

StopWatch and Release’s consultation response to HMICFRS’s 2019/20 policing inspection programme and framework

This is a joint response from StopWatch and Release.

StopWatch is a coalition of academics, lawyers, civil society organisations, young people, and community stakeholders, which works to promote fair, effective and accountable policing. Since forming in 2010, StopWatch has led a wide-ranging campaign against the disproportionate use of stop and search, the use of exceptional stop and search powers, and the weakening of associated accountability mechanisms. The campaign includes research, legal and policy analysis, media commentary, political advocacy, litigation, submissions to national and international organisations, and community organising.

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.

General response to consultation document

We welcome the opportunity to respond to the HMICFRS’s inspection programme and framework for 2019/20. In particular, we welcome the commitment in the foreword that the Annual all-force PEEL inspections will “focus on areas that present the greatest risk”; it is our view that the use of stop and search continues to fall within this category and should automatically be integral to inspections of all police forces.

We strongly oppose the use of a risk-based assessment to opt in or exclude forces from assessment in this area considering the well-established damage that the use of this power can cause to impacted communities. Research undertaken by StopWatch and Release has demonstrated that black people are still experiencing extremely high rates of disproportionality in the use of the police power, with black people nine times more likely to be subject to stop and search compared to the white population.¹ This is the highest rate of racial disparity recorded since records began demonstrating the need for continued inspection and analysis of stop and search. Rates of racial disparity exist in all police force areas - every force in England and Wales stopped and searched black people at a higher rate than white people during 2016/17. Disproportionality ratios ranged from 1.7 in Durham to 20.4 in Dorset for all stop-searches; and from 1.7 in Cleveland to 26.5 in Dorset for drug searches. It is therefore unclear to StopWatch and Release how any force can be considered ‘well performing’ in the context of the integrated PEEL assessment.

Furthermore, stop and searches for controlled drugs dominate the use of this power, with 60 per cent of all searches in England and Wales being based on these grounds.² This is despite HMICFRS highlighting concerns about the high level of recorded searches for drugs in their 2013 report when the percentage of

¹ Shiner M., Carre Z., Delsol R, & Eastwood N., 2018, The Colour of Injustice: “Race”, Drugs and law enforcement in England and Wales, <https://www.release.org.uk/publications/ColourOfInjustice>

² Stop and search statistics data tables: police powers and procedures year ending 31 March 2018, <https://www.gov.uk/government/statistics/police-powers-and-procedures-england-and-wales-year-ending-31-march-2018>

searches for these substances was 50 per cent of the total number of searches carried out nationally – 70 per cent of these searches were estimated to be for personal use offences.³ Furthermore, the issue of race and drugs was highlighted in the 2017 HMIC PEEL legitimacy report.⁴ However, since both those reports have been published the situation has deteriorated in terms of both the percentage of searches for drugs and the rates of racial disparity – hence the need to ensure that a review of stop and search powers is integral to all inspections and that the risk assessment tool is not applied to this area of policing. This area of policing goes to the very heart of police legitimacy.

The HMIC inspections and the robust reports produced have played an important role in bringing about the positive changes we have seen in stop and search. It is therefore unfortunate that previous reforms are under threat and disproportionality has since increased. The experiences with the Best Use Stop and Search Scheme and our recent analysis shows that the police have proved adept at meeting tick box standards and have learnt to improve the grounds and provide better data. The problems lies in the strategic use and oversight of the powers, which cannot be fundamentally assessed through a paper review and needs inspectors in force to test.

1. Are there any significant new or emerging problems in or for policing which HMICFRS should take into account in its effectiveness, efficiency and legitimacy inspections?

Please see our response above.

2. Do the proposed thematic inspections of counter-terrorism, older people in the criminal justice system, cyber-crime, child protection and crime data integrity cover areas that are of most concern to you at the moment?

Although important areas, there are other significant areas of concern which should be considered for thematic inspection including:

- Disproportionality in the use of stop and search
- Increased use of Section 60 of the Criminal Justice and Public Order Act
- The gang matrix (please see Stopwatch's report on this subject [here](#))
- Use of force, including handcuffs, as part of a stop and search
- Use of more thorough searches, including strip searches
- Searching of mobile phones
- Criminal justice outcomes for those caught in possession of a prohibited item as a result of a stop and search, or arrested for any other activity related to a stop and search

³ Her Majesty's Inspectorate of Constabulary [HMIC] (2013) *Stop and Search Powers: Are the Police Using Them Effectively and Fairly?* London: HMIC.

