



The Colour of Injustice: 'Race', drugs and law enforcement in England and Wales - a briefing paper

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Introduction

The unequal enforcement of drug laws is a source of profound racial injustice. While the U.S 'war on drugs' provides a particularly egregious example¹, differential patterns of enforcement have been identified across a range of jurisdictions². The Numbers in Black and White was published in 2013 by Release and showed how drug policing, particularly the use of stop and search, was driving ethnic disparities throughout the criminal justice system in England and Wales³. What we present below is a summary of the full report, which updates and extends this earlier analysis, highlighting important areas of continuity and change. The policy context has changed dramatically, with central government paying much greater attention to ethnic disparities in criminal justice and the use of stop and search. Despite the avowed commitment to tackling discrimination, however, the underlying problem remains and, in some respects, has been magnified.

The full report documents the disproportionate impact that drug law enforcement continues to have on black and minority ethnic communities in England and Wales. The analysis presented in the report covers various aspects of the criminal justice process, including:

- Stop and search
- Arrests and out of court disposals
- Prosecution and sentencing

For the full report go to: http://www.stop-watch.org/uploads/documents/The_Colour_of_Injustice.pdf

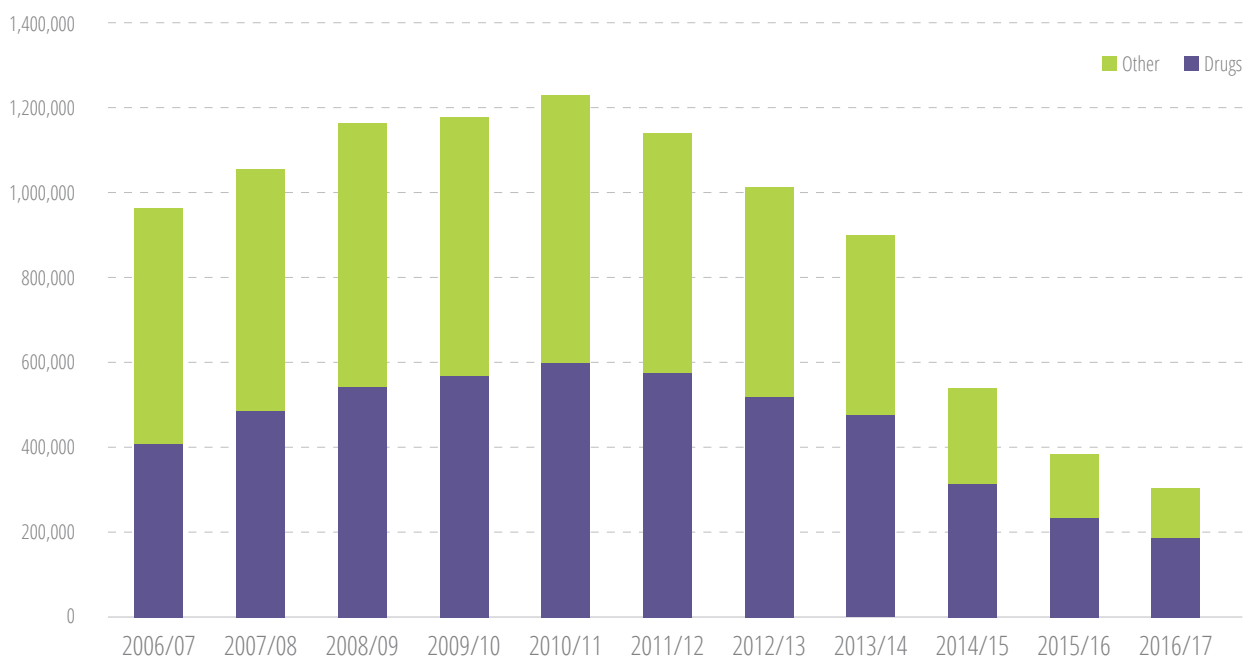
Executive Summary

Stop and search focuses on low-level drug offences

- Use of stop and search has fallen sharply, dropping by 75 per cent from 2010/11 to 2016/17.
- Stop and search has become increasingly concentrated on suspected drug offences, most of which involve low-level possession. Half of all stop-searches were targeted at drugs in 2010/11, rising to almost two-thirds by 2016/17.

Figure 1

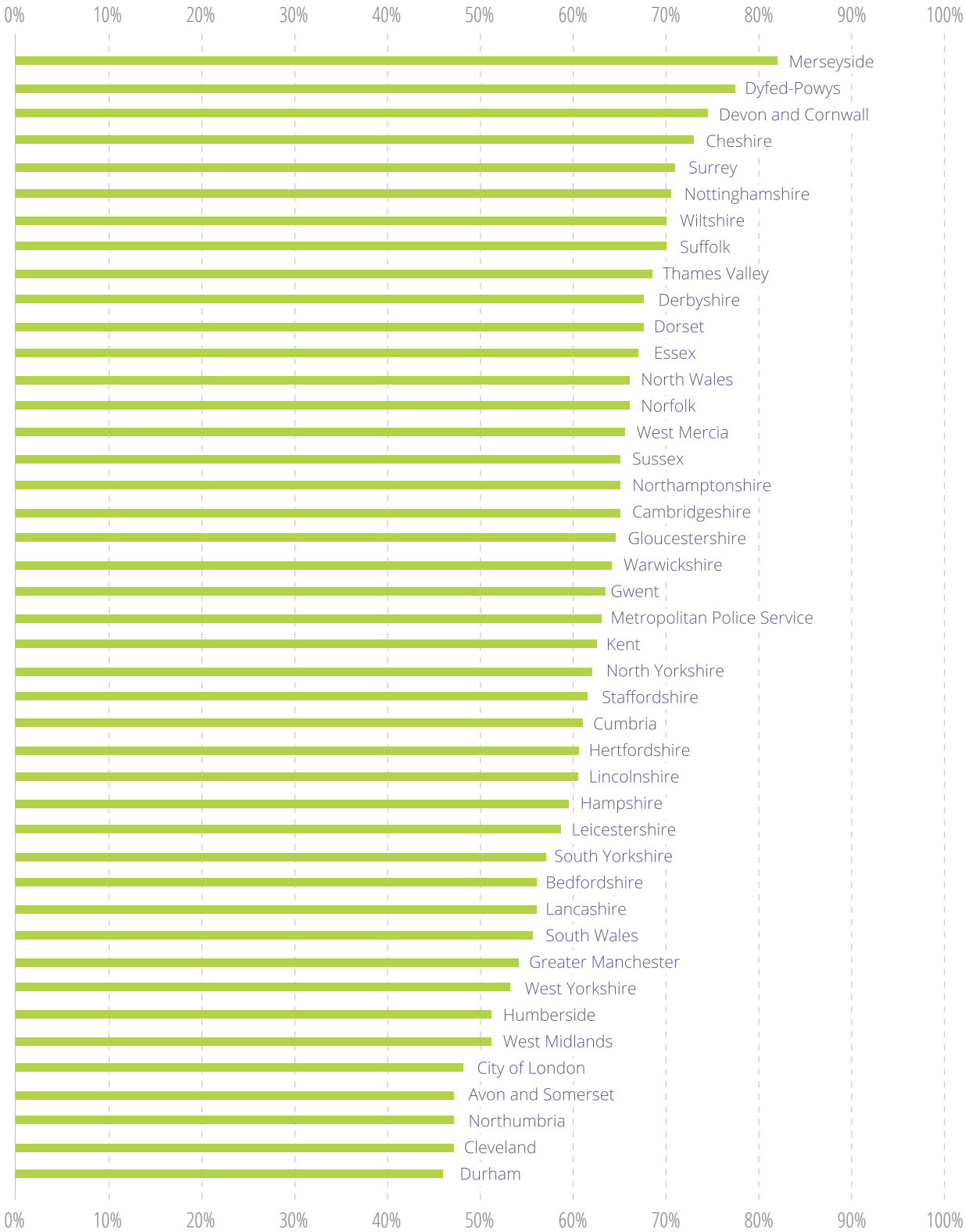
Number of stop-searches for drugs and other reasons in England and Wales, 2006/7 to 2016/17



