use a range of delivery approaches including one to one support, referral to support services, group workshops, online intervention support.
10. Restorative Justice approaches need to ensure that the victim is effectively included throughout the duration of the clients who has offended engagement. Victims need to feel listened to, heard, and that they have some choice and control over the process and the conditions set for the client.
11. High quality empirical research is needed for future pre-court diversion projects so that trustworthy lessons can be applied for future projects and this must include the experiences and needs of people from ethnic minority backgrounds and other protected characteristics such as religion, age, gender, LGBTQIA+, and specifically trans identities.

A lack of ethnic minority perspectives within pre-court diversion literature

However, it is clear that a major criticism of the above pre-court interventions is that their own evaluations do not really analyse ethnic minority experiences of their diversion programmes (Bennett and Corry-Roake, 2021). The lack of ethnic minority perspective is true for ethnic minority people more broadly and regarding specific ethnic minority groups such as women and children, especially young girls. A lack of understanding and appropriate support and services is sending ethnic minority people deeper into the CJS (Wang, 2023) and it is not a surprise that some disparity is getting worse (Bhattacharya, 2021), it certainly shows the whiteness from which the CJS operates and is a blanket of whiteness like snow, as poetically captured by Eddo-Lodge (2017).

The reality that diversion programmes do not meet ethnic minority needs or even consider them within reports is not new and NACRO in 2009 offered a useful and critical guide to developing appropriate services for ethnic minority people involved in such diversion programmes; it is interesting that their recommendations still have credibility and need in 2023, 14 years after its publication. It could be argued that the knowledge to change practice and be inclusive and anti-racist has been around for long time but the CJS has just not listened and taken the needed steps to ensure it becomes a reality.

The following recommendations are to support practice with, and appropriate development of services for, people from ethnic minority backgrounds and these have been synthesised from HMCIP (2022) and Bhattacharya (2021) but are still largely from the NACRO (2009) report:

1. A diverse workforce that reflects the groups it serves.
2. Education and training is focused on developing cultural competency and anti-racist practice, and includes how ethnicity often intersects with specific age (children and young adults), religion, and language.
3. Relationships with clients focus on developing trust, respect, and genuineness through culturally competent conversations that clients feel they can disclose and be honest about their experiences and needs.
4. Assessment of needs considers an individual's cultural and religious identity.
5. Assessment of risk is objective and that race and ethnicity are not seen as an indicator of dangerousness.
6. Effective relationships are developed with interpretation / language services.
7. Recording and monitoring of ethnicity, language, and faith so that analysis can be achieved to support understanding.
8. Effective networks and partnerships are made with diverse and specialist services that meet the needs of ethnic minority people and that referrals and info-sharing is achieved.
9. Effective whole-organisation communication with all partners on work, best practice, and guidance.
10. Awareness raising and building trust within ethnic minority groups and communities.



Supporting and meeting the needs of women in the CJS and more specifically those from ethnic minority backgrounds within the use of pre-court diversion and intervention.

The Corston report (2007) found that women were more likely to be arrested for minor offences than men, and to be sentenced for first time offences than men, as well as more likely to be victims of crime than men. Despite only making up 14% of people arrested, 15% supported through probation and 5% within prison in 2018/19 women are still one of the most vulnerable groups within the CJS (Centre for Justice Innovation, 2019). Overall, women have been more harshly treated by the CJS than men and the findings and recommendations of the Corston report suggested that women specific approaches were needed within the CJS.

The MOJ released the Ministry of Justice's Female Offender Strategy (2018) which uses the recommendations from the Corston report (2007) and focuses on reducing the number of women in custody by increased use of community interventions, and developing more appropriate support for women in custody that focuses on family, reducing self-harm, and support on transition back to the community upon release. However, the national audit office (2022) concludes that the CJS is still not responsive or supportive of the needs of women in the system.

