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This is a copy of the accepted author manuscript of the following article: Flacks, S. (2017) The stop and search of minors: A 'vital police tool'? *Criminology and Criminal Justice DOI:* 10.1177/1748895817720485. The final definitive version is available from the publisher Sage at:

https://dx.doi.org/10.1177/1748895817720485

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The stop and search of minors: A 'vital police tool'?

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Abstract
Police stop and search powers have been widely criticized for the disproportionate manner in which members of black and ethnic minority communities are targeted. However, the use of such powers on minors in England and Wales has largely escaped comment, despite good evidence that such practices are harmful and counter-productive. Whilst data on the stop and search of under-10s and even toddlers has been reasonably widely reported by the mass media, there has been little interest in the welfare of older children who are subject to such police powers. Drawing on police data, qualitative research and information obtained through Freedom of Information requests, this article considers the relationship between potentially corrosive stop and search practices, young people's use of public space and the question of vulnerability. It is concluded that policy and practice around the use of such powers should be amended to take account of the specific needs of individuals under the age of 18, and that children's welfare should be a central consideration.

Introduction

The practice of police stop and search, which has long concerned civil liberties groups,[1] mainly in respect of black and ethnic minority (BME) communities, has recently been the subject of renewed political attention. Both the Scarman and Stephen Lawrence inquiries into policing,[2] which followed the Brixton riots and racist killing of a black teenager in the 1980s and 1990s respectively, highlighted the problems associated with the use of such powers. Following the riots that took place across England in 2011,[3] Home Secretary Theresa May resolved to address criticisms of the ways in which stop and search tactics are deployed. The 'Best Use of Stop and Search Scheme', announced in April 2014 and initially adopted by all 43 territorial police forces in England and Wales,[4] was devised in order to achieve greater transparency and 'better outcomes'

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including 'an increase in the stop and search to positive outcome ratio' (HO and College of Policing, 2014: 2).

The scheme was launched in response to claims that stop and search powers continue to be deployed in a manner that is both disproportionate and discriminatory (Bowling and Phillips, 2007; StopWatch, 2013).[5] Her Majesty's Inspectorate of Constabulary found that 27 per cent of stop and searches did not satisfy the 'reasonable grounds for suspicion' requirement, meaning more than 250,000 of the one million searches conducted during the previous year could have been illegal (HMIC, 2013). As a possible result of the renewed political focus on the tactic, there were 541,000 stop and searches conducted by police in England and Wales in the year ending 31 March 2015, a 40 per cent fall on the previous year (HO, 2015a). Twelve per cent of all stop and searches carried out by police in England and Wales led to an arrest, an increase of 2 per cent from the previous year (HO, 2015a). In addition to the scheme, PACE Code A, the Code of Practice for statutory powers of stop and search, including requirements to record public encounters by police officers and staff, was revised and relaunched in March 2015 (HO, 2015b) to help curtail the use of such powers on the basis of 'hunch or instinct' (para. 2.6B) or stereotypes (para. 5.1). The government remains broadly supportive of the use of stop and search. The Home Office justifies the power as a 'vital police tool', particularly in efforts to combat gangs, knife crime and drug offences (HO, 2013). In a position statement, the Metropolitan Police Service (MPS), often the subject of the most trenchant criticism, has argued that 'stop and search is a legitimate power that is used by MPS to protect Londoners, tackle crimes and keep [the] streets safe' (MP, 2014).

The attempts to introduce fairness and transparency into stop and search policing practices are welcome, albeit problematic, and will be discussed further below. However, the purpose of this article is to highlight a hitherto largely unexplored aspect of the debate on stop and search. Delsol and Shiner (2006) have suggested that regulation has become too tightly bound to 'race' and measures of disproportionality, and that the current focus should be broadened to include other groups that may be subject to over-policing. The harm caused to under-18s – although particularly those from BME communities – has remained, until recently, underreported. That changed with the revelation that more than 1000 children under the age of 10 had been stopped and searched in London within a five-year period (Travis, 2014), and that even toddlers had been subject to stop and search powers (Barrett, 2015). A Freedom of Information (FOI) request by a city newspaper revealed that, between 2009 and 2014, at least 576 children between the ages of one and nine were stopped and searched in London alone (Blundy, 2015; MP, 2015b). Some data suggest that disproportionality according to race and ethnicity applies to under-18s as much as it does adults (APPGC, 2014). Concerns about very young children have, however, generally eclipsed any concerns about the apprehension of older children in England and Wales, although the issue has received greater attention in Scotland. Research published by the Scottish Centre for Crime and Justice Research (Murray, 2014) revealed that searches, which were largely non-statutory and required 'consent', were being undertaken at a rate four times higher than England and Wales, and fell disproportionately upon children and young people (see also Murray and Harkin, 2016). The purpose of this article is to consider the effects of stop and search practices on all children, as defined in UK and international law as individuals under the age of 18.[6] Using insights from scholarship on policing and youth studies, it will begin by discussing the value of stopping and searching

under-18s given the availability of research on the harms caused by the practice, but limited evidence on its effectiveness. It will then develop the claim that much greater attention should be paid to child protection when considering the use of such powers, drawing on evidence from interviews with young people who have been stopped and searched, data gleaned from Freedom of Information requests, interviews and a small survey of parents about the impact of stop and search on their children. Finally, it will propose suggestions for reform.

