

StopWatch and Release's response to the Home Office's proposed revised 'Best Use of Stop and Search Scheme' ('BUSSS 2.0')

StopWatch is a coalition of academics, young people, lawyers and NGOs campaigning for transparent, effective and accountable policing.

Release is the national centre of expertise on drugs and drugs law – providing free and confidential specialist advice to the public and professionals. The organisation advocates for evidenced-based drug policies that are founded on principles of public health and human rights rather than a criminal justice approach.

When the then Home Secretary Theresa May launched the Best Use of Stop and Search Scheme (BUSSS) in April 2014, she sought to address the misuse of stop and search, in particular its waste of police time, the unfairness of it to black men, and its damage to public confidence¹. While we welcome the decrease in the number of stop and search and slight improvements in effectiveness, in its first three years BUSSS has failed to improve the three areas of concern shared by the then Home Secretary, campaign charities and communities: stop and search continues to be ineffective, wasting police time, it continues to be disproportionately targeted against black and minority ethnic communities and damages public confidence in the police. The revised version of BUSSS "BUSSS 2.0" that has been circulated for comment does little, if anything, to change this.

The number of stop and searches have decreased from its peak in 2010 of over one million searches to 387, 448 searches in 2015/16. Stop and search remains ineffective and focused on the least serious of crimes, with an arrest rate of only 16 per cent². Despite the promise that stop and search should be focused on violent and serious crime, during the BUSS period the proportion of searches for drugs has increased. The most common reason for stop and search continues to be drugs related and has increased from 53 percent of searches in 2013/14 to almost 60 percent in 2015/16. Her Majesty's Inspectorate of Constabulary have found that of these searches most are for low level possession³. In 2015/16, only 9% of searches were for offensive weapons⁴. Since BUSSS's conception, the evidence shows that ethnic disproportionately has remained unchanged. Figures produced by the Home Office show that black people were 6.5 times more likely to be searched in 2010/11 and were still 6.5 times more likely to be searched in 2015/16⁵.

¹ Oral statement to Parliament. Stop and search: Comprehensive package of reform for police stop and search powers, Home Office and The Rt Hon Theresa May MP, 30 April 2014 <https://www.gov.uk/government/speeches/stop-and-search-comprehensive-package-of-reform-for-police-stop-and-search-powers>

² Home Office (2016) *Police powers and procedures, England and Wales, year ending 31 March 2016*, London: Home Office. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/562977/police-powers-procedures-hosb1516.pdf [last accessed 26/07/17].

³ Her Majesty's Inspectorate of Constabulary (2013) *Stop and Search powers: Are the police using them effectively and fairly?* Available at: <http://www.justiceinspectores.gov.uk/hmicfrs/media/stop-and-search-powers-20130709.pdf> [last accessed 26/07/17].

⁴ Home Office (2016) *Police powers and procedures, England and Wales, year ending 31 March 2016*, London: Home Office. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/562977/police-powers-procedures-hosb1516.pdf [last accessed 26/07/17].

⁵ Home Office (2016) *Police powers and procedures, England and Wales, year ending 31 March 2016*, London: Home Office. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/562977/police-powers-procedures-hosb1516.pdf

BUSSS 2.0 fails to acknowledge the continuing problems with stop and search and is strangely silent on the issue of fairness and disproportionality. BUSSS 2.0 does not address the lack of effectiveness of stop and search, set standards for intelligence lead stop and search to reduce violent crime and avoids the problem of discrimination to BAME groups and children and young people.

This response will address some general comments about BUSSS 2.0 and then deal with specific issues raised in the document.

GENERAL COMMENTS

Lack of public consultation

Whilst both organisations welcome the opportunity to respond to the proposed revision of BUSSS, it is of serious concern that this process was not subject to public consultation. The review of BUSSS has been underway since October 2016 and despite calls to involve civil society and those most impacted by the use of stop and search powers in the review, this has not happened. Instead a revised document has been sent out to a very limited range of civil society groups giving people only three weeks to respond and providing no guidance on how feedback will be incorporated into a final BUSSS 2.0 Scheme. The lack of consultation is clear in the revised document circulated as it fails to recognise ongoing issues with stop and search or how the BUSSS Scheme has operated in practice and does little to revise the Scheme to respond to them. Not only will this mean that BUSSS will fail to make the improvements to stop and search promised but it furthers undermines community confidence in the police use of their powers.