Within a Welsh context the joint MOJ and Welsh Government Women's Justice Blueprint for Wales was published in 2019 and is the principle delivery mechanism for the priorities within the MOJ Female Offender Strategy (2018) with a particular highlighted focus /approach on evidence-based practice. The Blueprint (2019: p1) sets out to meet the challenge of developing and providing a joined-up approach to women's support in Wales that 'acknowledges the gender-specific needs of women, promotes positive wellbeing and supports successful long-term outcomes to reduce reoffending.' The main foci of the Blueprint are to: reduce the number of women in the system by improving early intervention, prevention, and diversionary support; provide alternatives to custody and improved community support such as the residential women's centre; and improve understanding of women's needs through robust evidence and help improve sentencer confidence in community sentences. There are challenges to this because there is no women's prison in Wales, therefore women are typically held in prison establishments that can be significant distances from their families and support networks. This can also further complicate the experiences of resettlement and reintegration following a period of incarceration for women who live in Wales.

In Wales however, the progression of good practice is stronger as it is delivering via the Blueprint and there has been some useful progress since its publication. There has been good progress in terms of strengthening community options for women notably that there are diversion schemes in place across each of the four police force areas in Wales and the use of a whole system approach service for women across south Wales and Gwent. Despite a clear Blueprint strategy there are still gaps in understanding the experiences and needs of women more broadly and even more so for ethnic minority women and girls within the CJS and YJS.

Analysing the themes from the available literature of Easton et al (2010), The National Offender Management Service (2015), The Tavistock Institute (2019), The Centre for Justice Innovation (2019), The Footprints project (2020), Advance (2021), the SHE project (2022), Sheeran (2022), Holloway, Williams, and Brayford (2017); and Cordis Bright (2021 and 2022) there are some clear recommendations and understandings for the development of future women's diversion projects that are worthy of note including the need for:

1. National policy and approach with clear governance to ensure local delivery in partnership with women's centres and specialist women's organisations that is joined up through Home Office, MOJ, and Health and Social Care Institutions (Public Health).
2. Visible leadership from Police Chief's and Police and Crime Commissioners.
3. Increased and long-term resource allocation to create sustainability and long-term impact and change.
4. Widen criteria for access for women so even if charged or under investigation they receive the community support they need and referrals to be made from partner agencies, wider community services, and support self-referral. It is important that women cannot 'fail' a programme and have multiple attempts and support.

5. High quality and regular education and training on needs led, co-produced, gender specific and trauma informed approaches to supporting women as well as supporting the needs of women with other protected characteristics such as ethnicity, age, religion, sexuality, and issues of net-widening and up tariffing to minimise effects for officers, review officers, magistrates, and voluntary sector providers.
6. Clear guidance for the Police Service, the CPS, and any other partner involved in decision making and how to use with other conditions and ensure consistent decision making especially during times of pressure and high workloads (when decision making can be flawed or people take the easy 'charge' route to save time).
7. Understanding that women's needs are complex despite often low-level crime and commonly includes support relating to challenges of poor mental health, abuse, domestic violence, well-being, housing issues, financial problems, substance use, lack of education, training, or employment, negative parenting skills, and being primary or sole care provider.
8. Resources for specialist key workers and activities to meet complex and high needs (especially mental health) but not to 'overdose' women with intimidating and over intense interventions and support. That key workers are independent of the CJS and often based within custody suites to support effective decision-making for pre-court diversion and lead on co-production of intervention plan with women.
9. Development of and or working with specialist organisations that support those from marginalised groups, such as women from ethnic minority backgrounds, those with religious beliefs, and LGBTQIA+ individuals and groups.
10. Identified women's champion to work alongside all agencies/stakeholders with regular contact with custody suites (daily) to check in and raise awareness with officers and visits to custody suites to speak to women in custody (twice a week).

11. Embedding of holistic, trauma-informed, and women's specific practice and services that build trust, respect, safety, and increased self-agency and reflection to support empowerment and informed life decisions and healthy lives and don't further criminalise and or stigmatise women.
12. A communication strategy aimed at women within CJS, those that work in the CJS, and other support services in the wider community to raise awareness.
13. A 'user-friendly' data approach so effective understanding and learning can be achieved and fed back into the approach for ongoing development.
14. Further research into the needs of women from marginalise groups including those from ethnic minority backgrounds, religious backgrounds, and those who are LGBTQIA+.