Childhood, Public Space and the Legitimacy of Stop and Search

The evidence on the effectiveness of stop and search powers, in respect of both children and adults, is weak. Ben Bradford (2015: 119) argues that there is 'essentially no evidence relating to the effectiveness of stop and search in comparison with other policing methods and, furthermore, very little evidence concerning the marginal effectiveness of stop and search in apprehending or deterring offenders or reducing crime'. Rebekah Delsol (2015: 79) suggests that the effectiveness of the tactic has been taken for granted, particularly by police 'who have an almost mythical belief in its efficacy'. Some research from the USA suggested a possible deterrent effect from 'stop, question and frisk' strategies (Weisburd et al., 2016) although the data used had their limitations (Apel, 2016), and the policy implications remain problematic (Sweeten, 2016). On the other hand, evidence of the harms caused by such tactics is well established. The costs include damaged police/community relations, a reduction in public trust and confidence, undermining cooperation and police-legitimacy (Delsol, 2015). In addition to low arrest rates (discussed further below), research into police decision-making around the use of stop and search found that officers are often unclear about what constitutes 'reasonable grounds' and often fail to meet this requirement in practice (FitzGerald, 1999; Quinton et al., 2000; Shiner, 2006).

Bradford (2015) suggests that stop and search may in fact *encourage* offending through processes of deviancy amplification and labelling. Evidence suggests that low-level offending among young people is fairly typical, and that they normally grow out of it (Farrington, 1986; Gottfredson and Hirschi, 1990; Moffitt, 1993). Researchers have thus emphasized the importance of avoiding labelling or criminalizing young people through, for example, strategies of 'radical non-intervention' (Schur, 1973; see also Goldson, 2005). A self-report study on young people's offending in Scotland found that once individuals had been warned or charged they were much more likely to be arrested again than those who had committed similar offences, but were still unknown to the police (McAra and McVie, 2005). This is supported by recent research from the USA in which the authors concluded that: 'If simply being stopped and questioned has deleterious consequences, policing practices may inadvertently contribute to higher levels of delinquency even before youth have reached the stages of formal processing' (Wiley and Esbensen, 2016: 299). Research by Sharp and Atherton (2007: 758) found that young people considered police stop and search activities to be often unjustified and amounting to harassment, and that hostile and confrontational encounters 'led them to reject any notion that they have value, save that which they derive from their own peer group', resulting in a loss of confidence and trust in the police in general. The practice can also create fear and anxiety among young people

(Reid Howie, 2001) and, it has been suggested, should only be used as a last resort for both the young and other vulnerable groups (O'Neill et al., 2015: 14).

Given such doubtful effectiveness, and low arrest rates, the function of stop and search as a form of social control seems more plausible than its 'vital' role in the fight against crime (Shiner and Delsol, 2015). Young people, who lack control over private space or property, may be particularly susceptible to strategies of discipline and surveillance since they are among the main users of public, urban spaces. Research on children's geographies, in particular, has emphasized that public spaces 'have important implications for both personal and collective identities, as well as the formation of youth subcultures' (Gray and Manning, 2014: 642). Such identities may be either ripe for inclusion or exclusion depending on their 'fit' within the dominant culture and whether displayed behaviour is, for example, 'messy, dirty, loud, smoking, sexual' or 'clean, neat, polite, in school uniform' (Malone, 2002: 163). For Malone (2002: 163):

> Visible expressions of youth culture could be seen as the means of winning space from the dominant culture, to construct the self within the selfless sea of city streets; they are also an attempt to express and resolve symbolically the contradictions that they experience between cultural and ideological forces: between dominant ideologies, parent ideologies and the ideologies that arise from their own experiences of daily life.

For Valentine (1996: 596–597), public space is produced as 'normally' adult, a 'spatial hegemony' that is disrupted by teenagers. Recent policy developments have involved increasing attempts to regulate public space according to crime control rationalities, and the focus has been on the young. These developments can be linked with attempts by successive Westminster governments to reassure a risk-conscious public that young offenders will be punished severely, and to avoid being seen as lenient on juvenile crime (Muncie, 2014). For example, powers to disperse groups in particular areas, usually used against children and young people, and to return children under the age of 16 to their home address, were introduced under the Anti-Social Behaviour Act 2003. Research shows that general powers under the Act are commonly used to police groups of young people 'thereby problematizing the presence of young people in a variety of public spaces, and regulating their use of it to a greater degree' (Gray and Manning, 2014: 642). Curfews, measures prohibiting loitering and activities such as skateboarding, and the presence of security guards, may all limit the opportunities for teenage socialization in public (Valentine, 2004).

As discussed further below, age boundaries are a source of tension and dispute. The occupation of public space by teenagers and children is a source of adult anxiety, but whereas younger children may elicit concerns about protection, older children – who occupy a particularly ambivalent position within discourses of childhood – are more likely to be perceived as threats (Valentine, 1996). While still the focus of efforts to preserve their status as non-adults – to 'let children be children' – they test the boundaries of the adult–child dichotomy. As Faulkner (2010: 101) observes, 'It is because the ideal of innocence can no longer contain them that teenagers come to threaten it.' As mentioned above, figures demonstrating that high numbers of under-10s had been stopped and searched in urban areas were widely reported in news media, yet there has been very little concern expressed about the stop and search of 11–17-year-olds. A lack of concern about older children's vulnerability reflects the climate of fear

and intolerance directed towards teenagers and punitive attitudes towards criminal behaviour among under-18s (Halsey and White, 2008; Muncie, 2014). Although under-18s should be entitled to more protection from stop and search practices than adults, questions about child protection or harm have largely been eclipsed by crime control rationalities.

