



Release's response to the Home Office Consultation on police powers of stop and search

Release is the national centre of expertise on drugs and drugs law – providing free and confidential specialist advice to the public and professionals. Release also campaigns for changes to UK drug policy to bring about a fairer and more compassionate legal framework to manage drug use in our society.

Release welcomes the opportunity to respond to this Home Office consultation. We are pleased that the Home Secretary wishes to improve police use of stop and search to ensure that it is 'applied fairly and in a way that builds community confidence in police rather than undermining it.' However, it is our opinion that this can only be achieved by tackling the misuse of stop and search in the detection of drug offences.

This consultation response will focus on the use of stop and search to detect drug offences. In August 2013 Release and LSE published a report, '[The Numbers in Black and White: Ethnic Disparities in the Policing and Prosecution of Drug Offences in England and Wales](#)', **much of what is presented here is based on the findings of this research** (the report is also submitted as part of the consultation response).

Release's response will provide a broad overview of the issues surrounding the policing of drugs under the headings prescribed in the consultation paper. Annex A to this response provides answers to the closed questions posed in the consultation paper.

Finally, Release is a member of StopWatch (www.stop-watch.org) and we support the recommendations in their detailed response to this consultation.

Introduction

Stop and search has increased steadily since 2001/2 from less than 750,000 to a peak of almost 1.3 million in 2010/11, more than 1.2 million of which were carried out under PACE and associated legislation¹. Despite a slight decline, there were still more than one million stop searches carried out in 2011/12.² Half or more of these searches were for drugs.

The police use of stop and search to detect drugs forms the majority of stop and searches in nearly every police force in England and Wales. As identified in the recent report of Her Majesty's Inspectorate of Constabulary (HMIC)³ most of these searches are targeted at 'low level drug possession offences'. However discussion around the use of stop and search tends to focus heavily on the power being utilised to detect or prevent knife and gun crime, in practice such searches only account for 11% of the total (10% and 1% respectively). As such any review of stop and search powers cannot be properly undertaken without addressing the issue of policing and drugs.

1. Effectiveness

As stated over half a million stops and searches for drugs are carried out every year, in terms of effectiveness it is important to consider:

- the variation across police forces in the use of this ground to initiate a stop and search and the variation in arrest rates;
- the positive outcome rate;
- incentivised policing;
- the negative consequences;
- the relationship between law enforcement and drug prevalence rates.

1.1 The variation in Stop and Search & Arrest rates across police forces in England and Wales

The research carried out by Release and LSE showed that in 2009/10 the Metropolitan Police Service ('MPS') and the Merseyside Police Service were stopping people at much higher rates than any other police force in the country. However, the variation that exists across police forces in England and Wales raises issues regarding the consistency of the use of the power and the futility of stopping and searching people at such high rates for drugs.

In 2009/10 the national rate for drug stop and searches across England and Wales was 10 searches per 1000. When broken down by ethnicity the rate was 7 per 1000 for the white population, increasing to 14 per 1000 for those identifying as mixed race, 18 per 1000 for those identifying as Asian, and to 45 per 1000 for those identifying as black.

¹ Including section 23 Misuse of Drugs Act 1971.

² Home Office, 2013, *Police Powers and Procedures England and Wales 2011/12- Tables for Police powers and procedures stops and searches 2011/12*, <https://www.gov.uk/government/publications/tables-for-police-powers-and-procedures-in-england-and-wales-201112>

³ HMIC, 2013, *Stop and Search Powers: Are the police using them effectively and fairly?*, <http://www.hmic.gov.uk/media/stop-and-search-powers-20130709.pdf>

In the MPS the rates of drug stop and searches increased dramatically with an overall rate of 34 per 1000 searches. The ethnic breakdown was also significantly higher than the national picture with white people being stopped and searched at a rate of 24 per 1000, black people at a rate of 66 per 1000, and Asian people stopped and searched at a rate of 37 per 1000. By comparison in the second largest populated police force area, the West Midlands Police Service, the rate of stop and search for drugs was 3 per 1000 – for this police area the ethnic breakdown was 2 per 1000 for white people; 6 per 1000 for black people; and 6 per 1000 for the Asian community.

There is no explanation for the wide variations in the rates of stop and search across police forces and in terms of effectiveness the intensity of drug stop and searches seems to bear no relation to the arrest rate (currently one of the only measures of effectiveness being used for stop and search). To put this into context the national arrest rate resulting from stop and searches for drugs was 7 per cent, the MPS arrest rate was 6 per cent and the West Midlands Police arrested 3.5 per cent of those stopped and searched for drugs. When comparing this to the search rates we can clearly see that there is no correlation between the rates of stop and search and the levels of arrest.

In terms of measuring effectiveness arrest rates can never be an indicator of success, an arrest is an intermediate outcome and is not an end in itself. A low arrest rate is a matter for concern because it indicates that officers are setting the bar for reasonable suspicion too low, subjecting members of the public to unnecessary, and arguably illegal, searches. While a high arrest rate may indicate more targeted use of stop and search it may, alternatively, be indicative of inappropriate use of formal sanctions, including poor quality arrests, pushing the problem deeper into the criminal justice system, or of selective record keeping. If arrests are to be used as a performance indicator it is vital that the police are able to distinguish between these possibilities.⁴ The question that obviously arises is at what rate would the arrest rate indicate success - 30 per cent or 50 per cent or 80 per cent – in any event such rates would be impossible to achieve.

There has been very little research into the effectiveness of stop and search and its impact on prevention, deterrence and detection of crime. A 2000 Home Office review of the research evidence determined that there is little evidence that stop and search plays a significant role in controlling crime or in maintaining public order.⁵

1.2 Positive Outcome Rates

Until June 2013 the MPS used positive outcome rates to demonstrate effectiveness. This includes incorporating cannabis warnings and PNDs for cannabis possession into performance tables. For example, in May 2013 the MPS progress report showed a 'positive

⁴ Eastwood N, Shiner M, Bear D, (2013), 'The Number in Black and White: Ethnic Disparities in the Policing and Prosecution of Drug Offences, Release, page 47
http://www.release.org.uk/sites/release.org.uk/files/pdf/publications/Release%20-%20Race%20Disparity%20Report%202013_0.pdf

⁵ Miller, J., Bland, N., Quinton, P. (2000) *The Impact of Stops and Searches on Crime and the Community*, Police Research Series Paper 127, London: Home Office.

outcome' rate in 18.3%⁶ of all stop and searches across the capital, the arrest rate hovered around 10 per cent for most areas. Release is pleased that the MPS has decided to do away with this approach.

The main problem with using 'performance outcomes' that include cannabis warnings and PNDs is that it can result in the prioritisation of the detection of low level cannabis offences at the expense of policing more serious crime. Research has shown that this can result in the police actively seeking out people that are more likely to be in possession of small amounts of drugs⁷ rather than focusing on crimes that communities care about, such as violent or property crime.

A similar concern exists in relation to the Commissioner of the Metropolitan Police Service commitment to reduce the number of **negative** drug searches by half. Reducing negative drug searches is, of course, desirable, but there is a danger that setting such performance targets will create perverse incentives that may result in the inappropriate use of formal sanctions (to get a 'hit') or non-recording to hide unsuccessful searches. If the police are to use such indicators it is essential that they are able to identify where such manipulation occurs.