Source: Police powers and procedures

- The intensity of the focus on drugs varies sharply between forces: 82 per cent of stop-searches during 2016/17 were for drugs in Merseyside compared with 46 per cent in Durham.
- Substantial variations are evident between forces with similar crime-relevant profiles, suggesting they are largely a function of differences in police policy and decision-making.
- Police forces are making operational decisions to target low-level drug possession offences over other, more serious, offences.

Figure 2: Percentage of stop-searches in England and Wales targeted at suspected drug offences by force, 2016/17



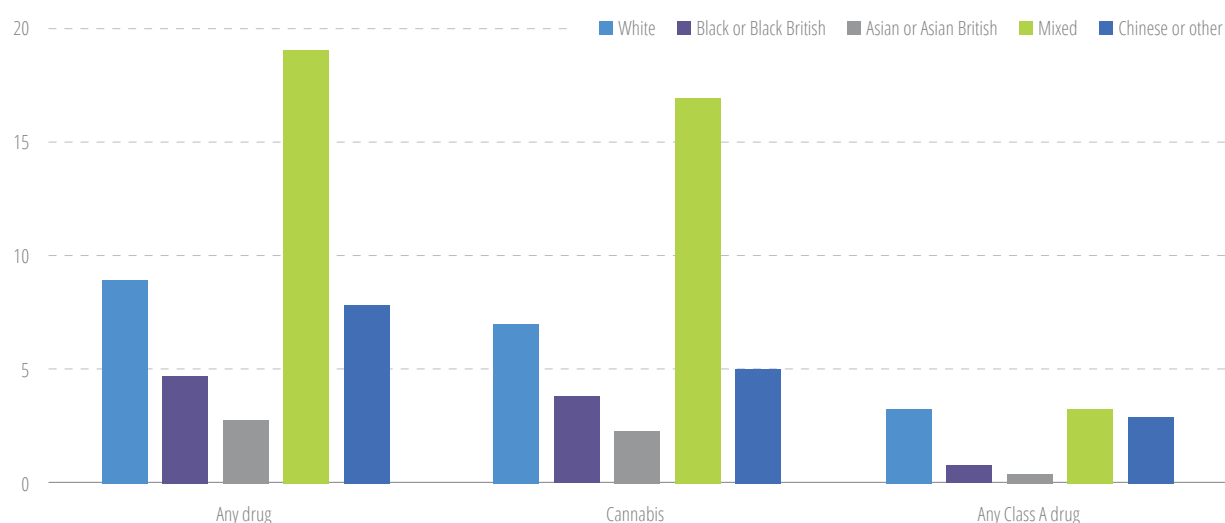
Source: Police powers and procedures

Stop and search is more disproportionate than ever

- The number of stop and searches has fallen sharply for all ethnic groups, but has fallen most sharply for white people even though they had relatively modest rates of exposure at the outset.

- Disproportionality has increased as the use of stop and search has fallen, indicating that residual use of the powers is more heavily concentrated on black and minority ethnic groups.
- Black people were stopped and searched at more than eight times the rate of white people in 2016/17. Asian people and those in the 'mixed' group were stopped and searched at more than twice the rate of white people.
- Black people were stopped and searched for drugs at almost nine times the rate of white people, while Asian people and those in the 'mixed' group were stop-searched for drugs at almost three times the rate of white people.

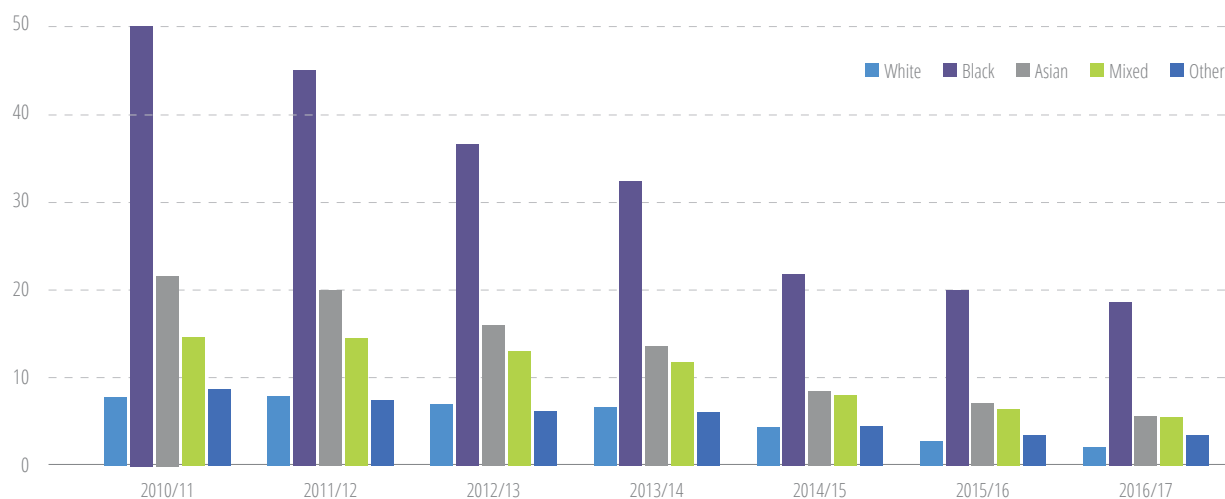
Figure 3 Proportion of 16 to 59 year olds in England and Wales who reported using drugs 'in the last year' by ethnicity (percentages)