In the recent case of *Mohidin and others v Commissioner of the Police of the Metropolis*,[7] three teenage claimants won damages against the Metropolitan Police Commissioner after they were pursued for making gestures at a passing police van, and subjected to violent and humiliating treatment. In the course of events, Mohidin was detained under stop and search powers on suspicion of drugs offences. Mr Justice Gilbart, the presiding judge, who described the actions of the claimants as 'regrettably typical' teenage behaviour,[8] said:

> I do not believe that PC Jones intended to conduct a search for cannabis at all. His purpose was, and remained, bringing home to Omar Mohidin that he should not mouth obscenities or to make obscene gestures at the Police.[9]

May et al. (2002: 48–49) have similarly noted that 'uncooperative' individuals may be searched for the drug as part of maintaining police authority on the streets. Tellingly, it was suggested in *Mohidin* that the claimants' attitude towards the police stemmed from their previous experiences of multiple stop and searches, almost all of which had proved negative. According to the judge, however:

> One must be realistic. If teenage youths go around together in a part of London which endures a fair amount of crime […] it is not surprising that they have been stopped and searched many times […]. I do not treat the fact that they had been stopped and searched often without anything been found as being a matter for which the officers who had done so should be criticised.[10]

Kennelly (2011: 336) explores how the surveyed bodies of young people are positioned as either 'in place' or 'out of place' within public areas, depending on whether they 'transgress the norms of legitimate citizenship and appropriate spatiality'. Placing her research within discourses of citizenship and a Foucauldian theoretical framework, she also argues that, in a neoliberal era, young people are dually constructed as lacking citizenship and yet 'ultimately' responsible. In *Mohidin*, the behaviour of the young people, although not criminal, was clearly deemed transgressive, yet it was the comments of the judge that proved especially instructive. In respect of policing in general, young people were expected to suffer the consequences of living, socializing, working or going to school in a 'high crime' area.[11] According to the judge, it was the young people themselves who had to shoulder the responsibility for disproportionate police attention, not the officers or public bodies entrusted with public protection.

As discussed further below, existing police law and policy makes only limited reference to the rights of young people to special protection in public places. In stop and search situations, under-18s thus face multiple disadvantages. Although more vulnerable than adults, they lack full rights to citizenship and may feel less entitled to complain about, or challenge, police treatment. At the same time, they are more likely to use public space than adults and do not benefit from the protection afforded to minors in other public places and institutional settings, such as schools and police

stations. If there is a tension between young people's desire to occupy public spaces, and police efforts to assert control over such areas, children's protection is imperative.

Methodology

The empirical analysis presented below is based on multiple sources of data, including research undertaken by StopWatch[12] and interviews conducted for a PhD study on drug treatment in which the issue of stop and search emerged as a recurrent theme (Flacks, 2014). The StopWatch data resulted from: Freedom of Information (FOI) requests to police forces in England on stop and search data for under-18s; a small survey of parents whose children may have been at risk of stop and search; a focus group with five young people differentially affected by stop and search; and two focus groups with other parents whose children may also have been affected. The focus groups were organized in order to both inform the design of a parents' guide, and to evaluate a programme addressing the needs of young people at risk of stop and search.[13] The data from the PhD study comprised 19 in-depth, semi-structured, interviews conducted between March and August 2011 with drug workers and adolescents in drug treatment. Although a different data set, it complements the other sources by exploring in-depth the effect of stop and search on young people in similar inner city districts within the same metropolitan area in which the focus groups were also conducted. It should be recognized that young people in drug treatment may have different needs and experiences with the police than other groups. However, a strength of drawing together data from such different sources is that the testimonies of a broader range of participants can be represented. Overall, the sample size is small, and caution should be exercised in drawing broad conclusions. In respect of the FOI data, a request was submitted to all territorial police forces in England in the summer of 2014. Requests covered the financial year 2013/2014 and included questions about the age, offence and action taken in respect of those who were stopped and searched. The data provided were variable, particularly in relation to ethnicity (some forces provided no data at all, or assessed ethnicity according to varying identifiers and categories), although some claims could be made. Moreover, the discussion below draws largely on data from the Metropolitan Police Service (MPS) because, aside from ethnicity, MPS data were broken down by age and offence type. Moreover, the numbers of people stopped and searched in Greater London is 32 per cent of all searches in England and Wales.

For the survey, 44 parents responded to a survey sent by StopWatch through existing networks of contacts.[14] For such a small sample, the results cannot be considered representative although they are indicative, particularly when considered alongside other sources. This target group is also normally difficult to access using conventional survey methods. Respondents answered a number of questions, including whether their child had been stopped and searched, and what they would do if they thought their child had been stopped and searched in an unfair way. Twenty-two of the respondents were male, 20 were female, whereas 11 identified as African Caribbean, 13 as Black African, two as Asian, 14 as White/European and two preferred not to say. Ages were not recorded, although the ages of their children ranged from one to 24. In addition to the survey, two focus groups were conducted at a city university as part of a consultation on the compilation of a parents' guide to stop and search, comprising of approximately 15 individuals in total.[15] The groups were informal and unstructured, with participants being asked about their feelings about stop and search, and possible

ways of minimizing impact. The discussions were not recorded, although notes were taken. The focus group with the young people was conducted with three female and two male participants aged 15 to 17, one of whom identified as White British, three as Black British and one as Pakistani British. In respect of the drug treatment interviews, six were conducted with drug workers between the ages of 28 and 54 (four women and two men), all identifying as White British, and 13 with adolescents aged between 15 and 17. Eight of the young people were male, and five were female, with four identifying as Black British, one as Polish-British and the rest White British.