1.3 Incentivised policing

As part of the research for the Release/ LSE report consideration was given as to what were the drivers for police officers to stop and search for low level possession offences. Whilst there are no national performance indicators it is clear from the comments of senior police officers that the target culture is embedded in police behaviour:

*"Despite assurances from the current Government about the removal of central targets there is still a really strong performance management culture in the service, which has created a generation of people who are great at chasing targets but do not always recognise that doing the right thing is the best thing for the public."*⁸ (Chief Superintendent Irene Curtis)

To support the view of senior officers we researched a number of online forums where police openly discussed the target culture. This included the number of stop and searches carried out by officers to show that they were active when out on the streets, as one officer stated, *"If you weren't doing at least three stop-and-searches per shift, you had to explain yourself"*.⁹ Another stated *"We were recently told that our BCU PACE 1s [stop and searches]*

⁶ MPS Publication Scheme, 2013, Stop and Search Key Performance Indicator Progress Report, May 2013, http://www.met.police.uk/foi/units/stop_and_search.htm

⁷ Eastwood N, Shiner M, Bear D, (2013), 'The Number in Black and White: Ethnic Disparities in the Policing and Prosecution of Drug Offences, Release, page 44
http://www.release.org.uk/sites/release.org.uk/files/pdf/publications/Release%20-%20Race%20Disparity%20Report%202013_0.pdf

⁸ Press Association, 2013, 'Police Performance Targets Cause 'Dysfunctional Behaviour' And Should Be Curbed Says New Chief Superintendent' Huffington Post UK, http://www.huffingtonpost.co.uk/2013/03/17/police-targets-curbed_n_2897721.html

⁹ Chitty A, 2013, 'The London Met: Not Racist, Apparently, Vice Magazine, http://www.vice.com/en_uk/read/riots-junkies-and-gangs-a-conversation-with-an-ex-met-policeman

had fallen to an unacceptable level on our internal force league table and that we needed to stop-search more people.”¹⁰

As well as the simple activity of stop and search, police officers appear to demonstrate their own effectiveness to senior police officers through the use of sanctioned detections. Arguably, for police officers the easiest sanctioned detection that can be obtained is low level drug possession offences, in particular possession of cannabis. This was evidenced in research carried out into the drivers for police, which found that the policing of drugs was less about drugs policy and more about police performance.¹¹

This research found that when dealing with a shoplifting case, it may take an officer 16 hours to process and for it to be recorded as a sanctioned detection. More serious cases such as burglary and sexual assaults are, in most instances, referred up to senior officers and therefore the sanctioned detection is not available to the officer policing the street. However, a cannabis warning takes on average between 30 minutes to an hour to issue and process, and as such is one of the easiest ways for a police officer to obtain a sanctioned detection. To put this into context, the report’s author describes a conversation with a police officer at the start of a shift:

‘On several occasions I worked with officers who immediately upon starting their shift went out to find cannabis. I was quite surprised and I said straight off the bat, ‘it is the beginning of the night shift, why are we going to this park to look for cannabis?’ The officer said quite bluntly ‘well I need to get a sanctioned detection, this is a quick way to do it, and afterwards, if we get it now, I can spend the rest of the shift doing real policing. Doing the things that the community want, doing the things that I feel good about doing, and engaging in, so if I get this out the way now we can move on’.¹²

For a police officer who needs to meet targets to show that he or she is doing a good job and might therefore be considered for promotion, the policing of cannabis is probably the most expedient method of obtaining that sanctioned detection. Finding cannabis is easy, most police officers will know where people, especially young people, are smoking it and so there is an incentive to police this activity even though it is not a priority for the community. The fact that nearly one in seven young people have used cannabis in the last year¹³ means that the police are incentivised to go out and search for drugs as they know they are more likely to detect this ‘crime’, unlike knife or property crime which clearly is not a prevalent activity in society, unlike drug consumption.

¹⁰ Guilfoyle S, 2013, ‘Intelligent Policing: How Systems Thinking Methods Eclipse Conventional Management’, <http://www.triarchypress.com/downloads/Intelligent-Policing-Chapter6.pdf> at page 155

¹¹ Bear D, 2012, ‘Questioning stop and search: Could drugs policy actually have a negative impact on the communities that it is designed to protect?’, LSE, <http://www2.lse.ac.uk/researchAndExpertise/researchHighlights/Law/Questioning-stop-and-search.aspx>

¹² Ibid – podcast at 3.43 minutes.

¹³ Home Office, 2013, ‘Drug Misuse: Findings from the 2012 to 2013 Crime Survey for England and Wales’, <https://www.gov.uk/government/publications/drug-misuse-findings-from-the-2012-to-2013-csew/drug-misuse-findings-from-the-2012-to-2013-crime-survey-for-england-and-wales>

This is despite the fact that cannabis is a low priority for most communities in terms of policing. In a 2009 poll of Londoners' main crime concerns, drugs were ranked 19th as a priority.¹⁴ Interestingly the number one priority was 'community engagement', something that is arguably undermined by stop and search tactics. Another survey carried out by an IPSOS Mori for the Police Federation in 2011 found only 9% of those surveyed thought that cannabis use was a priority for the police.¹⁵

This reasoning is also supported by the most recent 'Crime Survey for England and Wales'¹⁶ ('CSEW') which identified that the significant increase in the number of recorded drug offences was linked to the previous government's Public Service Agreement targets (2004/05 and 2008/09). This led to a target driven approach whereby policing priorities were based on increasing the number of recorded offences brought to justice.

The Office for National Statistics, who produced the CSEW, stated that this approach 'illustrates how proactive policing can increase crimes against society as the number of drug offences recorded by the police is heavily dependent on police activities and priorities'.¹⁷ The report also goes on to say that the increases in police recorded drug offences were not a reflection of real increases in drug use.¹⁸

Release welcomes the Government's attempts to do away with the target culture of the 1990's and the first decade of the 21st century, however it appears that the practice is still active on the ground. If this is the case then there is little doubt that the police are being incentivised to proactively seek out crimes that are easily detected, such as cannabis possession. The volume of stop and searches for drugs goes some way to supporting this position. The fact that a drug possession offence carries the same weight in terms of police targets (sanctioned detections) as a serious crime is a significant problem. Equally problematic is the idea that rates of stop and search count towards performance indicators.

1.4 Negative consequences

The large numbers of people stopped and searched by the police for drugs is negative for the individuals subject to this police power, their communities, and ultimately for the police. As discussed in the 'fairness' section (section 3) of this response, it is young men from the black and Asian communities who bear the brunt of drugs policing.

Academic research in recent years has established that police legitimacy can be negatively affected by the use of stop and search in an unfair and discriminatory manner. What is

¹⁴ London Communities Policing Partnership, 2010, 'London Communities' Crime Concerns', <http://data.london.gov.uk/datastore/package/london-communities-crime-concerns>

¹⁵ IPSO-Mori, 2011, 'Police Federation: Policing Priorities', http://www.ipsos-mori.com/Assets/Docs/Publications/sri_crime_and_justice_police_federation_policing_priorities_tables_22february_2011.pdf. A higher percentage, 38%, thought that the police should target use of heroin and other hard drugs. However, the top 3 priorities of those listed were burglary (74%); drunken and yobbish behaviour in a public place (57%); drunk driving (57%).

¹⁶ Office for National Statistics, 2013, Crime in England and Wales, Year Ending March 2013: Statistical Bulletin, ONS, http://www.ons.gov.uk/ons/dcp171778_318761.pdf

¹⁷ Ibid at page 72

¹⁸ Ibid

specifically unique to the use of stop and search for drugs is the scale of the problem where young people will often be at risk of repeated searches for low level drug possession offences. No other ground for 'reasonable suspicion' or 'no reasonable suspicion' searches elicits the level of police activity that we see with drugs policing. Therefore, any review of the police use of stop and search has to tackle this area of policing.

In those communities where young black or Asian men are repeatedly subjected to high levels of stop and search, their perception of the police is often a negative one. Release has been carrying out consultations with young people across London with a view of developing a training programme that will enable them to better deal with such police interactions. Sixty young people, between the ages of 7 and 24, have been involved in this process.

What we have seen through this programme is the severe and damaging effect that stop and search and other interactions with the police have on young people in London. Anger, frustration and mistrust towards the police have been prevalent among all of the youth groups that Release have spoken with over the past months. Many feel despondent that change could ever occur, having had recurring negative experiences throughout their youth. The consultations have also highlighted that negative experiences with the police start at an extremely young age; 9 year old children have been stopped and searched, 7 year olds have had interactions on the street that have left them feeling neglected by and mistrustful of police officers. The attitudes of those already being stopped and searched regularly can clearly have their roots in such experiences.