Recommendation:

- The period for consultation should be extended and the Home Office should proactively reach out to civil society and communities who are impacted by stop and search for their views on the scheme, proposed revisions and other additions needed in the Scheme. There should be guidance provided on how responses to the consultation will be included and clear evidence that feedback given has been included in the final Scheme.

BUSSS 2.0 should be more than an administrative exercise

BUSSS 2.0 does little to address the main problem with the original scheme that in practice, it is an administrative exercise without any sanction if forces do not meet standards. Forces only need to demonstrate that they have the provisions of the scheme in place and not the quality of those provisions and their outcomes.

The HMIC inspection process has shown that forces fail to take the basic BUSSS standards seriously and why would they if the only action taken is being “kicked out of a club” they have joined voluntarily? In 2015, the HMIC found that only 11 of 43 police forces were compliant with all elements of the scheme. 13 forces were failing to comply with 3 or more elements of the scheme. As a result, in February 2016 Theresa May suspended those 13 police forces from the scheme, temporarily removing the obligation to comply with the requirements of BUSSS. A follow-up HMIC inspection of the 13 failing forces reported back in September 2016. At the time of the re-inspections between June and August 2016, only 6 forces of the 13 were found to be compliant with all features of the scheme. A further follow-up HMIC inspection in

[hosb1516.pdf](#) [last accessed 26/07/17]. These ratios are calculated based on the 2011 census so should be treated with some caution.

November 2016 revisited those 19 forces that were not complying with one or two features of the scheme in 2015. HMIC found that 15 of these 19 forces are now complying with those features of the scheme, however four forces are still not complying: Derbyshire Constabulary, Greater Manchester Police, Northamptonshire Police and South Yorkshire Police.⁶

As HMIC notes, given that the scheme was launched in 2014, it was unacceptable that there were forces still meeting the basic provisions. It concluded: The public has the right to expect that forces signed up to such a scheme should be complying with it. Our findings represent unacceptably slow progress on improving an important aspect of policing that we know has the potential to erode police legitimacy in the eyes of the public.⁷ As recently as March 2017, the Derbyshire Police were suspended from the scheme for failing to be able to provide full data linking searches to their outcomes.⁸ Beyond being publicly suspended from a voluntary scheme there are no repercussions for their failure to meet the low standards of this scheme and no obvious benefit for them to meet these standards and re-join.

We are concerned that without sanctions forces will continue to show only minimal committed to remaining on the scheme if they can return, after being found non-compliant, on the same terms as joining. Considering forces nationwide are supportive of BUSSS, the Home Office should now make the scheme mandatory. This would strengthen the authority and the legitimacy of the scheme, and require forces to adhere to a strong national framework rather than allow forces to determine the type of action they will take to improve stop and search policy and practice, and set the level of their community engagement. The Home Office should be able to ensure compliance through a range of sanctions, this would give teeth to what is currently a toothless scheme.

Given that adherence to the BUSS Scheme is voluntary and that non-compliance is of minimal consequence to police forces, we are doubtful that BUSSS 2.0 will result in all police forces fully complying with the scheme. As such, an independent assessment to measure the effectiveness of the current scheme should be carried out as a matter of priority. To date HMIC assessment of BUSSS has focused on compliance⁹ rather than effectiveness. As such, we are concerned that while some police forces can demonstrate compliance with the scheme during PEEL inspections, they could still fail to introduce meaningful and long-lasting changes need to be made to the use of stop and search.

Recommendations:

- BUSSS 2.0 should be mandatory with compliance assured through a range of sanctions.