Findings

Age and vulnerability

The discussion below is informed by the only available data on the stop and search of under-18s to have been broken down according to age, by year, in England and Wales. It shows that, whereas it is troubling that thousands of stop and searches are being carried out on younger children, it is older adolescents who bear the brunt of these practices (Figure 1). Indeed, between 2013 and 2014, the MPS conducted 45,825 stop and searches on children between the ages of 15 and 18. Out of 18 forces that supplied relevant data following StopWatch's FOI request, there were a total of 99,402 stop and searches of under-18s resulting in the arrest of 10,808 children – a 'success' rate of 11 per cent. Just over a third (34.3 per cent) were conducted on 17-year-olds and, as might be expected, the proportion descends with age. Large numbers of stop and searches are nevertheless being conducted on younger adolescents (3289, or 6 per cent, on those aged 11 to 13) and some on young children (68 on under-10s, 249 on 10 to 11 year olds).[16] The number of stop and searches carried out on those as young as one ($N = 18$) has been explained by police as searches relating to situations in which adults have hidden prohibited items on children in order to escape detection (Barrett, 2015). The most common reason for stop and search by the MPS was drugs (45 per cent), followed by stolen property (23 per cent) (Figure 2). Out of 55,247 stop and searches conducted by the MPS, 7981 resulted in arrest (14 per cent). An inquiry conducted by the All Party Parliamentary Group for Children reported similar findings, and, notably, that between 2009 and 2013, almost half of the children stopped were from black and minority ethnic groups, suggesting over-representation (APPGC, 2014).

The qualitative analysis presented below does not purport to say anything about the operation of police practices, since the data only concern perceptions of targeting, although perceptions are important in themselves (see, for example, Souhami, 2014).
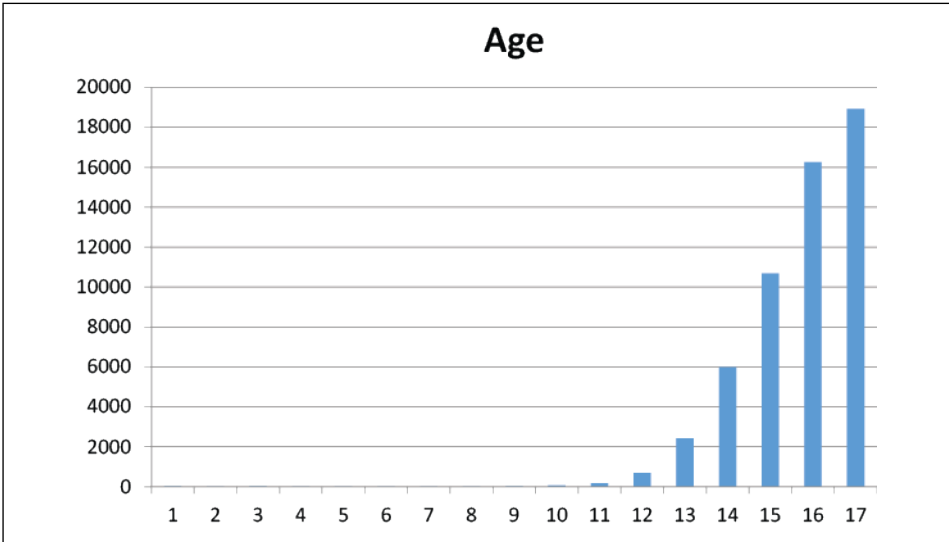
Figure 1. Stop and search by age. *Source*: MPS FOI data requested by StopWatch, 2013–2014.
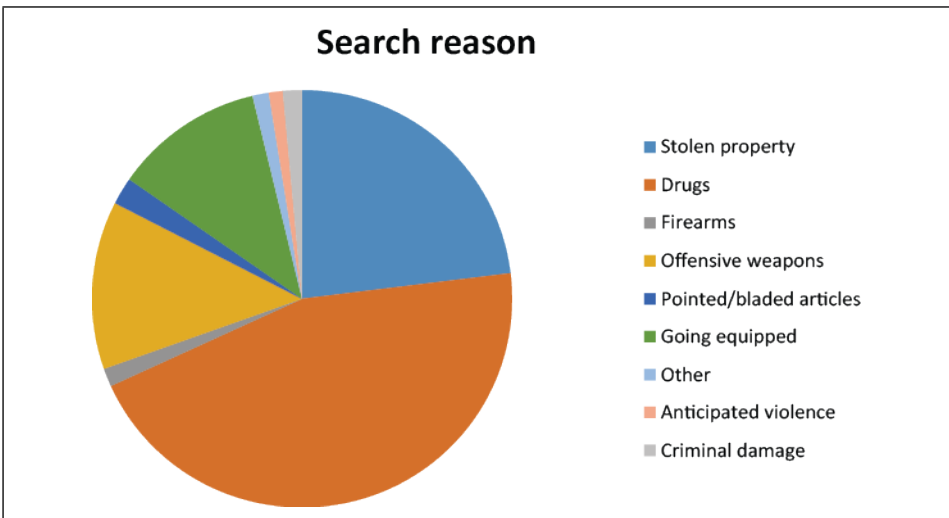

Figure 2. Stop and search by reason. *Source*: MPS FOI data requested by StopWatch, 2013–2014.