For young people who have experienced stop and search, and especially where they have had repeated encounters, their view of the police can be damaged. Often they will perceive the police as lacking legitimacy and that the role of the police is to 'control' their communities. This can in practice result in young people not cooperating as witnesses to a crime, or in taking a matter into their own hands as they do not view the police as a service that is there to protect them. This response is not limited to young people but also the communities in which they live, where the local population will have suffered for decades as a result of being over-policed. It is our position that that the damage caused by stop and search impacts on the ability of police to operate effectively in certain communities. This is particularly true for many from BME communities.

The issue of the disproportionate policing of BME communities is not a new one. Stop and search powers have been repeatedly cited as a flashpoint in some of the greatest disturbances witnessed in modern day Britain. Both the Brixton Riots of the 1980s and the more recent riots of August 2011 were linked to the discriminatory use of stop and search.¹⁹

The tragic murder of Stephen Lawrence, and the subsequent MacPherson inquiry into policing, highlighted the problems that exist in relation to stop and search, and drew particular attention to the issue of drugs legislation. The extract below, taken from the MacPherson report, is arguably as relevant today as it was in 1999:

¹⁹ The Scarman Report, 1981; Lewis, Paul, Newburn, Tim, Taylor, Matthew, McGillivray, Catriona, Greenhill, Aster, Frayman, Harold and Proctor, Rob (2011) *Reading the riots: investigating England's summer of disorder*. Reading the riots, The London School of Economics and Political Science and The Guardian, London, UK, <http://eprints.lse.ac.uk/46297/>

*If there was one area of complaint which was universal it was the issue of "stop and search". Nobody in the minority ethnic communities believes that the complex arguments which are sometimes used to explain the figures as to stop and search are valid. In addition their experience goes beyond the formal stop and search figures recorded under the provisions of the Police and Criminal Evidence Act, and is conditioned by their experiences of being stopped under traffic legislation, **drugs legislation** and so called 'voluntary' stops. It is not within our terms of reference to resolve the whole complex argument on this topic. Whilst there are other factors at play we are clear that the perception and experience of the minority communities that discrimination is a major element in the stop and search problem is correct.*

The fact that the police interfere with a person's free movement, and that drug policing is a primary factor in this experience, affects the ability of the police to perform their role effectively and potentially creates a number of other unintended consequences. The issue of police legitimacy and procedural fairness has received greater attention in the UK over the last decade. Repeatedly academics both in the UK and the US have stated that the public care more about police treatment which is 'linked to trust, legitimacy, cooperation and compliance with the law'²⁰ than they do about 'police effectiveness'²¹. As highlighted by Bradford et al 'when people do not feel a duty of deference toward the police, do not feel that police share their values, and who believe the police do not abide by the rules, legitimacy is fragile and may, in certain communities at least, be effectively absent.'²²

A negative encounter with the police can undermine cooperation between the police, individuals and communities. For individuals who have been frequently stopped and searched, or who have had a negative encounter with the police, they are unlikely to seek the assistance of the police whether as victims of a crime or witnesses to one. This in turn will have an adverse impact on the communities where they live which 'will suffer collectively as issues of law and disorder are less likely to be addressed – and even when police action is forthcoming its effectiveness will be damaged if officers are unable to rely on the assistance of local people, whether as victims, witnesses, or sources of information'.²³ Additionally, there is evidence that those who do perceive the police as lacking legitimacy are more likely to 'engage in "self-help" violence'²⁴, clearly an extremely damaging consequence. Finally, it appears that negative experiences of the police can increase the risk of social exclusion²⁵ and lead to a greater likelihood of an individual entering the criminal justice system.²⁶

²⁰ Bradford B, July 2011, 'Assessing the impact of police-initiated stop powers on individuals and communities: the UK picture', pages 1 – 15, at page 2 http://www.ijay.cuny.edu/uk_bradford_impact_on_communities.pdf

²¹ Myhill A & Quinton P, 2011, 'It's a fair cop? Police legitimacy, public cooperation and crime reduction', National Policing Improvement Agency, page 3. Police effectiveness is defined in terms of 'responding to emergencies, preventing and detecting crime, and keeping order'.

²² Bradford B, Jackson J & Hough M, 2013, 'Police futures and legitimacy: Redefining 'good policing'', Invited position paper for Lord

²³ Bradford B, July 2011, 'Assessing the impact of police-initiated stop powers on individuals and communities: the UK picture', http://www.ijay.cuny.edu/uk_bradford_impact_on_communities.pdf

²⁴ Ibid at page 7

²⁵ Ibid at page 9

²⁶ Ibid at page 9- 12; Bowling B & Phillips C, 2003, 'Policing Ethnic Minority Communities', LSE, page 24 [http://eprints.lse.ac.uk/9576/1/Policing_ethnic_minority_communities_\(LSERO\).pdf](http://eprints.lse.ac.uk/9576/1/Policing_ethnic_minority_communities_(LSERO).pdf)

If the police wish to be effective in their role then they must recognise the damaging impact of stop and search, and in particular, drug stop and searches. For the police to be effective at tackling serious crimes and to be able to properly work with communities then the use of stop and search powers related to drugs must be overhauled.

1.5 Relationship between law enforcement and drug prevalence rates.

As highlighted by the ONS, the levels of policing for drugs bears little relation to the level of drug use within a society. An effective way of demonstrating this is to consider the levels of cannabis use during the period when cannabis was downgraded to Class C in 2004. When cannabis was reclassified, the numbers of people prosecuted or cautioned for possession of the drug fell to their lowest rate since 1993, when records first began to disaggregate the data on cannabis from other drugs. During 2004 and 2007 these numbers remained low, at the same time the British Crime Survey reported falling rates of cannabis use amongst young people. The 23.6 per cent of young people aged 16 to 24 who in 2004/05 reported using cannabis in the previous 12 months, had fallen to 18% by 2007/08.²⁷

It is not suggested that the reclassification, or the reduced numbers being prosecuted or cautioned for possession of the drug, was the driver for this fall in use. The reality is that the use of criminal sanctions or the threat of detection has very little impact on prevalence rates. The question then arises what is the purpose in stopping and searching such large numbers of people for drugs, when we know and can evidence that it does not deter use? In fact the European Monitoring Centre on Drug and Drug Abuse ('EMCDDA') has made this point. Its 2011 Annual Report looked at countries that had changed the penalties for cannabis possession and found that 'no simple association can be observed between legal changes and cannabis use prevalence'.²⁸

2. Balancing public protection and individual freedoms

Many of the young people that we spoke to as part of the consultation process, as detailed above, were positive about the function of a police force. They recognised the positive role a fair and equitable police service could have – not one young person suggested that the police were not an important function in any democratic society. Many young people wanted a police service that protected them and their communities. What they did not accept, and we would agree with them, was that the police had to function in the manner in which they currently do - the high rates of stop and search, the repeated use of stop and search against certain individuals, the fact that the police are often more present in certain communities and that the manner in which they police those communities is an aggressive one, that the interactions between police and young people are often negative and that the police were often seen as an oppressive force. If these issues were addressed it may go some way to being able to argue that the use of stop and search balances public protection

²⁷ Home Office, 2013, Drug Misuse Declared: Findings from the 2012/12 Crime Survey for England and Wales – Extents and Trends in Illicit Drug Use amongst Adults', <https://www.gov.uk/government/publications/tables-for-drug-misuse-findings-from-the-2012-to-2013-csew>

²⁸ EMCDDA, 2011, '2011 Annual Report', <http://www.emcdda.europa.eu/online/annual-report/2011/boxes/p45>

with individual freedoms. The reality is that the police abuse of stop and search undermines both public protection and fundamental individual freedoms.

2.1 Undermining public protection

As detailed at section 1.4 the current practices associated with stop and search can be damaging for the police and undermine their ability to properly function. As stated the over use and targeting of certain communities impacts on police legitimacy and can impede their ability to effectively police these communities where people are unwilling to cooperate when they witness a crime, and where victims of crime may be less likely to report it. In some cases people might be more likely to take a matter into their own hands through 'self-help violence' this can increase the risk of harm to the individual and the communities they live in. Often this kind of behaviour will be linked to more serious crime including violent crime.