However, none of the narrative above discusses the needs or experiences of the ethnic minority women that were engaged with the projects. The recommendations for future practice therefore are useful but are not specifically contextualising the experiences, needs, and developments in practice that is the focus of this literature review. Indeed, the available literature on ethnic minority women's experiences of pre-court diversion and intervention including the use of OoCDs is very limited and virtually non-existent within a UK perspective (Sheeran, 2022).

Despite the lack of specific literature on diversion relating to women from ethnic minority backgrounds experiences there are some emerging and very useful sources of literature from a range of academics (including particularly the work of Hargons et al, 2022; Imkaan, 2016, Kanakam, 2022; Naz et al, 2019; Thomas, 2021; and Williams, 2021). From analysing and synthesising the themes in this section there are clear areas of learning and recommendations for developing practice that better meets the needs and experiences of women from ethnic minority backgrounds; these can arguably be applied directly to diversion and pre-court approaches in Wales. The learning and recommendations are that:

1. Language and terminology use is important and ethnicity is unique for every individual and so using umbrella labels like BAME is not appropriate. The use of 'racially and ethnically minoritized' 'racialized communities' and 'people of colour and other marginalised groups' is generally preferred as it validates multiple racial / ethnic identities and is non-hierarchical. However, getting to know women from ethnic minority backgrounds and their preferred language and terminology is best practice and it shows women you are using inclusive and considered practice.
2. Understanding and responding to race-based stress, racial trauma, and knowing that racism is a form of trauma is central to creating a healing environment that considers needs, experiences, boundaries, and expectations of women from ethnic minority backgrounds. Practitioners also need to understand how gender, ethnicity, and other identities such as religion, sexuality, age, and class all intersect to support the creation of individualised approaches to support

3. There is a need for culturally competent and anti-racist practitioners who can actively listen, discuss, and facilitate conversations on race, ethnicity, culture, racism, and racial trauma, as well as other identities comfortably and can show they are interested in supporting women from ethnic minority backgrounds and all their identities is of high importance for relationships building and for women to feel safe, open and honest and successfully engage with support provided
4. All practitioners, but especially White British practitioners need effective and ongoing education and training on being culturally competent and anti-racist in their practice so they can effectively support women from ethnic minority backgrounds and not avoid discussions based on lack of knowledge and fear and anxiety of 'getting it wrong'
5. Create a reflective practice model and culture in all organisations to support confident reflective discussion with colleagues, teams, and supervisors on cultural competence and anti-racism and supporting women from ethnic minority backgrounds. The aim is to create a 'cultural reflective practice' and lifelong learning approach to working alongside women from ethnic minority backgrounds and approach this with 'cultural humility'
6. Practice guidance for practitioners and wider support services as well as raising awareness with the wider public on a national level to support system wide change and belief in the system
7. Identification and or development of specialist services for women from ethnic minority backgrounds so they are supported effectively and appropriately in previous recommendations
8. Increased resource for development and ongoing funding of specialist services for women from ethnic minority backgrounds so not all homogenised together
9. Those with lived experiences should review and evaluate current services and guide the development of new appropriate services and approaches, including education and training of practitioners
10. More research is needed on local contexts so services are developed to meet local needs and experiences and better support diversion engagement and desistance
11. Diverse workforce representation is needed so that it reflects the people it supports and therefore there is a need to increase ethnic minority practitioners working in diversion and pre-court approaches and the wider CJS



Children from ethnic minority backgrounds experiences of the YJS and diversion.