For the parents' survey, almost 40 per cent of respondents (17/44) said that their child had been stopped and searched (3/44 did not know), and 17/44 had themselves been stopped and searched. The majority (32/44) said both that 'it was important that their children knew about their rights when it came to stop and search'. During the focus groups, parents spoke of their concern about the mental and emotional well-being of children detained in 'overwhelming' stop and search situations. Although parents felt that stop and search was 'inevitable', they were worried that their children may not understand their rights in such situations, or why they were being detained, and that a humiliated or embarrassed child might resist and become hostile. A participant in the

young people's focus group was similarly concerned with young people responding to provocation. He said:

> I've seen friends of mine be put into positions where their personal space is being invaded [...] obviously you're going to object to that […] You're not going to stand there when you haven't done anything […] if he had some kind of anger issue or, like, wasn't able to control his temper he […] would have been charged even though he hadn't ever done anything initially. (Male, 17, White)

Both parents and young people thus placed particular emphasis on children's potential volatility and vulnerability, characteristics that are considered to demarcate the difference between adolescence and adulthood (supported by research into developmental psychology – see Pepler and Rubin, 1991; Plomin et al., 1990). However, 'acting out' or apparent defensive or aggressive conduct, which could be framed as relatively 'normal' teenager behaviour (Moffitt, 1993), may also indicate the presence of mental health issues or experiences of, for example, bereavement (Vaswani, 2008). Given that defiance, annoyance or hostility may be construed by police officers as a 'failure of the attitude test', and/or guilt (Bear, 2013; Bowling and Phillips, 2007; Van Maanen, 1978), it could be argued that teenagers are particularly susceptible to disciplining measures such as stop and search because of typical adolescent behaviour. This would suggest that attendance to the specific vulnerabilities of young people, and the potential harms and risks involved in stop and searches, should be an integral part of regulation, policy guidance and officer training.

The impact on children whose parents had been stopped and searched was also a concern, indicating the wider impact of the tactic on families and communities. A father, for example, spoke of the lasting damage caused to his two children, aged eight and five, who were crying and confused after his car was stopped by police. He felt that his children had been 'traumatized' by the experience and were, three years later, fearful of the police.[17] Research in Scotland found that the use of stop and search could negatively impact young people's relationships with their families because parents could assume that it was the children who were 'in the wrong' (Stevenson, 2016: 34).

Among the interviewees in drug treatment, there was a strong sense that teenagers were treated with more suspicion. This supports research from Scotland which found that young people are more likely to be targeted for stop and search than other age groups, and that young people themselves felt victimized (Stevenson, 2016). According to Jon:[18]

> if you're older, like, they will treat you different, like they will just respect you. If you are younger they will just treat you as a little kid [...] chat shit to you […] 'Cos they know you're young. You can't really do nothing. But if you're older you can actually do something […] it makes me think like if they're thinking of me like that then why I am I just leaving them? (Site A, Jon, 16, Black)

It may be argued that rates of stop and search among young people reflect the age–crime curve, or the greater availability of under-18s on the street. However, Lennon and Murray (2016: 8) note that the age distribution of stop and search in Scotland varies from place to place, and thus is 'not readily explicable in terms of crime trends'. Moreover, Murray (2014) found that detection rates are lower for young people, indicating age-disproportionality because of a lower threshold for suspicion, supporting

the assertion that searches are 'used for social control (rather than detection) purposes' (Lennon and Murray, 2016: 8). Although detection rates or regional variation cannot be deduced from the data presented here, it is also important to emphasize that the perception of age disproportionately among young people is important in its own right. As argued above, the impact of stop and search is also likely to be particularly profound on a section of the population who are already routinely excluded from public space, and disciplined and regulated by 'civil' orders that can in reality result in the criminalization of non-criminal behaviour. Jon's suggestion that unjustified police attention may in itself be criminogenic was also instructive, and supported by other testimonies as well as evidence presented from other studies, discussed above. According to Robert: 'Because they're arresting people for nothing, everyone's just going [...] everyone's just thinking "right, fuck this, we're going out there [...] let's just get in trouble" 'cos that's all we can do' (Site C, Robert, 15, White).

The Risks of Being Both 'Out of Place' and 'In Place'

Young people felt that particular characteristics identified them as being 'out of place' (Kennelly, 2011; Wright, 1997) and therefore subject to discriminatory police attention. Age, dress and social background, as well as previous dealings with the police, were all markers, although different characteristics may have 'intersected'[19] to influence vulnerability to stop and search. Previous research has found that the 'usual suspects', and those known to police (Hough, 2013; McAra and McVie, 2005), as well as those who fail the 'attitude test' (Warburton et al., 2005), are most likely to be apprehended (on ethnic disparities, see Eastwood et al., 2013). Among the interviewees in treatment, Robert's testimony was typical:

> Yeah, like teenagers in like big groups and that [...] it's what they're wearing and how they're wearing it, and how they act when the coppers are around. That's why when I'm like getting stopped and searched every day, every hour, it's stupid man. (Site C, Robert, 15, White)