⁶ Her Majesty's Inspectorate of Constabulary (HMIC), *Best Use of Stop and Search Scheme (BUSS)*, February 2017. Available at: <https://www.justiceinspectorates.gov.uk/hmic/wp-content/uploads/best-use-of-stop-and-search-scheme-19-forces-revisits.pdf>

⁷ Her Majesty's Inspectorate of Constabulary (HMIC), *Best Use of Stop and Search Scheme (BUSS)*, February 2017, at 7.

⁸ "Derbyshire Police criticised for how they use Stop and Search powers" *Derby Telegraph* 14th March 2017, available at: <http://www.derbytelegraph.co.uk/derbyshire-criticised-for-how-it-operates-stop-and-search-powers/story-30203178-detail/story.html>

⁹ Her Majesty's Inspectorate of Constabulary (2016) *Best Use of Stop and Search (BUSS) Scheme: The findings of an HMIC revisit of the 13 forces that were not complying with three or more of the features of the scheme in 2015*, Available at: <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/best-use-of-stop-and-search-scheme.pdf> [last accessed 26/07/17].

- The Home Office should require the HMIC to conduct an assessment not only of compliance with the Scheme but the effectiveness of its provisions at improving stop and search use and its outcomes.

BUSSS 2.0 does nothing to address the operational failings of how stop and search is deployed

While we welcome the decline in the overall number of stop and searches, we continue to be deeply concerned about how stop and search is targeted. Stop and search should be effectiveness, intelligence led and focused on serious and violent crime. We continue to see calls by forces, especially the Metropolitan Police, to increase the level of stop and search to address rising knife crime, whilst across the country forces are overwhelming using the power to detect possession of drugs.

The BUSS Scheme has resulted in significant increases in the proportion of stop and searches for drugs across most police force areas in England and Wales. The HMIC has noted that most of these drug searches are for low level possession of cannabis. Nationally, drug stop and searches account for 60 per cent of all searches.¹⁰ In some areas it is much higher, for example, the proportion of stop and searches for drugs increased from 9 per cent in 2009/10 to 71 per cent in 2015/16 in the Devon and Cornwall police force area.¹¹ Devon and Cornwall are completely compliant with BUSSS and meeting all the administrative standards but failing to use stop and search effectively. Stop and searches for drugs are ineffective, as they tend to have low arrest rates and stop to find ratios (where the object searched for is found). Stop and searches for drugs also erode the relationships between police officers and the communities they serve, as they continue to disproportionately target black and minority ethnic communities and young people.¹²

The use of stop and search to target (largely possession of) drugs should therefore not be a strategic priority for police force areas. The BUSSS 2.0 entirely fails to outline steps to reduce the proportion of stop and searches for drugs and its associated harms.

Recommendations:

- BUSSS 2.0 should mandate forces to reduce the proportion of stop and searches that are focused on drugs.
- BUSSS 2.0 should mandate forces to target their use of stop and search on the areas and crimes of concern for local communities.

¹⁰ Her Majesty's Inspectorate of Constabulary (2013) *Best Use of Stop and Search (BUSS) Scheme: The findings of an HMIC revisit of the 13 forces that were not complying with three or more of the features of the scheme in 2015*, Available at: <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/best-use-of-stop-and-search-scheme.pdf> [last accessed 26/07/17].

¹¹ Home Office (2016) *Stop and search statistics data tables: police powers and procedures year ending 31 March 2016, SS.03: Stop and search under section 1 of PACE (and associated legislation) by police force area and reason for search*, Available at: <https://www.gov.uk/government/statistics/police-powers-and-procedures-england-and-wales-year-ending-31-march-2016> [last accessed 26/07/17].

¹² Eastwood et al. (2013) *The Numbers in Black and White: Ethnic disparities in the policing and prosecution of drug offences in England and Wales*, Available at: <https://www.release.org.uk/sites/default/files/pdf/publications/Release%20-%20Race%20Disparity%20Report%20final%20version.pdf> [last accessed 26/07/17].