Source: Crime Survey for England and Wales 2016/17⁴

Figure 4

Stop and search for drugs by self-defined ethnicity in England and Wales, 2010/11 to 2016/17 (rates per 1,000 and disproportionality ratios)



Source: Police powers and procedures

	Disproportionality ratios (compared to white)						
	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17
White	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Black	6.5	6.0	5.2	4.8	4.9	6.9	8.7
Asian	2.8	2.7	2.3	2.0	1.9	2.4	2.7
Mixed	1.9	1.9	1.8	1.8	1.8	2.3	2.6
Other	1.1	1.0	0.9	0.9	1.0	1.2	1.6

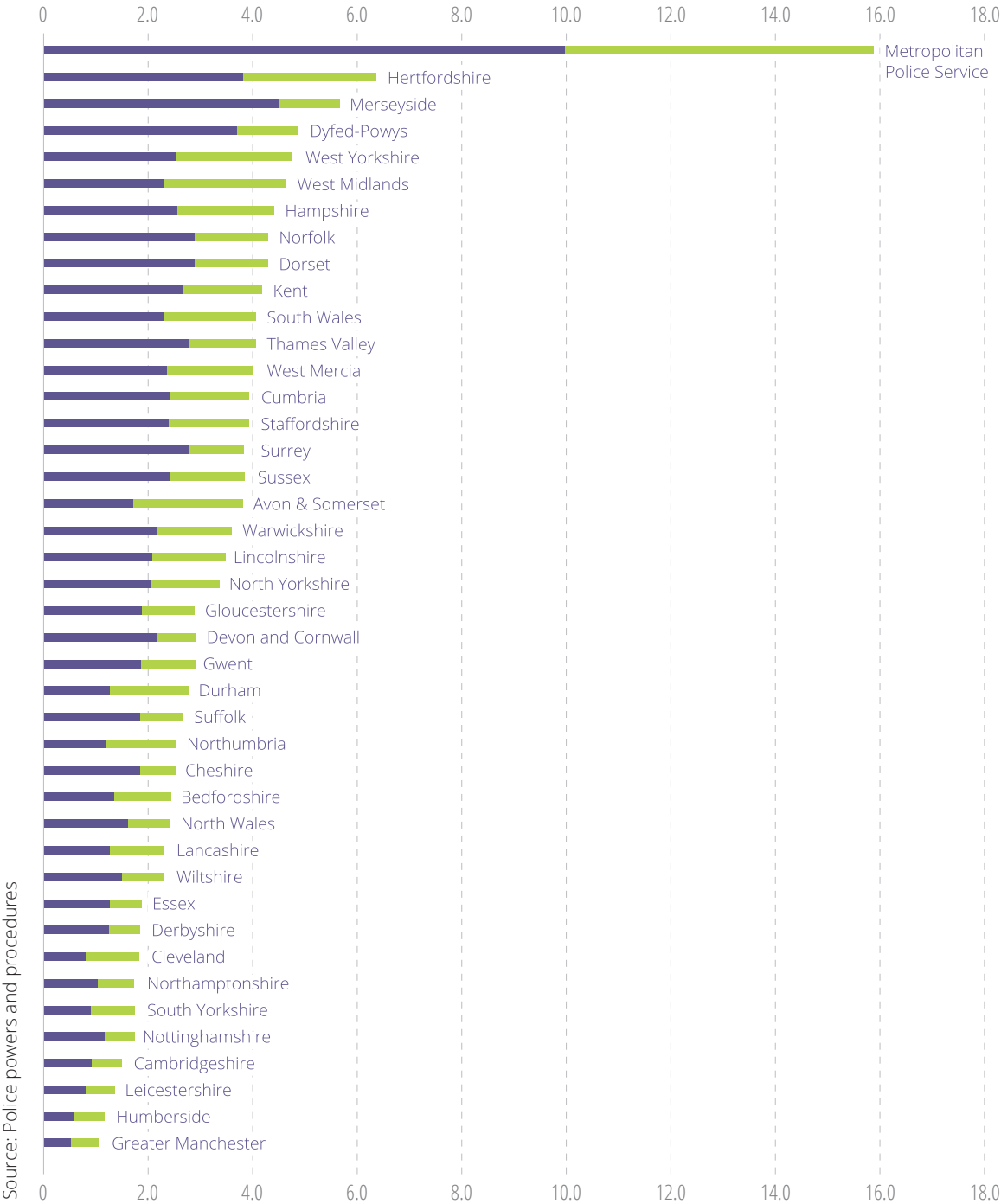
- The 'find' rate for drugs is lower for black than white people, suggesting that such searches are carried out on the basis of weaker 'grounds' for black people.

Variations across forces point to discrimination

- Forces vary sharply in their overall use of stop and search as well as their rates of disproportionality. Such differences are evident between forces with similar crime-relevant profiles, suggesting they are largely a function of police policy and decision-making.
- High rates of stop and search in London are an important driver of ethnic disproportionality because a large proportion of the black and minority ethnic population live in the capital.

Figure 5:
Rates of stop and search for drugs and other reasons per 1,000 population by force (2016/17)