Parents in the consultation similarly felt that choice of clothes, as well as ethnicity and gender, made children a 'target'. For Lucy, dress could also identify young people as 'out of place' in other public spaces, such as shopping centres. She said:

> Like if you're wearing like tracksuit bottoms or if you're wearing a hat then they'll stop you […] I know so many people who've been literally just walking down the road and they've been stopped 'cos they're wearing trackies […] Like, if I go shopping and that, yeah, because of the way I dress, security guards will watch me.
> (Site C, Lucy, 15, White)

'Being watched' by security guards communicated to Lucy that she 'didn't belong' in the sanitized world of the commercial shopping space. Dress (which can be inextricably bound up with class and/or race, as well as gender) has long been used as a means of marking youth as 'suspicious', enabling their identification as 'out of place' and thus signifying a lack of the necessary citizenship qualities for inclusion (Kennelly, 2011). Simply wearing a 'hoodie' or tracksuit can suggest that a young person has *already* failed to fulfil his or her citizenship responsibilities, and is therefore liable for surveillance and discipline. Although it is unlawful to conduct a search based on personal characteristics, in reality officers have been found to stop and search based on

a 'gut feeling' and subtle cues, including how and where individuals are standing, and whether they are wearing a hoodie (Bear, 2013).

This suggests that (certain) young people find themselves in a series of double binds. Although a marker for intervention, clothing is important for both individual expression and group identity (Hall and Jefferson, 2006). Moreover, children are also in a *spatial* double bind as both the main users of public space, and those most subject to police governance. For Ericson and Haggerty (1997: 259) police establish spatial boundaries and exclude undesirable populations, thus symbolically allocating 'where people allowed to remain within these symbolic borders should be assigned so that they least disrupt the rational and efficient flow of institutional life'. Yet although they may be identified as 'out of place' in the commercialized urban spaces reserved for 'good and legitimate citizens' within 'neoliberal' contexts (Kennelly, 2011), such as shopping centres or high streets, young people also felt victimized for literally being 'in place' – and appropriate targets for stop and search – in high-crime areas in which they lived, worked or studied. Recall that, in *Mohidin*, the judge suggested that young people should expect to be targeted if inhabiting, or travelling within, 'hot spot' locations. Similarly, Jason said:

> I get stopped all the time, because I'm a youth […] and […] I don't reckon there's much police anywhere else […] except for my area [where I live]. They mostly hang about there 'cos that's where all the crime is [...] if you're like posh and stuff like that they'll obviously treat you much better, innit? They know 'cos you'll make complaints and things like that. (Site C, Jason, 15, White)

Jason's belief that being 'posh' (or an adult) enabled complaints-making and deterred officers from treating individuals badly also echoed Lucy's belief that dressing 'posh' provided some degree of immunization against the attentions of security guards and police. She said:

> I'm quite quite street innit, but like one of my friends […] she talks proper posh and proper English, like, and they're properly like 'all right, then, on you go'[…] So she's always in a nice dress or something, so she's all girly girly […] I can be walking down the road with a group of friends and, like, none of the girls will get stopped but me and the boys. (Site C, Lucy, 15, White)

Lucy suggests here that 'doing gender' and conforming to socially proscribed gender roles, indicated by dress and speech, influenced police treatment. Male teens are generally more likely to use public space, and are more liable to being dispersed when in groups (Childress, 2004), but the experiences of girls have generally been neglected in studies of crime and policing (Sharpe, 2016). Although there is insufficient space, or relevant data, to explore this important issue in depth here, the claim that gender, class or social background, whether indicated by dress or other identifying characteristics, may be a determining risk factor in exposure to stop and search is supported by other research on the policing of marginalized communities (see also Loftus, 2009; May et al., 2010). For Abigail, simply 'having a name', and family members with criminal records, resulted in discrimination. She said:

It's unfair. I think if you're known to the police, if you've got a name then they're going to harass you anyway […] They know where I hang around, where I live, who I hang around with [...] who I'm related to. They know everything about me. (Site B, Abigail, 16, White)

Race and ethnicity was a key concern for all research participants, including parents. The young people interviewed, regardless of their own ethnic background, saw black, male teenagers as being subject to disproportionate police attention.

Jon: I just think any young teenager [...] black teenager with a hoodie or something [...] most young black teenagers I think. That's who the police target. (Site A, Jon, 16, Black)
[C]olour [...] clothing [...] first impressions, they do make a big thing. (Site C, Jason, 15, White)

The evidence presented here suggests that police activities should include sensitivity to the use of public space by young people, and the particular vulnerabilities of both young and older children. Moreover, the experiences of discriminatory treatment, and sense of a lack of a 'right to be heard' or make complaints, also requires careful consideration. Yet, as discussed below, current law, policy and guidance pays insufficient attention to the rights and needs of minors in stop and search situations.

Opportunities for Reform

According to Lennon and Murray (2016), in a comparison between policy and practice in England/Wales and Scotland, the prevalence of stop and search is influenced by 'top–down' regulatory factors. In Scotland, concerns about the impact of searching young people have helped to shape recent debates about policing, leading to reforms and clearer guidance on children's welfare in the police Code of Practice (Scottish Government, 2017). However, legislation and police guidance in England and Wales pay insufficient attention to the need to protect children from the harms resulting from stop and search. The flaws in existing policy, particularly in respect of the scope and application of child welfare principles, will be outlined below in addition to suggestions for reform. Among other recommendations, it is suggested that a presumption against stop and search should operate for under-16s, and that stop and searches on minors should require the presence of an 'appropriate adult'.