BUSSS 2.0 fails to address the continued rise of the racial disparity that exists in the police's use of stop and search

As highlighted, the racial disparity that exists in stop and search continues unabated. Despite the reforms introduced by the previous Home Secretary and the introduction of BUSSS black people are stop and searched at over six times the rate of white people¹³. The scheme should address this issue. There should be standards set that require forces to reduce disproportionality and clear disciplinary measures for officers who have been identified as targeting black and Asian people in an unlawful and discriminatory manner. StopWatch and Release would recommend that officers falling within this category are removed from frontline duties whilst their actions, and remedies to their behaviour, are identified.

Recommendations:

- Standards set that require forces to reduce disproportionality and senior officers should be held accountable for achieving this.
- Disciplinary measures should be monitored as part of BUSSS 2.0 where it has been shown that an officer has been using stop and search powers in a discriminatory and/or unlawful manner.

BUSSS 2.0 still fails to address concerns about traffic stops

In March 2016, in response to concerns about the discriminatory use of section 163, Theresa May committed to extend the BUSS scheme to cover traffic stops.¹⁴ There are longstanding concerns about the discriminatory and ineffective use of traffic stops. Key amongst these has been the concern that black and ethnic minority drivers are being disproportionately targeted for unmonitored and unregulated traffic stops. Yet, traffic stops are not routinely recorded and have not been subject to the same scrutiny and reform as other stop-search powers. Section 163 of the Road Traffic Act 1988 is a widely used stop power that can be deployed by officers without being required to have reasonable suspicion or make a record of the encounter. We are concerned that over a year later, the recording of traffic stops is not included in BUSSS 2.0. It should be added as a standard that all forces need to meet to be part of the BUSS scheme.

Recommendations:

- All forces should be required to record 163 stops. The recording of section 163 should mirror the recording of other powers to stop and search and the person stopped should be provided with a record of the stop. The following should be recorded for all traffic stops:
 - (1) details of the stop: date, time and location;
 - (2) demographic information: age, gender and ethnicity (using 18+1 ethnicity codes);
 - (3) reasons for the stop: broad categories defined by consultation should be supplemented by the requirement for officers to provide a free-text reason for the stop;
 - (4) outcomes: offence sanction/report i.e. summons/fixed penalty/caution etc., vehicle seized, driver or passenger arrested, stop and search (no further action), stop and search (arrest or other positive outcome), words of advice, intelligence report, no further action, other (must be specified);
 - (5) whether the stop led to a search and which search power was engaged;
 - (6) other factors: Whether force was used (e.g. was driver handcuffed) and length of stop.

¹³ Home Office (2016) *Police powers and procedures, England and Wales, year ending 31 March 2016*, London: Home Office. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/562977/police-powers-procedures-hosb1516.pdf [last accessed 26/07/17].

¹⁴ The Times, Driving while black is not a crime May warns police, 26 March 2016.

- Forces should be required to collate and publicly share data regarding the use of section 163 and involve local communities in the scrutiny of that data.

SPECIFIC COMMENTS

Data Recording and publishing

Recording of outcomes (1.3)

Despite national guidance¹⁵, it is our understanding that community resolutions are employed differently across police forces in England and Wales and some police force areas do not use community resolutions as a type of out of court disposal. We would therefore suggest that more clarity and/or guidance is needed on the use of community resolutions, in order to “build a richer picture of how stop and search is being used”.

Recommendation:

- An assessment of how community resolutions are used by police forces should be undertaken and forces should be reminded to follow the national guidelines.

Recording of age (1.7)

While we welcome the obligation for forces to record and publish the age of the person searched, we recommend the addition of ‘officer defined’ recording of their perception of the age of the person searched rather than be able to record ‘not given’. In the event of many children and young people deciding against revealing their age, the Home Office, forces and the public, would at least have police definition of the age to rely on for analysis. A concerted effort should be made by the Home Office to provide a range of ages that police could utilize in recording this information, currently many forces use different age ranges which is unhelpful when trying to analyse the scale of the problem relating to the use of this power against children.