■ Drugs
■ Other



Notes

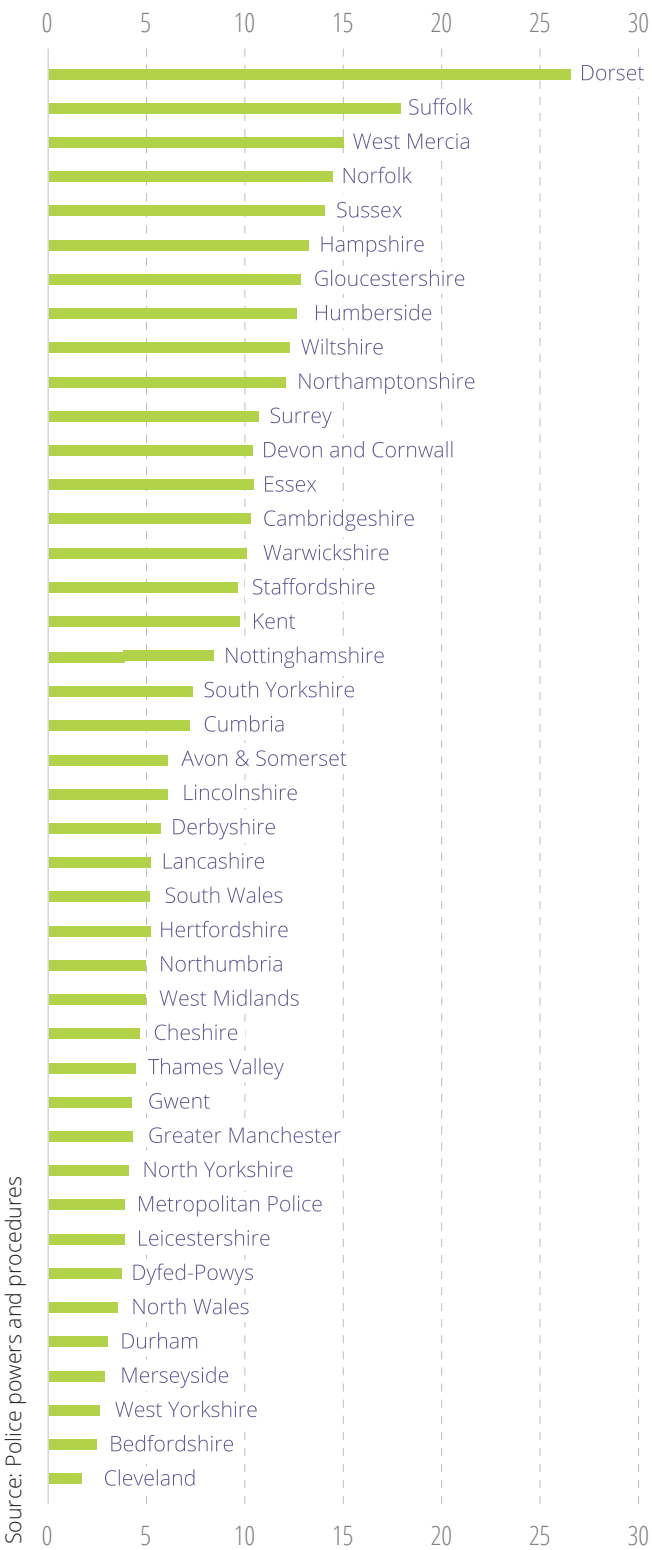
- Rates of stop and search per 1,000 residents were calculated on the basis of population estimates for mid-2015 published in Police Force Area Tables (Table P3: Police recorded crime by offence group and police force area) by the Office for National Statistics as part of the Crime in England and Wales series. See <https://www.ons.gov.uk/releases/crimeinenglandandwalesyearendingmarch2017> [accessed July 12 2018]
- City of London Police has been excluded from analyses relating to rates of stop and search and disproportionality because it has a small residential population and a large transient population, which means the Census does not provide a valid benchmark for assessing rates of use.

- Black people were stopped and searched at a higher rate than white people by every force in England and Wales during 2016/17. Disproportionality ratios varied 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.
- Some forces have substantially reduced their use of stop and search without seeing a corresponding increase in disproportionality. Other forces have combined much more modest reductions in stop and search with high, and increasing, rates of disproportionality.

Figure 6A: Black / white disproportionality ratios for all stop and searches by force (2016/17)



Figure 6B: Black / white disproportionality ratios for stop and searches targeting drugs by force (2016/17)

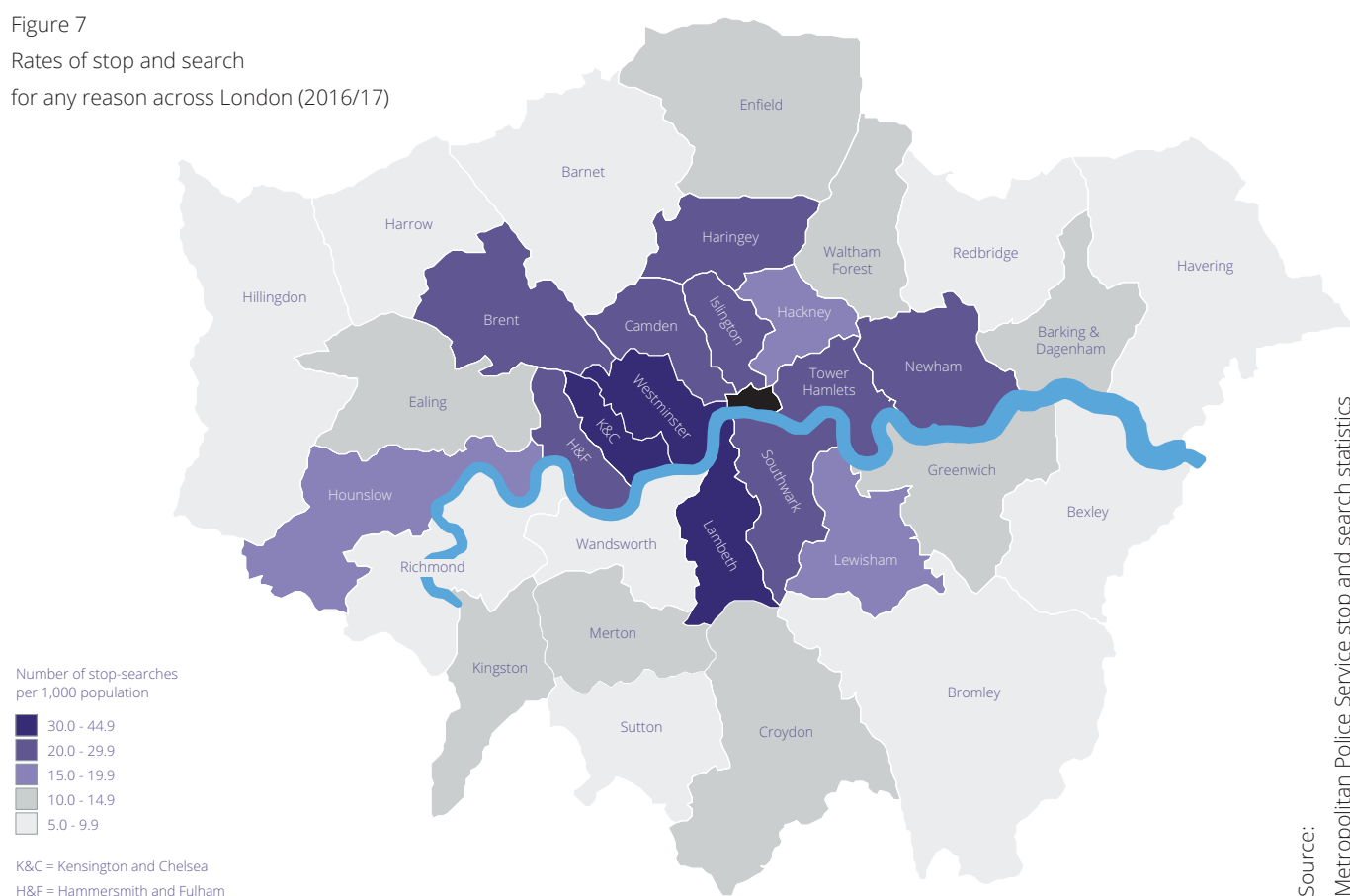


London data point to patterns of geographic and individual profiling

- Overall rates of stop and search are higher among inner than outer London boroughs.