In Release's view the significant number of people needlessly stopped and searched for drugs undermines public protection. In practice any analysis of stop and search should not only address the balance between public protection and individual freedoms but should also consider how stop and search can undermine public protection.

2.2 Infringement of individual freedoms

The use of stop and search, and the policing of drugs generally, undermines a number of fundamental individual freedoms. It is important to ensure that the use of police powers should be lawful, necessary and proportionate, and that checks and balances are put in place to safeguard against abuse. It is Release's position that a number of police powers, including and related to stop and search, do not meet this standard.

2.2.1 Stop and Search

The sheer number of stop and searches carried out by the police in England and Wales, coupled with the low detection rate, interferes with a person's free movement as protected under Article 2(1) of Protocol no. 4 of the European Convention on Human Rights ('ECHR'). Additionally, unnecessary stop and searches may breach Article 8 of the ECHR, the right to privacy. The use of stop and search is not proportionate and is unnecessary, it bears no relationship to crime levels within England and Wales and therefore it is difficult to see how the significant increase in the use of this police power can be properly justified.

It is worth noting the judgement of Lord Bingham in Gillan²⁹

"It is an old and cherished tradition of our country that everyone should be free to go about their business in the streets of the land, confident that they will not be stopped and searched by the police unless reasonably suspected of having committed a

²⁹ R(Gillan) v. Commissioner of Police for the Metropolis and Anor [2006] 2 WLR 537 at [1].

criminal offence. So jealously has this tradition been guarded that it has almost become a constitutional principle.”

It is the view of Release that this fundamental freedom is being undermined by police use of stop and search, especially in relation to the use of these powers under s23 of the Misuse of Drugs Act 1971. The execution of over half a million stop and searches for low level drug possession, with an arrest rate of 7%, clearly interferes with a person’s right ‘to be free to go about their business in the streets of the land’.

The disproportionate application of drug stop and searches in respect of black and ethnic minority communities is arguably in contravention of the Equality Act 2010 (‘the 2010 Act’). Section 149 (1) of the 2010 Act clearly states that a ‘public authority...have due regard to the need to...eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act’.

The over policing of black and Asian communities is at the very least a form of harassment. There can be no justification for those of these ethnicities to be subject to stop and search for drugs at a much higher rate than white people (please see section 3 for discussion on the rates of disparity). The statistics show that drug use is higher amongst the white population³⁰ and that the little evidence that does exist in relation to the ethnic background of drug dealers shows that there is parity between those from black and white ethnicities.³¹

Code A of PACE reiterates the principles contained within s149 of the 2010 Act and states that ‘police forces carrying out their functions...have a duty to have regard to the need to eliminate unlawful discrimination, harassment and victimisation and to take steps to foster good relations’. As a public authority arguably the police are in breach of their duties under the 2010 Act.

2.2.2 The use of strip searches as an extension of the power to stop and search

People can be detained and strip searched before arrest if the police have ‘reasonable suspicion’ that they are in possession of drugs. Some of those who are strip-searched are not always taken to a police station. A ‘designated area’ can suffice and this can include a tent or a police station that is no longer in use. The decision to strip search someone can sometimes be based on an indication from a sniffer dog, however evidence suggests that in 74% of cases where a dog indicates positively no drugs are found.³²

³⁰ Hoare J, 2010, Drug Misuse Declared: Findings from the 2009/10 British Crime Survey England and Wales Annex 1 - Nationally representative estimates of illicit drug use by ethnicity, 2006/07-2008/09 BCS, Home Office, UK (<http://webarchive.nationalarchives.gov.uk/+http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/drugs-alcohol-research/hosb1310/hosb13101-annex1?view=Binary>)

³¹ Stevens A, 2011, ‘Drugs, Crime and Public Health: The Political Economy of Drug Policy’, Routledge, United Kingdom, page 98

³² New South Wales Ombudsman, 2006, Review of the Police Powers (Drug Detection Dogs) Act 2001, NSW Ombudsman, Australia http://www.ombo.nsw.gov.au/_data/assets/pdf_file/0020/4457/Review-of-the-Police-Powers-Drug-Detection-Dogs-Part-1_October-2006.pdf

Code A and Code C of PACE provide some guidance on strip searches however Release would argue that the guidance is woefully inadequate when considering the intrusive nature of such a power. In particular, Code C Annex A 11 (e) states:

“if necessary to assist the search, the detainee may be required to hold their arms in the air or to stand with their legs apart and bend forward so a visual examination may be made of the genital and anal areas provided no physical contact is made with any body orifice”.

This is a disproportionate response, firstly, in many cases the police are dealing with someone who is suspected of being in possession of a small amount of drugs, and, secondly, the notion that this power can be used as an extension of stop and search is of significant concern.

Additionally, there appears to be limited recording of strip searches in the circumstances described above, preventing proper monitoring and external scrutiny of the use of this power. Release and Stopwatch recently submitted Freedom of Information requests to 43 police forces about the numbers of people being subject to ‘strip-searches’ outside of custody and arrest. Of those contacted not one force was able to provide the data requested, as recording of strip searches as part of a stop and search are not centrally recorded. Only 16 forces provided partial responses, with all forces citing that they were unable to provide the data on excessive costs grounds (s12 Freedom of Information Act 2001). As one force stated: “There is no ‘flag’ to distinguish a more thorough or more intimate stop-search from a standard stop-search on systems currently in use, and as such there is no automatic way to retrieve relevant records.” Strip searches are an intrusive police power and the use of this power must be limited in its application. At the very least the decision to strip search someone as part of a stop and search should form part of the PACE recording framework.

The use of strip search can be a humiliating, degrading and frightening experience for the person subjected to it. It is our view that the threshold for initiating a strip search is woefully inadequate and that such a procedure should only be allowed in cases where someone has been arrested for an offence. It is difficult to see how the use of strip search to detect drugs, outside of arrest, is in any way protecting the public, but it clearly is a serious infringement of someone’s individual freedom.

3. Fairness

The issue of fairness is central to the debate on stop and search. It is well evidenced that those from black and ethnic communities are disproportionately impacted on in respect of the police use of stop and search powers. However, the Release/LSE report ‘The Numbers in Black and White: Ethnic Disparities in the Policing and Prosecution of Drug Offences in England and Wales’, demonstrated that in relation to ‘reasonable suspicion’ stop and searches drugs policing is driving racial disparities within the criminal justice system. Again, if stop and search is to be meaningfully reformed then drugs policing is central to this process.

The following sections will reflect some of the main points evidenced by the report and will consider both the national picture and some specific areas within England and Wales, including the MPS.

3.1 Drugs stop and searches driving racial disparity

In terms of the national picture black people are stopped and searched for drugs at 6 times the rate of white people. The levels of racial disparity vary throughout the region but some police forces have consistently high levels of racial disparity in stop and searches for drugs.

The two police forces with the highest rates of disproportionately in 2009/10 were Dorset and Norfolk, which respectively were 17 and 9 times more likely to stop and search a black person. Avon and Somerset police reported high rates of racial disparity in 2008/09 with black people 9 times more likely to be stopped and searched for drugs, this rate fell to 5 times in 2009/10. Not all police forces reported high levels of racial disparity, although nearly every police force in England and Wales stopped black people for drugs at a higher rate than they stopped white people. Northumbria police force was the only force to report searching black people at a lower rate than white people.

It is not only the black community who are subject to higher levels of interference from drug policing. Asian people are also more likely to be stopped and searched for drugs than white people. Generally, the level of racial disparity is not as high as those from the black community however in some parts of the country those from the Asian community are being stopped at excessive rates. Three police areas report high levels of disproportionality in relation to those who identified themselves as Asian - Derbyshire police stopped Asian people at a 3 times the rate of white people; West Mercia's police force stopped Asian people for drugs at 4 times the rate of white people; and the West Midlands' police force stopped Asian people at 3 times the rate.