The Youth Justice Blueprint for Wales (2019) outlined aims to develop a YJS that is transformative and joined up, where key stakeholders work together to ensure that the system treats children with respect and fairness and support positive change and support children to live crime free, feel safe, and have positive well-being. Case and Browning (2021) add to this and propose a 'child first' approach that has now been adopted by the Youth Justice Board for England and Wales in their strategy (2021). Due to this commitment to a child first approach and that anyone under the age of 18 is defined as a child with this approach, the term 'child' shall refer to anyone under the age of 18 in this section. It is however important to note that youth work, which is a closely allied profession, labels their work as working with young people aged 11-25 and that anyone within this age range is a young person and that even Youth Justice uses the word 'youth' within its own label, as does so much of the literature on 'youth diversion.' It also opens broader debates about whether young people in transition to adulthood from 18-25 should have separate and more child focused approaches too, but this is out of the scope of this review.

Case and Browning (2021) propose that for the YJS to be 'child first' it should; see children as children and meet their needs; support children to develop pro-social identities; collaborate with and for children; and promote diversion away from the stigma of being in contact with the system. Case et al (2022) argue that the biggest and most pressing challenge to Youth Justice in England and Wales is making the child first tenets mainstream consistent practice and not just a policy and strategic notion. The Welsh Government (2022) acknowledges that there needs to be cultural change within the system and the developing of an approach that is non-punitive, does not criminalise those who were looked after, uses a child-first approach, and better understands the experiences of ethnic minority children and young people in relation to pre-court diversion.

When synthesizing the discussion and content from the key literature (Harris and Goodfellow, 2022; HMIP, 2022; Jones and Henry, 2022; Traverse 2023; and Youth Justice Board, 2020), there needs to be development and understanding in a number of key areas and this review highlights the common learning and recommendations for practice and policy:

1. A child first approach is used where children are seen as children and their needs are met, that children are supported to develop pro-social identities, collaborate with and for children, and promote diversion away from stigma and contact with the CJS.
2. High quality education, training, and leadership is needed that develops culturally competent and anti-racist workforce, culture, and practice.

3. Increased and consistent use trauma-informed practice / therapeutic interventions that support a child's development and an understanding that trauma compromises, delays, and or impairs the emotional, social, and cognitive development of children and that trauma experiences are common for children engaged with the YJS and CJS.
4. A focus on relationship building with children is central to their trust and engagement with interventions and should be based on trust, understanding and empathy, integrity, patience, respect, choice, participation, empowerment, and a holistic needs-led approach. These skills and approaches are deemed to be more important than the ethnicity of a youth justice worker from the perspective of most children from ethnic minority backgrounds and will support higher engagement and commitment to positive long-term goals.
5. Children from ethnic minority backgrounds have significantly high rates and experiences of school exclusion, exploitation, racial discrimination, care and support plans or protection plans; as well as having high rates of disability, poor education and health experiences, and having specific educational needs not identified. There are also high rates of family violence and breakdown, high social deprivations, and racial trauma from engagement with the CJS. Such children therefore experience multiple ACE's and have high levels of negative mental health and low well-being with high and complex needs. This greater complexity of experiences, barriers, and challenges require greater consideration and access to support services and greater support in accessing appropriate services.
6. Increased research to better understand the experiences of children from ethnic minority backgrounds of pre-court and diversion provision.
7. Lower reoffending rates seem to be supported in diversion interventions if children have positive attitudes towards learning, employment, friends, family, and parenting and so interventions should focus on developing these characteristics.
8. Children from ethnic minority backgrounds face significant isolation, racism, and disproportionality in the CJS and wider society and engage less with diversion opportunities due to a lack of trust in the system and that this has increased over the Covid-19 Pandemic. Engagement with groups and communities including family approaches is needed to overcome the lack of trust in the CJS.
9. Youth Offending Services should challenge the racism that ethnic minority children experience in relation to racial profiling, stop and search, adultification, and harsher treatments by the system.
10. There is a need for specialist services that specifically meet the needs of children from ethnic minority backgrounds and support their needs including the experiences of peer influence and pressure. Specialist services should be co-created with children from ethnic minority backgrounds.
11. Increased research is needed into understanding why and what is causing over-representation in the system and the development of clear, consistent, and detailed data for diversion so outcomes over time can be tracked for children from ethnic minority backgrounds (and other marginalised identities).
12. YJS approaches need to ensure close inter-agency working and information and system sharing to ensure joined-up decision making and a whole system model of holistic and trauma informed practice that supports children with complex needs and provides consent, clarity, and relatability of intervention offered.
13. There needs to be an increase in the ethnic diversity of the workforce so it reflects the children it supports.