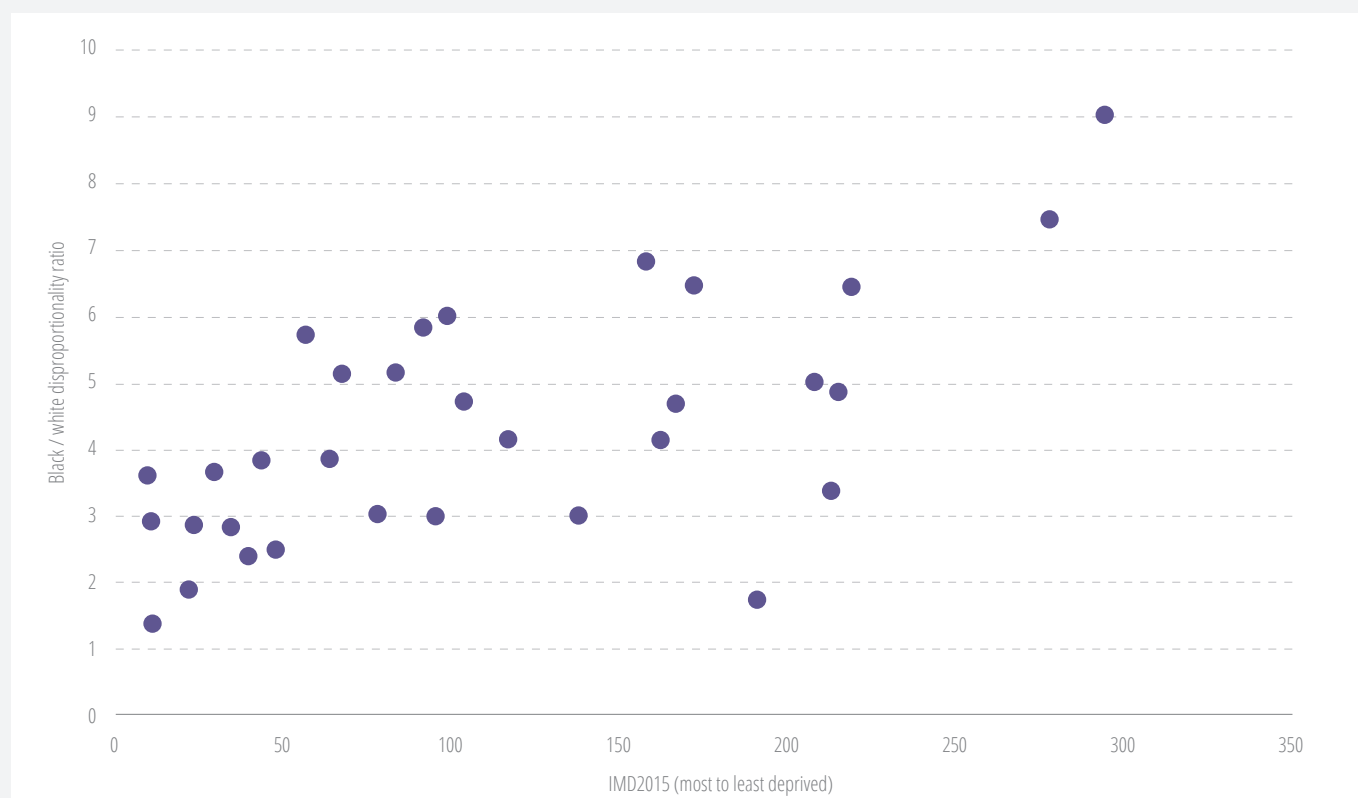
Figure 7

Rates of stop and search
for any reason across London (2016/17)



- Variations between boroughs are strongly linked to levels of deprivation. Overall rates of stop and search are highest in more deprived boroughs with considerable inequality.
- Rates of stop and search appear to be more sensitive to deprivation and inequality than crime. The concentration of stop and search in deprived boroughs cannot be explained by patterns of drug use, including cannabis use.
- The concentration of stop and search in boroughs with high levels of deprivation and inequality fuels disproportionality because people from black and some other minority ethnic groups tend to live in such areas in relatively large numbers.
- 'Race' complicates and confounds the general relationship between stop and search and deprivation. Rates of stop and search for black people do not vary with levels of deprivation.
- Disproportionality is highest in relatively wealthy and affluent boroughs. White people are subject to very low rates of stop and search in such locations, while black people continue to experience heightened rates of intervention. This pattern is consistent with ethnic profiling because it indicates that black people are being singled out for suspicion.

Figure 8 Black / white disproportionality for stop-searches targeting drugs across the 32 London boroughs by levels of deprivation (2016/17)



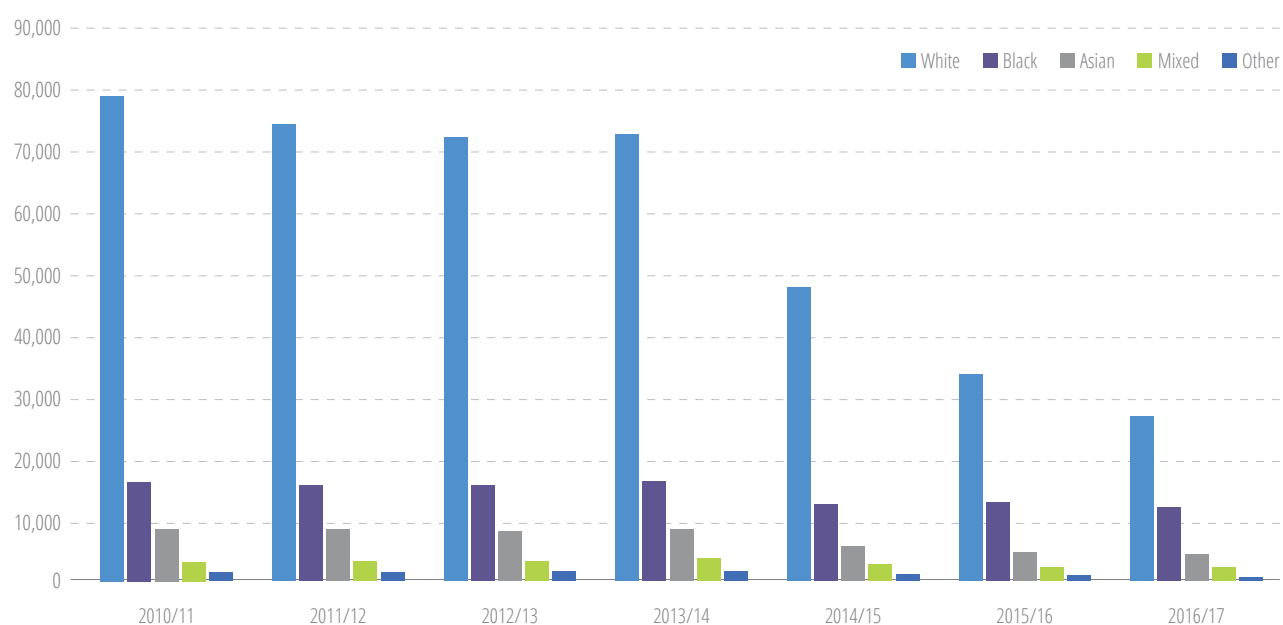
Source: Metropolitan Police Service stop and search statistics

rs= 0.60, p < .01

Arrests and out of court disposals exacerbate ethnic disparities

- Stop and search was responsible for 39 per cent of all arrests for drugs in 2016/17 compared with 3 per cent of arrests for other offences.