Police powers are vested in a range of legislative provisions, including section 1 of the Police and Criminal Evidence Act 1984 (PACE), section 60 of the Criminal Justice and Public Order Act 1994 and section 47A of the Terrorism Act 2000. 'PACE Code A' is the code of practice for the statutory power of stop and search and includes requirements to record public encounters by police officers and staff. The code also warns against discriminatory policing and emphasizes the need to comply with the Equality Act 2010, which means they must have 'due regard' to the potential discriminatory impact of policy and practice (s. 149(1)(a)). Until recently, PACE Code guidance contained no reference to under-18s, and no requirement to monitor the age of individuals stopped and searched. However, the revised PACE Code A now includes the following:

The Children Act 2004, section 11, also requires chief police officers and other specified persons and bodies to ensure that in the discharge of their functions they have regard to the

need to safeguard and promote the welfare of all persons under the age of 18 (Section 1.1). (Home Office, 2015b)

Although this passage is an improvement, it merely references an existing legal requirement and creates no new duty. The document also sets out the justification for stopping and searching children under the age of 10 (the criminal age of responsibility) where there is no power of arrest. This, according to the guidance, is because of the practice of older children or adults handing young children prohibited items in order to prevent detection. As well as emphasizing the need to treat such children as a 'potentially vulnerable or intimidated witness' section 1(b) goes on to explain that: 'Safeguarding considerations will also apply to other persons aged under 18 who are stopped and searched under any of the powers to which this Code applies.' Although this revision is welcome, it would appear to refer to children with existing care needs, and there is no reference in PACE to the risk of harm caused to children by the stop and search process itself, or any further discussion on the scope of safeguarding responsibilities. The brief recognition that police are obliged to 'have regard to' the welfare of all persons under the age of 18 falls short of the recommendations made by the United Nations Committee on the Rights of the Child (UNCRC, 2007), which has emphasized that the welfare of the child should be the primary consideration in all juvenile justice matters.[20] Section 29 of the Police Act 1996 (as amended by section 83 of the Police Reform Act 2002) requires that all police officers uphold fundamental human values with fairness, integrity, diligence and impartiality according to law. PACE Code A bears comparison with the Code of Practice on the exercise by constables of powers of stop and search of the person in Scotland (Scottish Government, 2017) which cites the UNCRC (s. 7.6) and recognizes that a child's well-being must be a 'primary consideration' (s. 7.4). Moreover, it stipulates that children 'may require additional support to help them comprehend and participate in the search process' (s. 7(1)) and that 'where a constable believes it to be more harmful to a child or young person to carry out a search than not, then the search should not proceed and other measures to safeguard them should be considered' (s. 7.4). The Criminal Justice (Scotland) Act 2016 places a statutory duty on officers to consider the child's 'wellbeing' (s. 51), including in stop and search situations (s. 68).

The Association of Chief Police Officers' (ACPO) 'Practice guidance on stop and search' emphasizes that 'Stopping and searching young or vulnerable persons can be particularly intimidating for them' and that the grounds for the search must be communicated appropriately (NCPE, 2006: 7). This was the only guidance provided by ACPO for officers dealing with children (StopWatch, 2013). The Metropolitan Police's 'Stop and search practitioner's toolkit' (MP, 2015a), recently amended in the context of increased public scrutiny, is much more explicit about the possible harms caused to under-18s, even if the toolkit does not carry the weight or legal force of PACE guidelines:

Some people, particularly those under 18 years of age, may be more vulnerable and have greater concerns about the encounter when approached or questioned by officers. A negative stop and search encounter can have a long (even lifetime) effect on a child or young person. Officers need to be tolerant, patient and aware of any concerns when seeking co-operation. (MP, 2015a: 7)

The toolkit also explains that officers must consider the requirements of the Children's Act 2004, and that safeguarding and welfare must be a paramount consideration when stopping and searching under-18s. It is stipulated that the child 'must *generally* be seen as an exploited victim lacking capacity, rather than an offender' (MP, 2015a: 8, emphasis in original).

Although a positive first step, the guidance needs to be reinforced with specific instructions on how such encounters should be managed by police. Moreover, this should be replicated in more formal statutory guidance which would apply to all police forces.

As mentioned earlier, there is no requirement, as recommended by different organizations, (CRAE, 2014; StopWatch, 2013) that police forces should be required to collect data on the age of those stopped and searched, and that Home Office annual reviews of stop and search should assess the proportionality of the practice in relation to age as well as ethnicity. Moreover, police agencies have thus far failed to provide data on the stop and search of looked after children, despite concerns that this group of young people may be both particularly vulnerable and more likely to experience the harms of stop and search practices (APPGC, 2014). Code A should be revised to incorporate these requirements.

The All Parliamentary Group for Children (APPGC) (2014) has suggested that it may be appropriate to codify a presumption against under-10s being stopped and searched other than in exceptional circumstances. It is recommended that such a presumption should be incorporated into statutory guidance for all under-16s. Stop and searches of children under the age of 16 could also require the need for authorization from a senior police officer, at least at the rank of Inspector. The permission of a senior officer is required in relation to other stop and search powers, such as section 60 of the Criminal Justice and Public Order Act 1994 which allows a police officer to stop and search a person without suspicion within a designated area on the basis of their reasonable belief that violence has or is about to occur. There is thus a precedent for requiring more authority where powers are more intrusive or liable to cause harm, although there would be challenges in applying the requirement in respect of individual cases, as well as with establishing an individual's age.