Gwent police showed high rates of disproportionality in relation to stop and searches for drugs in 2009/10 for both the Asian and Black populations, with black people 8.5 times more likely to be stopped and Asian people 6 times more likely.

Furthermore, those who describe themselves as mixed race are also subject to disproportional levels of policing for drugs. Nationally, those from this ethnic background were twice as likely to be subject to stop and search for drugs as white people. Nottinghamshire and Warwickshire police reported the highest rates of disproportionately with people of mixed ethnicity being stopped and searched at 3 times the rate of white people.

When comparing the policing of all other offences³³ excluding drug offences, the rate of disproportionality fall in most parts of the country. When drugs are removed from all stop and searches nationally disproportionality for black people drops to a rate of 5 times that of white people, rather than 6.3 times for drug stop and searches. In Dorset, for example, when drugs stop and searches are removed from the statistics the rate at which black

³³ These offences are recorded as criminal damage; firearms; going equipped; offensive weapons; stolen property and other.

people are stopped and searched is 7 times that of white people. Compare this to drug stop and searches where black people in Dorset are subject to this type of police interaction at 17 times the rate of white people. Similarly in Norfolk the rate drops from 9 to 3 times more likely to be searched for any offence excluding drugs. For the Asian community the rates of disproportionality more than half for offences other than drugs.

These figures demonstrate that the policing of drugs is the driver for racial disparity at stop and search in most parts of England and Wales.

3.2 Drug prevalence amongst Black and Asian communities

The disproportionate policing of those from black and minority ethnic backgrounds cannot be explained away by higher rates of drug use. In reality, those who identify themselves as white have higher rates of drug use, across all types of controlled drugs, compared to those from black and Asian backgrounds. For example, reported use of cannabis in the last 12 months was 6.6 per cent of white respondents and 5.2 per cent of black respondents. In relation to powder cocaine last year use amongst the white population was 2.9% compared to 0.4% of black people³⁴ (crack cocaine use was also higher amongst those reported as coming from a white background³⁵). The notion that the black community uses more drugs than the white community is a fallacy and does not support the over policing of BME communities for drugs. Additionally, there is no evidence to support the theory that drug dealing is higher amongst the black population and what evidence we do have indicates that drug dealing may be more prevalent amongst white people³⁶.

A similar picture emerges for the Asian community where reported drug use is very low – in the last 12 months 3.8% of Asian people reported using ‘any drug’ compared to 8.6% of white people. With cannabis use amongst this ethnic group also low with only 2.8% reporting using the drug in the last 12 months.³⁷

3.3 The Metropolitan Police Service, drug policing and ethnic disparities

As part of the research for the LSE/ Release report Freedom of Information requests were sent to all 43 police forces in England and Wales. Twenty eight forces responded, with the remaining 15 citing financial costs as the reason they could not comply with the request. Of those who responded only a limited number provided robust enough data for analysis, this

³⁴ Home Office, 2013, ‘Illicit drug use by personal, household and area characteristics and lifestyle factors: Drug Misuse 2012 to 2013’, <https://www.gov.uk/government/publications/tables-for-drug-misuse-findings-from-the-2012-to-2013-csew>

³⁵ Hoare J, 2010, Drug Misuse Declared: Findings from the 2009/10 British Crime Survey England and Wales Annex 1 - Nationally representative estimates of illicit drug use by ethnicity, 2006/07-2008/09 BCS, Home Office, UK (<http://webarchive.nationalarchives.gov.uk/+http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/drugs-alcohol-research/hosb1310/hosb13101-annex1?view=Binary>)

³⁶ Stevens A, 2011, ‘Drugs, Crime and Public Health: The Political Economy of Drug Policy’, Routledge, United Kingdom, page 98

³⁷ Home Office, 2013, ‘Illicit drug use by personal, household and area characteristics and lifestyle factors: Drug Misuse 2012 to 2013’, <https://www.gov.uk/government/publications/tables-for-drug-misuse-findings-from-the-2012-to-2013-csew>

included the Metropolitan Police Service whose quality of data was unparalleled. This data analysis covers the period 2009-2010.

An Overview of the Capital's Policing Of Drugs³⁸

- 34 people out of every 1000 is stopped and searched for drugs³⁹ - for white people it was 24 per 1000; for black people it was 66 per 1000; for Asian people 37 per 1000; and for those defined as 'other'⁴⁰ it was 20 per 1000.
- Black people in London are nearly 3 times more likely to be stopped and searched for drugs than the white population.
- Asians are 1.5 times more likely to be subject to a drugs stop and search.
- In every BOCU in London bar one⁴¹ black people are stopped for drugs at a rate higher than those from the white community.
- In just under two thirds of London BOCUs Asian people are disproportionality subject to drugs stop and searches.
- London's overall arrest for all groups is just under 6%, slightly lower than the national figure of 7.1%.
- Black people are 3 times more likely to be arrested for a drugs offence than a white person.

The areas of London with high levels of deprivation⁴² had the highest rates of search outside of Westminster⁴³:

- Tower Hamlets 55 per 1000
- Southwark 54 per 1000
- Newham 51 per 1000
- Hackney 41 per 1000
- Islington 41 per 1000

³⁸ Eastwood N, Shiner M, Bear D, (2013), 'The Number in Black and White: Ethnic Disparities in the Policing and Prosecution of Drug Offences, Release, page 22

http://www.release.org.uk/sites/release.org.uk/files/pdf/publications/Release%20-%20Race%20Disparity%20Report%202013_0.pdf

³⁹ The search rate data provided by the Metropolitan Police Service ('MPS') varied slightly from the data provided by the Ministry of Justice which reported search rates for 2009/10 as 31 per 1000 of the population.

⁴⁰ The categories falling within the definition of 'other' are dark European; Oriental; Arabian/Egyptian; and unknown.

⁴¹ The disproportionality rate in Barking & Dagenham is 0.91 meaning that the search rate for black people in the borough is slightly less than it is for white people.

⁴² Lesser R, 2011, English Indices of Deprivation: A London Perspective, Greater London Authority, Intelligence Briefing <http://data.london.gov.uk/datastorefiles/documents/ID2010-a-london-perspective.pdf>. This reports highlights that all the boroughs mentioned rank within the top 50 of the 326 local authorities in England on at least one of the summary measures of deprivation. Hackney, Tower Hamlets, Islington and Newham are in the top ten most deprived areas in England.

⁴³ The borough of Westminster has the highest search rate of 134 per 1000 which is unsurprising considering the high levels of human traffic that enter this area on any given day. As Westminster has a significant transient population it is unhelpful to use the analysis from that borough as the measures in relation to racial disparity cannot concretely be used against the residential figures

The exceptions to this were Kensington & Chelsea with a rate of 55 per 1000 and Camden where the stop and search rate was 42 out of every 1000 person subject to stop and search.

In every London BOCU the search rate for the white population did not exceed 50 per 1000 of the local white population (excluding Westminster). The highest rates of search within the local white populations were Southwark and Kensington & Chelsea, at a rate of 44 per 1000 and 37 per 1000 respectively.

On the other hand, the black community was subject to much higher rates of searches, with 16 BOCUs reporting search rates above 50 per 1000 population. The BOCUs with the highest rates of drug searches of the black population were Kensington and Chelsea at 189 per 1000; Brent at 130 per 1000; Camden at 121 per 1000; and Hammersmith and Fulham at 109 per 1000. Westminster, unsurprisingly, has the highest rate of search in the Metropolitan area. This is to be expected with the police in the centre of the capital carrying out nearly 30,000 stop and searches for drugs in 2009/10 and stopping black people at a rate of 367 per 1000 of the population. Whilst the levels of search rates does not provide the levels of disproportionality it does demonstrate that in some parts of London the black community is being aggressively searched for the presence of drugs.