Understandings of pre-court Diversion practice with children and young people from ethnic minority backgrounds

The Youth Justice Board (2023) found that to effectively support diversion then there needs to be greater partnership working with a shared vision and that there are some good examples of such practice involving police, health, education, children's services, courts, and wider providers where they all used a child first and rights-based practice. However, the report also found that prevention and diversion approaches have inconsistent funding, varied practice quality, missed opportunities for use due to poor information sharing, outdated guidance on good practice, poor data quality and capture, and a lack of national and local governance consistency. These themes are consistent with earlier research in a Welsh context by Williams and Llywelyn (2016) who evaluated the Dyfed-Powys Youth Justice Bureaus. Similar themes of good practice were identified but there were needs identified for better Police training to better recognise referral opportunities to Youth Justice and early interventions, as well as better information sharing with Youth Offending Service. They also found that there could be greater use of referral to Youth Offending Services and more professional discussion with youth offending practitioners on borderline referral cases. Interestingly, neither report mentions meeting the needs of or the experiences of children from ethnic minority backgrounds.

Indeed, the Welsh Centre for Policy and Practice (2021) recommended that there needs to be a greater priority and resource to researching factors that influence children offending from ethnic minority backgrounds and differences in understanding across different ethnic minority groups and this seems a Western nation issue (The Sentencing Project, 2022). Furthermore, they state that such research should be used to guide the development of appropriate prevention and diversion schemes for children from ethnic minority backgrounds (this review is part of that work). Gaffney et al (2022a) conclude that there are inadequate understandings from the

research on diversion and more needs to be carried out to have confident analysis of what works in diversion and why it works.

The research and literature on the experiences of, and supporting children from ethnic minority backgrounds within pre-court diversion is limited in some respects (useful literature includes; Banwell-Morre, 2022; Fitzpatrick et al, 2022; Gaffney et al, 2021 and 2022; and Jones and Henry, 2022) but there are clear areas for learning and recommendations to guide future diversion practice, and these are:

1. Long term resource agreement needed for diversion work at a national level to alleviate pressures on YOS's who are increasingly unable to meet high demands.
2. National definition, guidance, and model for child diversion so there is consistency of high-quality provision and experiences.
3. The need for strong partnership working across multiple-agencies with a shared vision, information / data sharing, and joint decision making to embody a whole system approach with Police, YOS's, and intervention providers working closely together.
4. Education and training to better recognise referral opportunities for diversion and to support appropriate assessment of risk and stop up-risking children from ethnic minority backgrounds.
5. Research into factors that influence offending by children from ethnic minority children and across different ethnic minority groups and that this is used to develop appropriate diversion programmes and interventions.