Police could also consider instituting an 'appropriate adult' (AA) requirement. Officers would only be permitted to stop and search a child in the presence of a civilian adult. The role of the AA was created by the Police and Criminal Evidence Act (PACE) 1984 in order to protect the rights and welfare of a child or 'mentally vulnerable' adult who is either detained or interviewed voluntarily by police. It is therefore notable that minors stopped on the street do not benefit from the protection afforded in police stations. For youth conditional cautions,[21] issued under the Crime and Disorder Act 1998 (s. 66B), if the young person is aged 16 years or under the explanation and warning must also be given in the presence of an AA. AAs are normally trained individuals (sometimes from social services), but it is suggested that, given the obvious resourcing challenges (and propensity for drawing out the encounter by contacting a trained AA), the person in question could simply be passing in the street. The most important requirement is that another adult is present to bear witness, thus increasing accountability.

The training and education of police officers is important. Mike Hough has argued for the adoption of 'procedural justice', which is concerned with fair and respectful policing based on process rather than just outcomes, rather than adversarial styles of

policing which further alienate disenfranchised young people. In a balanced critique, Hough (2013: 194) notes:

> the tension between the desire to reassure the public – for example through visible assertive policing – and to retain the confidence of those who are most often or most heavily policed […] There is room for training that more explicitly handles questions about the use of authority, ways of legitimating authority and effective ways of responding to challenges to authority.

This remark on authority seems particularly apposite for the young, who may find it more difficult to remain calm when subject to aggressive police tactics. Yet the evidence presented here also suggests the need for a broader and deeper discussion on the nature and use of public space, in addition to what marks certain children as 'out of place' or 'legitimate' targets for stop and search, and how their rights might be better respected, protected and fulfilled.

Conclusion

The use of stop and search powers has long been regarded as disproportionate and damaging to communities. In England and Wales, the impact has been most deeply felt by members of black and ethnic minority communities, but the particularly vulnerability of children – and particularly black children – to the consequences of such tactics requires more consideration. Given that officers' broad powers to stop and search have been retained through a series of damaging episodes, and persistent revelations of damage and disproportionality, it might be unrealistic to expect the wholescale revision of statutes. Yet it is unacceptable that under-18s do not at least benefit from special safeguards, other than in respect of those who may already be identified as 'victims' or especially vulnerable. The policy recommendations suggested, in respect of training and guidance, data collection, and police practice, have been carefully considered bearing in mind resource constraints and the challenges of police operations. Further research is moreover needed on police practice and perceptions in respect of stopping and searching under-18s specifically, and on how such powers might best comply with the exigencies of procedural justice. Even aside from welfare concerns, the fact that stop and search powers may foster criminality, and almost certainly damage relations between police and young people, should generate concern among law and policymakers. Yet thinking about children and policing in terms of 'harm' rather than 'crime' seems central to recalibrating the use of stop and search powers, if not questioning whether they should be deployed altogether.

Notes

1. For example, the Equality and Human Rights Commission (2010), Human Rights Watch (2010) and, more recently, StopWatch (2013).
2. For reports of the inquiries, see Scarman (1981) and MacPherson (1999).
3. For a report into the riots, see *Guardian*/London School of Economics (2011).
4. Thirteen forces were subsequently suspended from the scheme after failing to comply with three or more requirements (HMIC, 2015), although they have since been readmitted (HMIC, 2016).
5. Although the launch of the scheme was also probably part of attempts by the Conservative-led government to better appeal to black and ethnic minority voters (Dominiczak, 2014).
6. Children's Act 1989 and United Nations Convention on the Rights of the Child 1989 (Article 1).
7. *Omar Barraq Mohidin, Basil Khan, Ahmed Hegazy v Commissioner of the Police of the Metropolis, Mark Jones, Steven White, William Wilson, Neil Brown* [2015] EWHC 2740 (QB).
8. The Directorate of Professional Standards (DPS), responsible for investigating complaints against the professional conduct of MPS officers, ruled that the stop and search was lawful. See note 7, at para. 14.
9. See note 7, at para. 272.
10. See note 7, at paras 40 and 41.
11. Research in Scotland found that young people do indeed change routes to avoid certain areas as a result of stop and search practices (Stevenson, 2016).
12. StopWatch is a coalition promoting effective, accountable and fair policing in relation to stop and search in particular. For more information, visit: http://www.stop-watch.org/about-us/.
13. The author has been working with StopWatch since 2014 as an adviser/contributor.
14. The survey is available here: https://www.surveymonkey.com/r/ZV3LS7T.
15. Participant data were not recorded.
16. It should be noted that there may have been inputting errors related to age.
17. Similar concerns have been reported by Stevenson (2016).
18. Names have been changed.
19. Intersectionality describes how oppression or discrimination do not necessarily occur because of individual characteristics (race, gender, sexuality and so on), but that markers for unjust treatment are interrelated and may shape each other (Crenshaw, 1991).
20. Convention on the Rights of the Child, Article 3.
21. This allows a police officer to decide to give a caution with one or more conditions attached (Crime and Disorder Act 1998).

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