Disproportionality and Stop & Search in the Capital

There are seven boroughs which have significantly high rates of racial disparity in the policing of drugs, five of these boroughs - Camden, Ealing, Hammersmith & Fulham, Harrow and Wandsworth - stop and search black people at between 4-5 times the rate of white people. Kensington & Chelsea and Richmond Upon Thames ('Richmond') have the worst rates of racial disparity for drugs stop and searches in the whole of London. In Kensington & Chelsea a black person is just over 5 times more likely than a white person to be subject to a police stop and search for drugs, in Richmond this rises to nearly 6 times.

Overwhelmingly, it appears that it is the leafy suburbs and those areas of London which are occupied by many of the city's affluent that are the scene for high rates of disproportionate policing of drugs amongst the black community. It is these boroughs that are driving up the rates of racial disparity in this area of policing in the Capital. There are, however, factors that may explain this phenomenon. Kensington and Chelsea, for example, is often viewed as a wealthy area but it is considered one of the most polarised areas of London in terms of inequality - the 8th most deprived ward in London is located in the borough⁴⁴. Questions have to be asked about whether this is a form of social control, where the police are taking action to segregate the community and in their eyes 'protect' against those people they see as outsiders or not belonging – in the eyes of the police they simply look out of place. Clearly, this is not about drugs but about policing certain communities in a certain way. This is a deeply worrying and divisive trend.

Even outside the more affluent parts of London racial disparity is apparent. In Hackney, Haringey and Tower Hamlets black people are between 2 and 2.5 times more likely to be stopped and searched for drugs. Whilst this is lower than those boroughs with the highest

⁴⁴ London's Poverty Profile, 2011, Income and Wealth Inequality, <http://www.londonpovertyprofile.org.uk/indicators/topics/inequality>

rates of disproportionate policing it is still a significant feature of the local policing experience, where young black men perceive that they are unfairly treated by the police and are living in areas with very high levels of overall stop and search.

Three London BOCUs are more than 2 times more likely to search Asian people than the white community. These boroughs are Ealing, Tower Hamlets and Waltham Forest. In twelve London boroughs⁴⁵ Asian people are less likely to be stopped than the local white and black populations.

Arrest Rates in London

The percentage of searches resulting in arrests in London is extremely low, with an overall arrest rate of 6% (lower than the national rate). The best performing borough is Islington, achieving a 8.7% arrest rate across all drug searches regardless of ethnicity. At the other end of the scale is Richmond, which whilst having the highest rates of disproportionality has the lowest arrest rate, where the police arrest 4.1% of all those searched for drugs.

In terms of racial disparity clearly the initial disproportionately that exists at stop and search will continue to drive that experience into the arrest figures. The BOCUs with the highest rates of disproportionality at stop and search also have the highest rates of disproportionality at arrest. The rates of racial disparity range from a black person being: 4 times more likely to be arrested in Camden and Ealing; in Hammersmith & Fulham and Wandsworth this increases to 5 times more likely: and in Richmond, Kensington & Chelsea and Harrow the rates are 6 times more likely.

The disproportional arrest rate in relation to black people is also high in other parts of the city: Kingston, Westminster and Redbridge have rates of 5 times more likely and in Lambeth black people are 4 times more likely to be arrested.

In relation to the Asian community the disparity that exists at stop and search does not necessarily result in disproportionality at the arrest stage. In the data on stop and search from the Metropolitan Police area it was established that 12 London BOCUs were less likely to search Asian people than those from white backgrounds. In terms of the arrest rates and disproportionality, 24 London boroughs arrest Asian people at the same rate or at a lower rate than white people. Overall, the disproportionality arrest rate is 1.14 meaning that there is almost parity between white people and Asian people.

However, five boroughs do report higher levels of disparity. In Ealing an Asian person is 2.4 times more likely to be arrested and in Waltham Forest they are 1.5 times more likely to be arrested. These were two of three boroughs that had high rates of racial disparity for this group at the search stage. Interestingly, the rates of disparity that exist at stop and search in Tower Hamlets disappear at the arrest stage with Asians being as likely as whites to be arrested.

⁴⁵ The boroughs are Barnet, Bexley Bromley, Enfield, Greenwich, Haringey, Kingston Upon Thames, Lambeth, Lewisham, Merton, Southwark and Sutton.

It is important to remember that arrest does not mean that the person is necessarily prosecuted so is not always indicative of a successful case. Research has stated that the CPS terminates higher rates of cases involving black and Asian people suggesting 'that the police may be presuming guilt in the case of some black and Asian suspects as a result of negative stereotyping yet where there is insufficient evidence to proceed against them.'⁴⁶

Additionally, disproportionality may be higher at arrest in relation to black people primarily as they are less likely to receive out of court disposals such as a cannabis warning or a penalty notice for disorder ('PND'). This does not include cautions as these are usually preceded by arrest.

Cautions and Charging

Of the very small percentage of people who are stopped and searched and the police find drugs, there are a number of criminal justice responses that can be deployed. These responses are: Cannabis warning (cannabis possession only offences); Penalty Notice for Disorder ('PND') (cannabis possession only offences); Caution (can be issued for possession of any controlled drug); charge.

As stated, the arrest rate for black people may be disproportionately higher than for white people in relation to drug offences as they may be less likely to receive an out of court disposal that does not necessitate arrest, for example, a cannabis warning or PND. To test this theory and to consider whether black or Asian people are treated more harshly data from the MPS was analysed for the levels of racial disparity that exists in relation to the police's response decision when people are found in possession of either cannabis or cocaine (this data did not include PNDs).

The levels of racial disparity that exist at stop and search for black people will primarily result in disproportionately at all stages of the criminal justice system. However, if racial disparity is lower for out of court disposals than charge, when compared to the white population, then we can conclude that those from black or Asian backgrounds are receiving tougher sanctions and/or responses.

The Black Population and Cannabis Possession Offences

In the Greater London area a black person is 5 times more likely to be charged for possession of cannabis than a white person and nearly 3 times more likely to receive a cannabis warning. This jump in disproportionality at charge stage demonstrates that a black person is more likely to receive a harsher police response for possession of cannabis.

In most boroughs the rates of disproportionality escalated in line with the severity of the response. Again, Kensington & Chelsea stands out in relation to the charge rate with black people nearly 12 times more likely than a white person to be subject to prosecution for a

⁴⁶ Bowling B & Philips C, 2003, 'Policing ethnic minorities communities', Originally published in Newburn, Tim, (ed.) Handbook of policing. Willan Publishing, Devon, UK, pp. 528-555, Willan Publishing Ltd, available: [http://eprints.lse.ac.uk/9576/1/Policing_ethnic_minority_communities_\(LSERO\).pdf](http://eprints.lse.ac.uk/9576/1/Policing_ethnic_minority_communities_(LSERO).pdf)

cannabis offence. Camden's use of cannabis warnings as compared to charging for the offence is clearly evidence of the significant risk that black people face when caught in possession of the drug, with warnings being issued at a rate that is almost in line with the numbers issued to white people but a black person is nearly 9 times more likely to be charged.

Across London there is a marked increase between the disparity rates at cannabis warning and caution compared to charge demonstrating the risk faced by black people when they are caught in possession of cannabis, namely that it is significantly more likely that they will be charged with the offence than be subject to a lesser penalty. The inequality and injustice that exists at this point in the criminal justice system demonstrates that many from the black community are subject to substantially different treatment at the hands of the police than those from the white community.

The Asian Population and Cannabis Possession Offences

Generally, in terms of sanctions for cannabis possession most London BOCUs respond to those from Asian backgrounds in the same way they respond to the white population – in the whole of the Capital Asian people are 1.2 times more likely to receive a cannabis warning and 1.3 times more likely to be charged for the offence.

There are, however, exceptions. In Tower Hamlets, Ealing and Kensington & Chelsea an Asian person is charged for possession of cannabis at between 2 and 2.5 times the rate of white people. The risk of being charged versus being issued a cannabis warning is much less pronounced than for the black community, and as stated in many boroughs those of Asian background are likely to receive the same or similar response as those from a white background.

How are the police responding to BME communities caught in possession of cocaine?