Forces should be required to record more information on drugs searches

As a large proportion of stop and searches are for drugs, forces participating in the BUSSS 2.0 should be required to record more information about those searches including which drug was being searched for, was the suspicion for possession or intent to supply and what drugs were found as a result of the search. This would allow the forces to develop a clearer understanding of how they are targeting stop and search and its effectiveness. Stop and searches for drugs are one of the main drivers of disproportionality so collecting additional data on this would allow for work to be taken to improve the fairness of stop and search.

Recommendations:

- Rather than age ‘not given’ it should be recorded as ‘self-defined’ or ‘officer defined’.
- A coherent classification of age ranges should be adopted by all forces to ensure data recording consistency.

¹⁵ Association of Chief Police Officers (2012) *Guidelines on the use of Community Resolutions (CR) Incorporating Restorative Justice (RJ)*, Available at: <http://library.college.police.uk/docs/appref/Community-Resolutions-Incorporating-RJ-Final-Aug-2012-2.pdf> [last accessed 27/07/17].

- Forces should record which drug was being searched for, was the suspicion for possession or intent to supply and what drugs were found as a result of the search. This should be monitored and shared as part of the existing framework.

Force data recording will enable that supervisors scrutinise records of stop and search, identifying those in which the grounds recorded do not appear to be reasonable, and taking appropriate action

The Scheme should be more explicit on what is meant by ‘appropriate action’ if the grounds are not reasonable then it is arguably an unlawful search and as such a failure of duty. In such circumstances the very least that should be implemented is a withdrawal of the right to use the power to stop and search members of the public whilst the individual officer’s behaviour is addressed, where the power is repeatedly abused or applied in a racially targeted manner then it should result in disciplinary proceedings.

Recommendation:

- The BUSSS 2.0 should provide more guidance on what an ‘appropriate action’ for noncompliance with PACE Code A entails.

Review of Body Worn Video (BWV) by Lay Observers (2.3)

We have concerns around the emphasis on body worn video for reviewing the use of stop and search. BWV is not an objective insight into a stop and search, it will be filmed from the officer’s perspective who will decide when to start and stop filming and explain what has happened from their perspective. It will not capture the totality of the encounter including what happened or was said before it was turned on and the encounter can look very different from other angles. We are aware that BWV is being used differently by forces to review stop and search. As the BUSSS 2.0 document highlights the decision to allow lay observers to review BWV engages Article 8 of the Human Rights Act 1998 and the Data Protection Act 2000. In recognition of this, and to protect an individual’s privacy BUSSS 2.0 should provide guidance on how BWV footage of a stop and search should be shared with the public and scrutinised including standards for ensuring the privacy of the person stopped and searched is protected. Given the sensitivity of the use of BWV – these standards should be widely consulted with civil society and communities.

In addition to BWV, forces should be required to regularly monitor social media for video and comments about stop and search instances and this footage should be included in scrutiny processes, with the same protections given to protect the privacy of the person being stopped and searched.

Recommendations:

- More detailed guidance should be included on how BWV footage should be used within scrutiny processes to ensure that the rights of those stopped and searched are not being infringed and that the use of BWV improves practice. There should be wide public consultation into these standards.
- Forces should be required to regularly monitor social media for video and comments about stop and search encounters and this footage should be included in scrutiny processes, with the same protections given to respect the privacy of the person being stopped and searched.

Section 60 Criminal Justice and Public Order Act 1994

StopWatch and Release fundamentally oppose the watering down of the authorisation process for the use of section 60 contained within the current version of BUSSS (1.0.). This is the aspect of the BUSSS that has been successful and which has resulted in the use of this power falling dramatically in the last three years. It is incomprehensible as to why the Home Office would want to make it easier for forces to authorise the use of such power, especially when it has been so abused historically. At the height of its use in 2009 black people were stopped and searched at 23 times the rate of white people and the detection rate was 0.32 per cent.¹⁶

We understand that police forces are concerned that an Assistant Chief Constable (ACC) might not be available to authorise a section 60, especially if there was an emergency but we are unaware of any circumstances in which this has actually happened. This is producing guidance based on 'what ifs' and 'maybes' rather than focusing on the reality of the policing environment since the introduction of the scheme in 2014. The guidance should require forces to put systems in place to ensure that chief officers are always available, at least by telephone, to make a decision to authorise a section 60 in the event of violence.