<https://www.justiceinspectorates.gov.uk/hmicfrs/media/stop-and-search-powers-20130709.pdf>

⁴ Her Majesty's Inspectorate of Constabulary and Fire & Rescue Service [HMICFRS] (2017a) PEEL: Police Legitimacy 2017 – A National Overview, London: HMICFRS; p. 26.

<https://www.justiceinspectorates.gov.uk/hmicfrs/publications/peel-police-legitimacy-2017/>

3. How else could HMICFRS adapt the way in which it acquires information, to take account of current circumstances and risks to public safety?

It is our understanding that the risk-based assessment that was undertaken in 2018/19 PEEL legitimacy inspection resulted in only a small number of forces in the first and second tranches of this cycle of inspections deemed a “risk” around stop and search. Furthermore, as engaged, active and responsive stakeholders it was disappointing that the HMIC did not consult with StopWatch and Release to solicit input on any of the forces. To date, the risk assessment process remains unclear and would benefit from being revisited, if our recommendations to include stop and search as an integral part of the process is not taken up.

It is our belief that a majority of the police forces across the country should have fallen into a high-risk category given the lack of progress in certain key areas. We attach our *Colour of Injustice* report, which demonstrates that disproportionality persists in most forces and that the problem goes beyond the decision to stop and search, through to the disproportionate distribution of outcomes. The report also highlights the increasing proportion of searches focusing on drugs rather than more serious crimes, in many police forces, an issue the HMIC have raised. Finally, as there are very few good examples of meaningful community engagement around stop and search taking place across the country, it is difficult to understand how forces would be deemed as meeting standards in this area.

Although welcomed, HMICFRS’s attempts to broaden the diversity of the team working on the records review do not go far enough. The little progress that has been made in this area when combined with the weakening of the inspection regime undermines the legitimacy of the HMICFRS. There are still concerns with the lack of diversity across the inspection teams and liaison officers, we believe that in this area lies potentially an impediment to your ability to conduct robust inspections around legitimacy. For many years StopWatch and Release have proposed that a range of stakeholders (including community members and civil society) are involved in all aspects of the inspections and have repeatedly volunteered to assist with this. We believe that adopting this approach would prove advantageous for HMICFRS and enable access to a broader range of expertise, experiences and facilitate engagement with different communities. In the absence of a justified reason being provided it is difficult to comprehend why this has not yet happened. Particularly as there are good examples, such as record reviews, where the public are positively involved in the stop and search scrutiny process. It is a procedure designed to be assessed by an “objective third person” and could be easily opened up to stakeholder involvement. The HMICFRS should also develop a methodology for using a dip sample of body worn video footage and videos posted on social media to provide additional data source on officer’s interactions with the public.

Recommendations:

Moving forward we have a number of concrete recommendations:

- The PEEL Legitimacy inspection and assessment should not subject stop and search to a risk-based assessment at the force level, but rather be a standing item that is reviewed and reported on annually for every force.
- In the absence of stop and search being a standing item for inspection, the record review and pre-assessment of all forces should be published to allow comparisons between forces to promote good standards and best practice.

- The thematic focus on the next tranche of forces should explore disproportionality. This would be broader than stop and search but would serve to draw attention to the worrying trends and set a benchmark for the NPCC diversity strategy. It also seems timely given the work done by the Lammy review and the government's race audit and would allow the HMIC to draw on a broader range of external expertise in this area. This could include an assessment of forces record of action to reduce ethnic disparities as well as their attempts to understand the nature of the problem.
- Disproportionality should be a specific standalone item in PEEL inspections, this should be recorded against age and gender.
- Pre-assessments and inspections should involve a broader range of stakeholders including community members and civil society.
- Body worn video should become part of the pre-assessment of forces use of stop and search powers alongside the record review and a methodology developed accordingly. It would provide a broader review of stop and search in practice and allow issues such as officer conduct and use of force to be picked up.