6. Point of Arrest child diversion may offer the most effective and ethical approach as children are diverted away from harmful effects of engagement with YJS and CJS as even OoCDs are formal processes that arguably label and stigma children and jeopardise their future opportunity of education, employment, and training.
7. The need for broad and inclusive eligibility criteria with multiple opportunities to engage, not need to admit guilt, and should fully understand and consent to diversion. This would better support children from ethnic minority backgrounds to engage with diversion as they are more likely to be arrested, receive an offence, and not admit guilt than White children so need more inclusive diversion criteria due to this disproportionality.
8. Diversion assessment and referral needs to be quick (48 hours) to support diversion and engagement by children and captured as a positive outcome by Police and their performance management schemes.
9. Diversion programmes need to be managed and supported by dedicated child diversion caseworkers with off-site sessions that are not part of statutory provision to support trust and engagement.
10. Interventions need to be evidence based, therapeutic, informal, light touch, proportionate and delivered by the voluntary / third sector and include specialist ethnic minority provision to support the needs and experiences of children from ethnic minority backgrounds.
11. Education and training for lawyers / solicitors and advice and guidance to parents and carers to raise awareness of the positive outcomes of diversion to support informed decision making and for lawyers to be more culturally competent in supporting children and their families from ethnic minority backgrounds.
12. Strong inter-agency working and information, data, and system sharing to better understand the journey and outcomes of children from ethnic minority backgrounds to support understanding and future development.
13. Restorative Justice (RJ) diversion further disengages children from ethnic minority backgrounds due to lack of knowledge, mistrust in the system, lack of ethnic representation in support staff, fear of shame in their family and community and in meeting the victim.
14. To increase children from ethnic minority backgrounds engagement with RJ barriers need to be removed by building strong relationships with children and their families and outreach to raise awareness of RJ in ethnic minority communities and in schools.
15. RJ needs a clearly defined model at a national level and appropriate education and training to all stakeholders to create effective culturally competent practice and raising awareness within the YJS and CJS.
16. RJ needs to use specialist RJ mentors that are from ethnic minority backgrounds and have lived experiences of RJ to effectively support children from similar backgrounds to engage.
17. Victims in crimes are often the last thought and victim satisfaction is often low in diversion and RJ programmes and so victims need to be included throughout the time of the programme and included in decision making where appropriate. Victims need to feel listened to, heard, and have choice and control within their experience of diversion and RJ programmes.
18. MST approaches to support diversion could be effective and useful especially as the intervention is therapeutic, involved the whole family, and is trauma informed but more research is needed in this area.
19. More research is needed to understand the experiences and needs of girls from ethnic minority backgrounds within the YJS and in diversion and use this to coproduce specialist services for diversion work with girls from ethnic minority backgrounds.



Using Learning Theory and Practice in Developing Diversion approaches.

Our understandings of children, young people and adult education are diverse and constantly evolving within what is a multi-disciplinary umbrella, as are the learning and education theories used to explain how people learn. Indeed, there is no single definition, theory, or model that explains how or why people learn (Merriam, 2017). However, across all the literature there are a useful set of principles and theories that construct what can be viewed as the foundations of learning, as well as a growing body of knowledge that has more recently broadened our understanding and application of theory and practice that can support education and learning (Merriam, 2017).

The Coates Review (2016) found that those who had been involved within the CJS often had negative previous experiences of formal education and this is a common experience captured and reported in the literature (Warner, 2007; Czerniawski, 2016; Torlone & Vryonides, 2016; Wood, 2020; and Jones and Jones, 2021). Therefore, despite the evidence that exalts the benefits of education in supporting desistance (Jones and Jones, 2021) it shines light on how those that educate within such contexts need to understand that the past experiences of education of those that they are teaching can impact on future successes. This understanding needs to guide approaches for education with those who have offended and arguably means that using more informal and discursive andragogical practice is needed and offers support to Knowles et al's (2005) principles of learning.

Therefore, the main elements to arguably embed from learning theories within diversion practice to better support the needs of people from ethnic minority backgrounds and those that support and deliver such programmes is too:

1. Those involved in diversion whether clients or professional staff need to see the value and know reason in what they are learning and that it is relevant to their lives and or roles.
2. Explore and understand the motivations of learners to support their commitment to learning and engagement.
3. Develop an informal learning approach that is conversation based, collective, co-produced, humanistic, shares power, is moral, and supports critical thinking and sharing of personal experiences.
4. Support critical reflection of own world view, personal histories, and beliefs, norms, rights, and wrongs and become solution focused and challenge the learner to better understand multiple perspectives and application of this to their social world and or work contexts.
5. Create safe and secure environments where people feel solidarity, purpose, trust, and respect and are not judged.
6. Create opportunity for developing and engaging with a new self and learning new perceptions and views that may challenge and mean the creation of new rules, roles, relationships, norms, and values.
7. Opportunity to plan, practice, and gain confidence in new ways of being, experiences, skills, and become more responsible for own learning and become self-directed learners.
8. Create environments that are pleasant and open to support learning and conversation.