Section 60 is unjustified in terms of its contribution to the detection and prevention of crime, it is open to abuse that is difficult, if not impossible to control because there are no particular grounds for its exercise. The power is insufficiently circumscribed; it has an extremely racially disproportionate impact and the safeguards against misuse and arbitrariness are wholly inadequate. BUSSS 2.0 fails to go far enough to protect against its misuse. Further limits should be placed on its use including a reduction of the time period of authorisation from 12 to six hours.

Recommendations:

- The current scheme and level of authorisation operates effectively and as such should not be diluted. Authorisation should remain at a level of ACC or above.
- BUSSS 2.0 should require that section 60s should only be authorised for a maximum of six hours.

Race and Diversity and Children

Forces have been monitoring the use of stop and search for decades. This does nothing to require forces to prevent, investigate and reduce discrimination. BUSS 2.0 does not explain what would be unacceptable behaviour or failures to address discrimination, and specifically what would be expected to be done from forces in response. While it is important the effectiveness of the powers is monitored, the 'successful' outcome of a stop and search does not affirm the power has been used without discrimination to someone with a protected characteristic. It should also be stressed, police forces are not prevented from enhancing their abilities to fulfil the Equality Act 2010 on their own and in this regard do not need the components of BUSS 2.0 to strengthen their abilities. BUSS 2.0 should be giving forces more than just abilities they already possess and also provide goals for them to meet.

¹⁶ Taylor R (2014) *Section 60: a most draconian stop-and-search law that plays to police prejudice* <https://www.theguardian.com/commentisfree/2014/feb/06/section-60-draconian-stop-and-search-police-prejudice> [last accessed 26/07/17].

Children and young people are vulnerable members of the public. Research suggests a significant proportion of stop and searches are of children and young people¹⁷, yet there is a lack of guidance on how an officer should conduct a search of someone under the age of 18. BUSSS 2.0 should go further than reinstating obligations that are already expected of police forces, and set minimum standards around the stopping and searching of children and young people.

Recommendations:

- BUSSS should set specific standards for police forces in order to eliminate the current discrimination that exists in the use of stop and search.
- All forces should adopt a safeguarding policy for children that considers their vulnerabilities within the context of policing experiences rather than considering only external risks, as is currently the case in most police forces.
- BUSSS 2.0 should set minimal standards around the stopping and searching of children and young people that forces should be required to meet.

Independent Scrutiny Groups ('ISGs') should reflect the demographics of the local force area

BUSSS 2.0 makes Independent Scrutiny Groups the key focus of police - community engagement around stop and search but fails to set any minimal standards for these groups. ISGs are important but should only be considered one mechanism for engagements and forces should be required to demonstrate how they have used a range of tools to engage with local communities around the use of their powers.

As currently operating ISG vary hugely around the country both in terms of how they are constituted and how the police interact with them. ISGs should not only reflect local demographics rather membership should also largely be drawn from impacted communities, that is, communities who have direct experience of stop and search. Failure to do this can lead to ISGs who rather than acting as critical friends of the police can become cheerleaders, diluting the both the independence and the scrutiny elements of the group. Clearly, those who have directly experienced stop and search, or whose family members or friends have been subject to this police power, would provide much more robust insight into the role of police in their communities. This would be a positive experience for both the police and, potentially, for those who are disproportionately the focus of stop and search.

Recommendations:

- Standards should be set to ensure that scrutiny processes are independent, representative and effective.
- Members of the ISG should come from communities most affected by police stop and search.

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¹⁷ All Party Parliamentary Group for Children (2014) "It's all about trust" : Building good relationships between children and the police
https://www.ncb.org.uk/sites/default/files/uploads/documents/Policy_docs/appgc_children_and_police_report_-_final.pdf