The picture for those from the black community caught in possession of cocaine is remarkably similar to that of cannabis. In every borough in London, except for Barking & Dagenham, black people are more likely to be charged for possession of cocaine than white people. In 25 out of the 32 London boroughs those from the black community are much less likely to be cautioned than those from the white community.

The London figures for 2009/10 show that 56% of the 2658 white people caught in possession of cocaine received cautions, the remaining 44% were charged, of the 1287 black people caught in possession of cocaine 22% received cautions and 78% were charged for the offence. In Hackney for example, 80% of those from a white background are cautioned for cocaine possession and the remaining 20% are charged, whilst of those from black background caught in possession 33% are cautioned and 67% are charged.⁴⁷ Questions must

⁴⁷ Eastwood N, Shiner M, Bear D, (2013), 'The Number in Black and White: Ethnic Disparities in the Policing and Prosecution of Drug Offences, Release, page 35
http://www.release.org.uk/sites/release.org.uk/files/pdf/publications/Release%20-%20Race%20Disparity%20Report%202013_0.pdf

be asked of the MPS when a police force treats one section of society more severely for the same offence.

The racial disparity that exists in relation to charging for cocaine possession is often high in those boroughs that have previously exhibited similar behaviour in relation to stop and search, arrest and the responses to cannabis possession. Again, in Kensington & Chelsea black people caught in possession of cocaine are 11 times more likely to be charged than a white person. Police in Richmond, Ealing, Haringey, Harrow, Wandsworth and Westminster are more likely to charge those from the black community at a rate of 6 to 7 times that of white people. Black people in Camden and Barnet are 5 times more likely to be charged for cocaine possession than white people.

It is important to recognise that the racial disparity that exists through stop and search is driving some of the issues described above in relation to how the police dispose of an offence. Release would recommend that as part of the review on stop and search the Home Office, with the involvement of the Ministry of Justice, also looks at police practices in relation to charging standards.

3.4 Other police forces within England and Wales

The information detailed below was obtained through responses to Freedom of Information requests submitted as part of the research for the LSE/Release response.

Merseyside

Merseyside is interesting in that it has very high rates of stop and search but low rates of disproportionate policing in the black and Asian communities.

In 2009/10 Merseyside police stopped over 28,000 people for drugs. This means that 64% of all 'reasonable suspicion' stop and searches carried out by the police in that area were for drugs.⁴⁸ The search rate for Merseyside is 21 per 1000 - with white people being stopped and searched at a rate of 21 per 1000, black people at a rate of 25 per thousand and Asian people at a rate of 7 per 1000. Whilst black people are stopped and searched at almost the same rate as white people, black people are 2 times more likely to be arrested for a drugs offence than white people. Interestingly, there is no disproportionality at arrest for other offences excluding drugs.

West Midlands

The West Midlands has a large Asian population and, as such, it was important to ascertain whether this resulted in higher rates of disproportionality for that ethnic group. Based on the data received by the West Midlands Police Service the rates of disproportionality for the stop and search of those who are of black and Asian ethnicity were that both groups were 3.2 times more likely to be searched for drugs.

⁴⁸ The total number of reasonable suspicion stop and searches in Merseyside for 2009/10 were 44,400.

The rates of disparity changed significantly for those of Asian background after stop and search, and although still disproportionate, the likelihood of arrest was just over 2 times more likely than when compared to the white population. However, the rate of racial disparity at arrest for black people was 4 times the rate of white people.

Avon & Somerset

Based on the data received from the Avon & Somerset police force their rates of disproportionality in terms of stopping and searching black and Asian people for drugs is higher than that reported in the Home Office's national data.

According to the Avon & Somerset data black people were 8 times more likely to be stopped and searched for drugs than white people (the 2009/10 national data recorded disproportionality as 4.8) and Asians 2.5 times more likely. At arrest again racial disparity was pronounced with black people arrested at a rate of 10 times that of white people and Asian people 2 times more likely to be arrested.

3.5 Increased searches of the white population mask disproportionality and increase the risk of poor relationships between the police and the community.

One concern that arises in relation to stop and search and disproportionality is the potential for police forces to mask the problem by increasing the number of white people being stopped and searched. In Avon & Somerset, for example, rates of disproportionality in 2008/09 for searches involving all 'reasonable suspicion' grounds were 6 times more likely to be searched if they were black, in 2009/10 it was 4 times more likely. By 2011/12 the rate of disparity for black people had dropped to 2.5 times more likely to be stopped and searched than white people. It appears that this was simply achieved by increasing the number of white people subject to stop and search.

In 2008/09 the number of white people stopped and searched was 10,490 and the number of black people was 1,349. However, in 2011/12 the number of white people stopped and searched increased to 18,613 whilst 1,351 black people subject to this police power.⁴⁹

Clearly, this increase in stop and search can create negative relationships between individuals, communities and the police. Increasing the numbers of stop and search may dilute the rates of disproportionality but arguably it will lead to greater numbers of people being needlessly subjected to stop and search, and greater police interference of people's liberty and their right to move freely. The Home Office should ensure that the results of this process do not lead to an unnecessary increase to stop and search which is already at an all-time high.

⁴⁹ Home Office, 2013, *Police Powers and Procedures England and Wales 2011/12- Tables for Police powers and procedures stops and searches 2011/12*, <https://www.gov.uk/government/publications/tables-for-police-powers-and-procedures-in-england-and-wales-201112>

3.6 Children & Young People

Significant numbers of young people are being stopped and searched. In 2009/2010 the Metropolitan Police carried out nearly 280,000 stop and searches for drugs in London, half of which were carried out on people aged 21 and under. Almost 16,900 children aged 15 years or younger and nearly 550 aged 12 or below were searched by the MPS for drugs in 2009/10.⁵⁰

As stated, Release is carrying out consultations with young people across London with a view to developing a training programme which better equips them to deal with stop and search. Ideally, this should not be necessary but in reality unless the police change their practices the only way to improve the experience for young people is to provide them with the skills and confidence to deal with stop and search in a more confident manner. The aim of this programme is to de-escalate the interaction so as to reduce the risk young people face in such police encounters.

As part of the process we have spoken to children as young as seven who have described their interactions with the police. Some of them have already been stopped and searched and describe their view of the police in deeply negative terms. Other children aged below ten who had not been stopped and searched were able to demonstrate how they would physically respond to this type of police encounter. One of the children put his arms out to the side and pulled his trouser pockets inside out. It cannot be right in a democratic and just society that children as young as that are able to demonstrate how they would respond to this type of police interaction. Their views and knowledge of police behaviour is truly worrying and is the direct result of how they see the police treating their siblings and other young people in the community. It is also the product of decades of poor police practices.

The lack of guidance and regulations that exist in relation to the stop and search of children is of deep concern. There appear to be no clear safeguarding procedures in place to ensure that the welfare of children is paramount when it comes to police interactions with young people. Code A of PACE does not deal in anyway with the treatment of children during stop and search encounters. The 2006 ACPO 'Practice Guidance on Stop and Search', a 53 page document, has only the following advice for officers dealing with children as part of stop and search:

*"Stopping and searching young or vulnerable persons can be particularly intimidating for them. Officers must clearly communicate the grounds for the search using simple and easy to understand language, and check that the person has understood the grounds before continuing with the search."*⁵¹

⁵⁰ Eastwood N, Shiner M, Bear D, (2013), 'The Number in Black and White: Ethnic Disparities in the Policing and Prosecution of Drug Offences, Release, page 26,
http://www.release.org.uk/sites/release.org.uk/files/pdf/publications/Release%20-%20Race%20Disparity%20Report%202013_0.pdf

⁵¹ ACPO, 2006, Practice Guidance on Stop and Search', Centrex, p7,
<http://content.met.police.uk/cs/Satellite?blobcol=urldata&blobheadername1=Content-Type&blobheadername2=Content-Disposition&blobheadervalue1=application%2Fpdf&blobheadervalue2=inline%3B+filename%3D%22436%2F86>

The Metropolitan Police's 'Stop and Search Practitioner's Toolkit' (2013) states 'where a young person is stopped and searched officers must consider the requirements of Every Child Matters (ECM) instructions.'⁵² No further detail is provided on how stop and search can impact on the welfare of a child and it would appear that the ECM policy only is enacted where the police consider a child is at risk because of other external factors. The MPS ECM policy is silent on the issue of stop and search.⁵³

The welfare of a child must be central to any action carried out by the State in respect of young people. Other state bodies are usually robust in their safeguarding procedure and principles but yet the same cannot be said of the police forces across England and Wales. This is despite the fact that it is acknowledged that stop and search can be 'intimidating' for young people. This is certainly the experience of the young people that we spoke to but many went further describing some interactions with the police through stop and search as humiliating, frightening, and degrading.