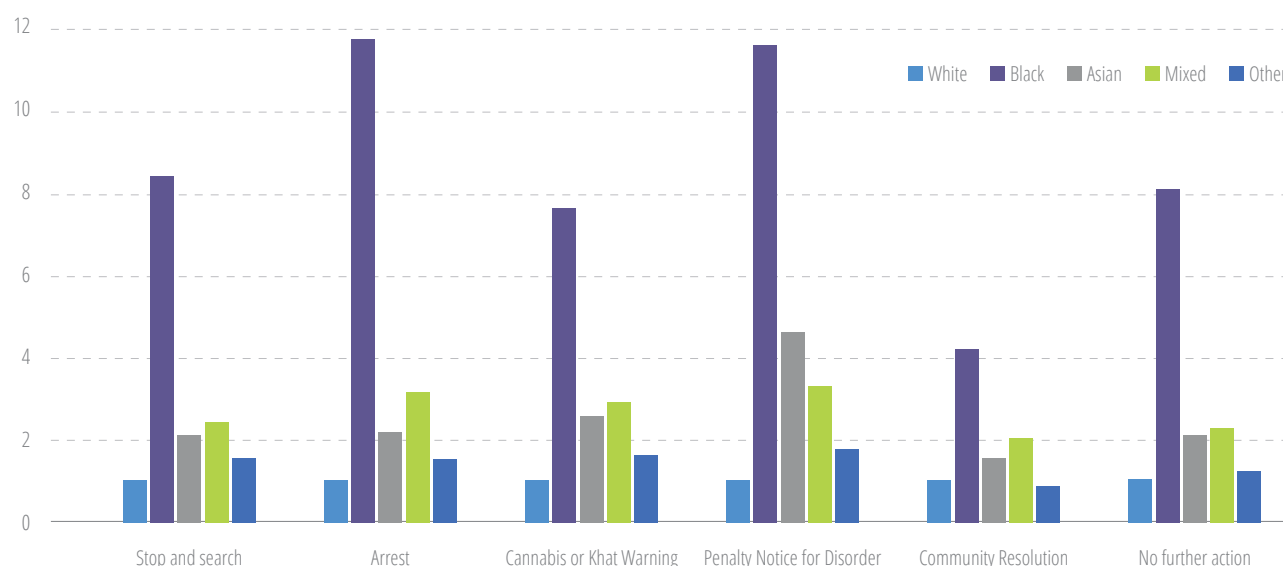
Figure 9 Arrests from stop and search for any reason in England and Wales 2016/17 (number)



Source: Police powers and procedures

- The rate at which stop and search identifies stolen or prohibited items is similar for all ethnic groups, though the 'find rate' for drug searches is lower for black than white people.
- The rate at which further action is taken, leading to a criminal justice outcome, is similar for all ethnic groups, but there are marked differences in the type of action taken.
- Black people are more likely to be arrested as a result of stop and search than white people, but less likely to be given an out of court disposal. This means black people are more likely to be prosecuted.
- Penalty notices for disorder (PNDs) or 'on the street' fines are the only out of court disposal that black people receive at higher rate than white people. Unlike other out of court disposals, PNDs do not require an admission of guilt.
- The number of arrests from stop and search has fallen much more sharply for white than black people. Arrests from drug searches halved for white people between 2010/11 and 2016/17, but remained stable for black people.
- Stop and search accounts for a much larger proportion of arrests of black than white people: 17 per cent compared with 5 per cent for all offences; and 57 per cent compared with 31 per cent for drug offences. Such disparities suggest that the disproportionate application of stop and search is largely a function of police policy and decision-making rather than crime.

Figure 10 Ethnic disparities for stop and search and associated outcomes in England and Wales 2016/17 (disproportionality ratios)



	Rates per 1,000					
	Stop and search	Arrest	Cannabis or Khat Warning	Penalty Notice for Disorder	Community Resolution	No further action
White	3.49	0.55	0.26	0.04	0.06	2.47
Black	29.33	6.47	1.96	0.46	0.26	20.07
Asian	7.56	1.22	0.66	0.19	0.10	5.28
Mixed	8.54	1.73	0.75	0.13	0.12	5.66
Other	5.50	0.84	0.41	0.07	0.05	3.17