Conclusion

The literature review for this project has discussed and synthesised the available literature concerning tertiary interventions as defined by the CJBW (2022) where interventions are aimed at diverting people away from the CJS and so includes programmes and activities that are also called diversionary, prevention, early intervention and are often implemented through using OoCDs. The main focus of this review was to understand the experiences of diversion for people from ethnic minority backgrounds including a particular focus on women and children.

The available literature reviewed included a significant amount of appropriate texts that relate to the subject matter and offer a lens from which to support the outcomes for this project and included; research articles and journals, policy documents, reports, project evaluations, published practice, and other documents such as guides to practice. Nearly 200 sources of literature were used for this review offering global, UK, and Wales specific understandings and perspectives.

Another key source of understandings for this review was taken from the narratives and discourses gained regarding the experiences of the police and wider CJS through the engagements carried out across Wales during the co-production writing of the Anti-Racism Action plan for the CJS in Wales (2022).

Finally, due to the embedded thread of trauma informed practice within the Anti-Racism Action Plan for the CJS in Wales, where there were understandings to gain within the reviewed literature particular attention and synthesis of trauma and racial trauma experiences was included.

Ultimately, this review has provided a detailed overview of the knowledge, understandings, and applications to practice within diversion and where available the learning, understandings, and recommendations for future practice to better support people from ethnic minority backgrounds within such work. This review will ensure a final report can be agreed (phase four) that offers evidence based and co-produced understandings on how to develop tailored or alternative approaches to diversion for Ethnic Minority groups that are also trauma informed.

This executive summary offers recommendations and key learning for all the areas of discussion. However, despite the extensive areas of research, policy, and practice discussed within this review there are some clear common themes and learning to take forward for diversion practice to better support people from ethnic minority backgrounds.

Indeed, the main areas for development to create an effective diversion approach to meet the needs of people from ethnic minority backgrounds are need for:

- Long-term resource to ensure work is carried effectively and has time to develop, be effectively evaluated and to show impact and areas for continued learning and development.
- Strong governance and leadership at and through a national, regional, and local level.
- Education and Training to develop culturally competent and anti-racist practitioners and leaders within all stakeholders involved with diversion practice to support effective relationships with people from ethnic minority backgrounds (including lawyers, solicitors, and courts).
- Developing effective relationships that are culturally competent and anti-racist means that practitioners are confident to discuss culture, ethnicity, racism, racial trauma, and other identities such as religious, sexual, and class to support the experiences and needs.
- Developing effective relationships in diversion also need to be built through mutual respect, trauma informed practice, holistic needs led support, and supporting clients to develop critical thinking and reflective skills to gain greater self-agency and make informed life choices and to coproduce their own intervention and support plan as part of this development process.
- Understanding that people from ethnic minority backgrounds face multiple barriers to engaging with the CJS due to racism and disproportionality and have experienced multiple ACE's, racism, racial trauma, and have significant support needs and mistrust of the CJS and other institutions in society. Therefore, eligibility criteria for diversion programmes needs to be broad, flexible, forgiving, and inclusive, and not need an admission of guilt for engagement.
- Consider that diversion practice should be standardised across Wales and that the model should use a point of arrest diversion approach where possible and that all condition-based cautions should use a restorative justice process that is embedded within the support and interventions provided.
- Research the needs and experiences of people from ethnic minority backgrounds of diversion and coproduce new practice and projects with those with lived experiences.
- Using and developing specialist provision and support for people from ethnic minority backgrounds that are independent to the CJS / statutory services as they are more trusted and people engage more confidently but also for the CJS to work in partnership with such providers to learn and understand such services, build trust with such services, and with groups and communities from ethnic minority backgrounds.
- Develop an ethnically diverse workforce that reflects the people that it supports.
- Raising awareness through community outreach to promote greater understanding and buy in of the positive diversion approach, and advice and guidance for ethnic minority groups regarding diversion approaches to support trust in the system and informed decision making.

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Cyfiawnder Troseddol
yng Nghymru
**Criminal Justice
in Wales**

Our vision and purpose is to make the Criminal Justice System in Wales the fairest, the most efficient and the most effective it can be - with anti-racism as a core value and approach



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