4. Bureaucracy in policing

If the Government is serious about reducing bureaucracy in policing in order to free up police time then the focus should not be on recording but on reducing the numbers of people being stopped and searched. There is little doubt that the record keeping associated with stopping and searching 1.2 million people will be significant, rather than tinkering with stop and search forms and the level of detailed recorded, meaningful reduction in bureaucracy can be achieved by limiting the use of this police power. This can be achieved by better training of police in the understanding of what constitutes 'reasonable suspicion' and police leadership in tackling the levels and problems created by stop and search.

The recording of stop and search is essential and the current data obtained should in no way be diluted. Release would recommend that in order to ensure that checks and balances are in place and that the police are effective, additional information be added to the current data recording requirements. The stop and search record should distinguish between what class of drugs the stop and search was aimed at and whether the officer suspected possession or dealing – so that there is accurate data for making assessments of effectiveness.

5. Conclusion

The policing of drugs takes up a significant amount of police time, accounting for over 50% of stop and searches annually. Crucially, it drives racial disparity within the criminal justice system. In a time of limited resources and economic austerity is this best use of police time? Do communities want the police to be focussed on low level drug use at the expense of investigating crimes people care about like violent and property crimes? We argue that the

[5%2FPractice Advice on Stop and Search.pdf%22&blobkey=id&blobtable=MungoBlobs&blobwhere=1283565271771&ssbinary=true](http://www.met.police.uk/foi/pdfs/practice_advice_on_stop_and_search.pdf%22&blobkey=id&blobtable=MungoBlobs&blobwhere=1283565271771&ssbinary=true)

⁵² Metropolitan Police, 2013, Stop and Search Practitioner's Toolkit,

http://www.met.police.uk/foi/pdfs/priorities_and_how_we_are_doing/corporate/stop_search_ga_2013.pdf

⁵³ MPS, 2008, Every Child Matters Policy,

http://www.met.police.uk/foi/pdfs/policies/every_child_matters_policy.pdf

answer to both of those questions is no. By focussing police efforts on procedural and distributive fairness instead of diverting resources and energy to the pursuit of low-level drug possession, the following can be achieved:

- Improved confidence in the police by reducing the number of negative encounters;
- Freeing up police time so that they can target serious crime;
- Improved cooperation between individuals, communities and the police;
- Reduced risk of public disorder.

For over 30 years the police have demonstrated that they cannot address or tackle the racial disparity in stop and search. The only genuine reform that would have immediate benefits is the removal of stop and search powers for drug possession.

6. Recommendations

Release would recommend that tackling the problems that exist in relation to stop and search of drugs forms part of a wider review into the UK drugs policy. The Government repeatedly states that UK drug policy works because drug use is falling, however as demonstrated by this report this trend has very little to do with the use of criminal sanctions and over-policing of our society in respect of drug possession. The harms caused to certain sections of society as result of the policing practices around drugs cannot be overstated. An immediate review of drug policy in the UK is needed, in recognition of the urgency and need to address the disproportionate impact of drug law enforcement on those from BME communities.

In 2012, the organisation published the report 'A Quiet Revolution: Drug Decriminalisation Policies in Practice Across the Globe'.⁵⁴ This report looked at 21 jurisdictions that had adopted non-criminal sanctions in relation to drug possession and found that there was no statistically significant increase in drug use in those countries or states that took such an approach. In fact, the evidence showed that when a non-criminal response was adopted individuals who were no longer at risk of criminal sanctions had better outcomes in terms of employment, education, relationships, accommodation and were less stigmatised as a result of their drug use. In Portugal, where drug possession was decriminalised in 2001 relationships between the police and certain communities improved. This is why we are asking the Home Secretary, that as part of the review into stop and search, and to ensure reform is meaningful, the issue of drugs and policing has to be addressed and we would propose that decriminalisation of drug possession would be an effective solution to the problem.

Whilst decriminalisation of drug possession offences is Release's principle recommendation, as part of the report produced with LSE a number of other practical recommendations were made in respect of police procedure and practice. These recommendations are taken directly from the Release/LSE report:

⁵⁴ Rosmarin A & Eastwood N, 2012, 'A Quiet Revolution: Drug Decriminalisation Policies in Practice Across the Globe', Release, <http://www.release.org.uk/publications/quiet-revolution-drug-decriminalisation-policies-practice-across-globe>

- Sanctioned detections for cannabis should be abolished or should be weighted to represent the complexity and seriousness of a detected crime, thus dis-incentivising officers from policing low level drug crimes.
- Clear guidance needs to be provided on charging standards for drug possession offences. The lack of uniformity in charging practices demonstrates the need: for higher thresholds implemented for charging in relation to drug possession; and increased supervision and monitoring of police and CPS decision making in relation to charging decisions.
- Officers' performance should be evaluated based on factors that improve community relations and detect serious crime rather than using crude assessments, such as stop and search numbers and sanctioned detections.
- The recording should distinguish between what class of drugs the stop and search was aimed at and whether the officer suspected possession or dealing – so that there is accurate data for making assessments of effectiveness.
- Those caught in possession of cannabis should be dealt with in accordance with the 2009 ACPO guidance on cannabis possession for personal use.
- Data relating to charge and caution for drug possession offences should form part of s95 Criminal Justice Act 1991 reports.⁵⁵

Additionally, Release would recommend that some clear guidance is developed through both the PACE codes of practice and the Home Office in respect of the use of stop and search and children. It is clear that the safeguarding protocols that are in place are not sufficient and do not address the welfare of children in the context of stop and search.

Finally, the police use of strip searches to detect evidence as part of a stop and search detention should be abolished. The legal threshold for initiating a strip should only be allowed in cases where someone has been arrested for an offence.

If any further information is required or clarification needed, please contact:

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⁵⁵ Eastwood N, Shiner M & Bear D, 2013, 'The Number in Black and White: Ethnic Disparities in the Policing and Prosecution of Drug Offences, Release, page 56
http://www.release.org.uk/sites/release.org.uk/files/pdf/publications/Release%20-%20Race%20Disparity%20Report%202013_0.pdf

Annex A

Below is Release's response to the closed questions in the consultation document. We have responded to the open questions via this response document.

Effectiveness

Q1. To what extent do you agree or disagree that the use of police powers of stop and search is effective in preventing and detecting crime and anti-social behaviour?

Strongly Disagree

Q3. To what extent do you agree that the arrest rate following stop and search events is a useful measure of the power's effectiveness?

Strongly Disagree

Balancing public protection and individual freedoms

Q5. To what extent do you agree or disagree that the 'with reasonable grounds' stop and search powers are used by police in a way which effectively balances public protection with individual freedoms?

Strongly disagree

Q6. To what extent do you agree or disagree that the 'without reasonable grounds' stop and search powers are used by police in a way which effectively balances public protection with individual freedoms?

Strongly disagree

Q7. To what extent do you agree that it is right that the police are under a national requirement to record the information in respect of each stop and search?

Strongly agree

Fairness

Q9. To what extent do you agree or disagree with the following statement: 'I am confident that the police use stop and search powers fairly to prevent and detect crime and anti-social behaviour'?

Strongly disagree

Q11. To what extent do you agree or disagree that the current requirement to explain the reasons for stop and search make the use of the power more fair and transparent?

Strongly disagree

Q14. To what extent do you agree or disagree that local communities should have direct involvement in deciding how the police use their stop and search powers?

Neither Agree or Disagree