Notes

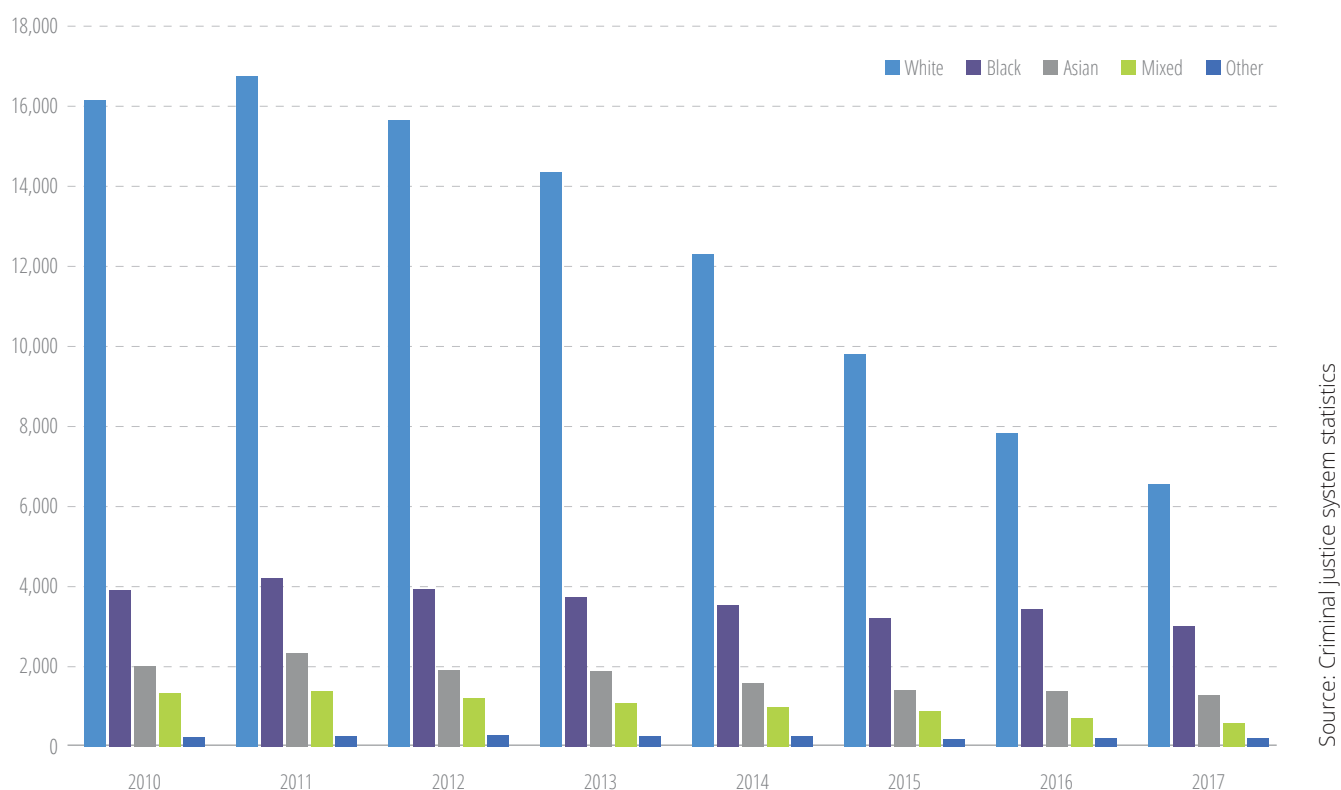
1. The figures shown here refer to the 'principal outcome' of the stop and search. Where an outcome follows arrest, only the arrest is recorded. This means cautions are under-recorded because they are typically issued after arrest. Consequently, cautions have been excluded from the analysis shown here.
2. The published figures do not distinguish between cannabis and khat warnings, but other criminal justice statistics indicate that, in 2016/17, 5,966 penalty notices were issued for cannabis possession and seven were issued for khat possession⁵. Based on these figures we can safely assume that the vast majority of warnings were for cannabis.

Source: Best Use of Stop and Search scheme

Sentencing decisions perpetuating injustice

- Ethnic disparities introduced by stop and search and other forms of police activity follow through to prosecution, conviction and sentencing.
- Black people were prosecuted for drug offences at more than eight times the rate of white people in 2017. This compared with almost four times the rate for all indictable offences.
- More black people were prosecuted for cannabis possession than supply of Class A or B substances combined. The balance was reversed for white people.
- Black and Asian people were convicted of cannabis possession at 11.8 and 2.4 times the rate white people despite their lower rates of self-reported use, providing prima facie evidence of discrimination.

Figure 11 Court convictions for cannabis possession by ethnicity in England and Wales (number, indictable offences only)



- Black people made up a quarter of those convicted of cannabis possession even though they comprise less than 4 per cent of the population.
- Black people were sentenced to immediate custody for drug offences at 9.1 times the rate of white people, but given suspended sentences at 5.6 times the rate of white people.

Table 1

Defendants proceeded against, convicted and sentenced for indictable offences in 2017 by ethnicity, England and Wales

	Rate per 1,000 population					Disproportionality of white people				
Drug offences	White	Black	Asian	Mixed	Other	White	Black	Asian	Mixed	Other
Proceeded against	0.44	3.82	0.87	1.37	0.57	1.00	8.63	1.96	3.09	1.28
Convicted	0.41	3.35	0.78	1.19	0.48	1.00	8.14	1.90	2.89	1.18
Sentenced	0.40	3.26	0.76	1.15	0.47	1.00	8.13	1.90	2.87	1.18
Absolute or Conditional Discharge	0.05	0.41	0.08	0.13	0.05	1.00	7.51	1.48	2.46	0.95
Fine	0.14	1.27	0.28	0.41	0.18	1.00	8.81	1.94	2.85	1.23
Community Sentence	0.05	0.45	0.09	0.19	0.06	1.00	8.81	1.86	3.80	1.24
Suspended Sentence	0.05	0.29	0.08	0.12	0.04	1.00	5.58	1.44	2.28	0.72
Immediate Custody	0.08	0.75	0.21	0.25	0.13	1.00	9.10	2.52	3.02	1.57
Otherwise Dealt With	0.02	0.09	0.02	0.04	0.02	1.00	5.50	1.42	2.55	0.92

All indictable offences	White	Black	Asian	Mixed	Other	White	Black	Asian	Mixed	Other
Proceeded against	3.42	12.53	3.47	5.58	2.88	1.00	3.66	1.01	1.63	0.84
Convicted	2.92	9.86	2.78	4.41	2.33	1.00	3.38	0.95	1.51	0.80
Sentenced	2.88	9.73	2.75	4.30	2.32	1.00	3.38	0.96	1.49	0.81
Absolute or Conditional Discharge	0.29	0.80	0.20	0.35	0.21	1.00	2.75	0.67	1.20	0.71
Fine	0.45	2.00	0.50	0.78	0.40	1.00	4.40	1.11	1.72	0.88
Community Sentence	0.57	1.91	0.51	0.95	0.45	1.00	3.33	0.89	1.66	0.79
Suspended Sentence	0.50	1.47	0.48	0.68	0.36	1.00	2.96	0.96	1.36	0.72
Immediate Custody	0.94	3.22	0.98	1.39	0.81	1.00	3.41	1.04	1.47	0.86
Otherwise Dealt With	0.09	0.30	0.08	0.13	0.08	1.00	3.23	0.82	1.40	0.85

Source: Criminal justice system statistics

Notes

1. Sentencing data are published according to calendar years (i.e. January to December)
2. Rates per 1,000 are subject to rounding errors and may not exactly match the disproportionality ratios given in the table.

Recommendations

The uneven enforcement of drug laws and selective criminalisation of black and minority ethnic communities is a profound source of injustice that demands redress. It is scarcely believable that ethnic disparities have widened, despite the introduction of recent reforms that were meant to address the problem, and that the situation is not being treated as a matter of urgency by government. The main message from this report is that specific measures and safeguards are required to tackle entrenched ethnic disparities in drug policing and stop and search.

1. The role of law enforcement in UK drug policy should be reviewed and reformed. Drug policing is a key driver of ethnic disparities throughout the criminal justice system and must be reoriented if ethnic disparities are to be alleviated.
2. The Government should honour the pledge made by the current Prime Minister - and former Home Secretary - to introduce primary legislation to ensure that stop and search powers are used fairly, effectively and proportionately. Given the persistent nature of ethnic disparities and the failure to deliver sustained improvements in this area, an element of compulsion is required. Forces that fail to meet acceptable standards should face sanctions. The Home Office should be able to suspend poorly performing forces from using stop and search powers until appropriate safeguards have been put in place, which should be subject to further review.
3. The Police and Criminal Evidence Act (PACE) 1984, Code of Practice A should be revised to:
 - i) Clarify that 'the smell of cannabis' on its own does not meet the threshold for reasonable suspicion and is not sufficient to justify the use of stop and search.
 - ii) Clarify that selectively using 'the smell of cannabis' to target people who are thought to be involved in other forms of criminal activity is inconsistent with the requirements of PACE and unlawful.
 - iii) Require that officers conducting stop-searches for drugs make a record of the substances that are believed to be involved and the nature of suspected offence (i.e. possession-only or supply). Such information will help forces and others assess the extent to which stop and search is being targeted at priority crimes, as well as its effectiveness and likely impact on trust and confidence.
 - iv) Extend existing requirements for public scrutiny to include a focus on arrests and out of court disposals. The proportion of arrests within each ethnic group that are made as a result of stop and search should be a key indicator and the presumption should be one of parity unless there are demonstrable, evidence-based reasons why this is not appropriate.
 - v) Require that local scrutiny groups responsible for reviewing the use of stop and search should operate independently of forces and under the jurisdiction of the relevant Police and Crime Commissioner's Office.

4. The Best Use of Stop and Search (BUSS) scheme should be abolished. This voluntary scheme has failed to deal with the central problem of disproportionality and does not incentivise forces to do so because it makes no distinction between those that are performing well or poorly on key indicators. Given existing levels of disproportionality, it is not credible that all 43 territorial forces should be deemed to be fulfilling the requirements of the scheme, including the public sector equality duty that they have due regard to the need to eliminate discrimination. Rather than relying on a voluntary scheme, the Home Office should ensure that stop and search is subject to robust inspection and rigorous enforcement of legal standards.
5. No new stop and search powers should be introduced unless it can be demonstrated that existing powers are being used lawfully, fairly and effectively. An evidence-based case needs to show how recently proposed stop and search powers to target acid, drones and laser pointers will be effective in tackling related offences. An equality impact assessment is required to establish what effect the proposed powers would have on existing ethnic disparities, community relations and police legitimacy. It also needs to be demonstrated that these powers are necessary and do not replicate existing provisions.
6. Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services should include a broader range of stakeholders in the PEEL inspection process. Inspections are, to our knowledge, predominantly undertaken by current or former police officers, raising concerns about the independence and legitimacy of the process. Forces are required to make provision for public scrutiny of stop and search forms and/or statistics and this principle should be extended to the inspection process by including representatives from civil society and other community stakeholders.
7. Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services should consider ethnic disproportionality as a specific, stand alone, assessment criteria for the PEEL Legitimacy inspections. Forces should be rated on their record of taking action to reduce ethnic disparities as well as their attempts to understand the nature of the problem. Greater attention should be given to area-based drivers, including the potential for the kind of geographical profiling we have identified as well as for individual ethnic profiling.
8. The College of Policing should strengthen its Authorised Professional Practice guidance by reinstating the original statement that the smell of cannabis alone will not normally justify a stop and search. It should also make clear that selectively using 'the smell of cannabis' to target people who are thought to be involved in other forms of criminal activity is inconsistent with the requirements of PACE and unlawful.
9. The College of Policing should pilot and evaluate the use of decision-breaks and real-time supervision as a way of tackling ethnic profiling. Officers should be required to check their grounds and secure authorisation from a supervising officer before proceeding with a stop and search in circumstances that are prone to disproportionality (e.g. drug searches of black people in relatively affluent areas).
10. The College of Policing should establish how some forces have substantially reduced their use of stop and search without seeing a corresponding escalation in rates of disproportionality, and identify any learning that can be shared more widely.
11. The Equalities and Human Rights Commission should revisit the question of whether to take legal compliance action against forces that are persistently and/or highly disproportionate in their use of stop and search.
12. The National Police Chiefs' Council and the Crown Prosecution Service should establish a general presumption that drug possession offences should be dealt with using out of court disposals, including

the 'deferred prosecution' model and other forms of diversion. The Crown Prosecution Service should issue guidance making clear the conditions under which prosecution of drug possession offences may be considered appropriate and proportionate.

13. The National Police Chiefs' Council should provide clear guidance on how out of court disposals can be made available in ways that do not exacerbate ethnic disparities. Specific consideration should be given to providing disposals that do not require a prior admission of guilt, and to relaxing current restrictions on the number of disposals somebody can receive.
14. The National Police Chiefs Council should clarify what the two tier out of court disposals system will mean for drug possession offences. Consideration should be given to the 'deferred prosecution' model and other diversion schemes developed by forces in England and Wales.
15. Custodial sentences should be abolished for drug possession offences and, following the example of Scotland, there should be a presumption against sentencing people to prison when they would serve less than 12 months⁶.
16. The record of a defendant's previous out of court disposals should not be routinely considered by courts and having previously received such a disposal should not automatically mean an increase in the severity of a subsequent sentence⁷.

The full report, including the Methodological Appendix, can be accessed online at: http://www.stop-watch.org/uploads/documents/The_Colour_of_Injustice.pdf

Endnotes

- 1 Alexander, M. (2010) *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, New York: The New Press; Tonry, M. (2011) *Punishing Race: A Continuing American Dilemma*, Oxford: Oxford University Press
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- 3 Eastwood, N., Shiner, M., and Bear, D. (2013) *The Numbers in Black and White: Ethnic Disparities in the Policing and Prosecution of Drug Offences in England and Wales*, London: Release.
- 4 Home Office (2017a) *Drug Misuse: Findings from the 2016/17 CSEW: Data Tables* (Table 3.01 Proportion of 16 to 59 year olds reporting use of drugs in the last year by personal characteristics2, 2016/17); <https://www.gov.uk/government/statistics/drug-misuse-findings-from-the-2016-to-2017-csew> [accessed July 12 2018].
- 5 Ministry of Justice (2017) *Criminal Justice System Statistics Quarterly: March 2017 – Overview tables* [Table Q2.1 - Number of offenders issued a Penalty Notice for Disorder aged 16 and over by offence, 12 months ending March 2007 to 12 months ending March 2017]; <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-march-2017> [accessed August 21 2018].
- 6 Scottish Legal News (2017) *Presumption Against Short Sentences Extension Welcomed*, September 6; <https://www.scottishlegal.com/article/presumption-against-short-sentences-extension-welcomed> [accessed August 22, 2018].
- 7 Allen, R. (2017) *Less is More: The Case for Dealing with Offences Out of Court*, London: Transform Justice; http://www.transformjustice.org.uk/wp-content/uploads/2017/12/November2017_Less-is-more.pdf [accessed August 22, 2018].



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