



## **The colour of injustice: 'race', drugs and law enforcement in England and Wales**

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# The Colour of Injustice: 'Race', drugs and law enforcement in England and Wales

Michael Shiner, Zoe Carre, Rebekah Delsol and Niamh Eastwood



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# Preface

## StopWatch

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

## Release

The national centre of expertise on drugs and drugs law - providing free and confidential specialist advice to the public and professionals. The organisation campaigns directly on issues that impact on our clients - it is their experiences that drive the policy work that Release does. Release believes in a just and fair society where drug policies should reduce the harms associated with drugs, and where those who use drugs are treated based on principles of human rights, dignity and equality.

## The International Drug Policy Unit (IDPU)

A cross-regional and multidisciplinary project based at the London School of Economics and Political Science (LSE). Utilising LSE's academic expertise and networks, IDPU fosters new research, analysis, and debate about global drug policies. The Unit works closely with governments and policymakers around the world, to develop innovative analysis and helps design and implement new policies at local, national, regional and international levels.

# Authors

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Rebekah is the programme manager for the Open Society's Justice Initiative's Fair and Effective Policing (FEP) project. The FEP project works to improve police relations with diverse communities through supporting dialogue, leadership and innovation based in collaborative alliances between police professionals, academics, regional institutions and civil society. Rebekah has written and presented widely on stop and search, racism, equality and policing and co-edited (with Michael Shiner) *Stop and Search: The Anatomy of a Police Power* (Palgrave, 2015). Rebekah is a founder member of Stopwatch.

## Niamh Eastwood

Niamh is Executive Director of Release. She has co-authored Release's two most recent policy papers 'The Numbers in Black And White: Ethnic Disparities In The Policing And Prosecution Of Drug Offences In England And Wales' and 'A Quiet Revolution: Drug Decriminalisation Policies Across the Globe'. Niamh is also responsible for drafting many of Release's briefings for parliamentarians and policy makers. She has presented at international and national conferences and is regularly invited to comment in the media. Niamh has been a technical advisor to the Global Commission on Drug Policy and is Associate of The London School of Economics IDEAS International Drug Policy Project. She is also a member of Drugscience and the Expert Steering Group for the Global Drug Survey.

# Acknowledgements

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# Foreword

I was 12 years old when I was first frisked, groped and harassed by the police. I was walking down Lawrence Road in Tottenham, rocking big hair and NHS prescription glasses, when I was abruptly ambushed by three police officers. Ferociously patting me down, they said I matched the description of a mugger. The reality was that they could not tell one black boy from another. Many years later, the fear and embarrassment of the first time I was stopped and searched for a crime I did not commit remains with me. Speaking to young black men in my constituency and looking at the statistics, it's clear that nothing has changed.

The fact that you are now over eight times more likely to be stopped and searched if you are black than if you are white, even though it is less likely for drugs to be found, represents a profound racial injustice. Grounded in the fictitious narrative that drug use is especially prevalent among black and minority ethnic groups, the current practice of stop and search entertains a racist fantasy. As we speak, there will be young, white middle class men smoking a joint at a campus university or having cocaine delivered to their dinner parties, but the police will be nowhere in sight. We cannot have different policing for different communities. It is inherently unfair. Stop and search is an integral cog in a racially disproportionate criminal justice system.

The disproportionate use of stop and search is not only born out of, but also perpetuates, a paranoid and generalised suspicion toward an entire community. The ingrained image of black men being searched by the police feeds into the collective illusion that black men everywhere need to be policed more than others. Crucially, the way in which the police's huge discretionary power is exercised does not only fuel deep distrust toward the groups they target. The systematic profiling of black and minority ethnic groups inevitably leads these groups to lose faith in the very authorities that are meant to protect them. An institution that people depend on for their safety is transformed into one that is feared just as much as the threats it intends to defuse.

As for the use of weapons searches, the evidence is clear: increases in the use of stop and search do not lead to any discernible drop in violent crime. Used as an antibiotic to a resistant infection, stop and search is overly prescribed to the detriment of its own effectiveness, squandering police time and energy that could otherwise be expended on protecting the wider community. In fact, stop and search relieves us of the responsibility of engaging with the deeper problems that create the very criminals it intends, but systematically fails, to apprehend. It wants to perform a feat of magic: to make the underlying roots of criminal activity disappear.

To put it simply:

“Nobody wins when stop and search is misapplied. It is a waste of police time. It is unfair, especially to young black men. It is bad for public confidence in the police.”

These are not my words. These are the words of Theresa May, in 2014 when she was Home Secretary. As somebody who is committed to both reducing the overall use of stop and search and ensuring its “effective and fair use,” the Prime Minister clearly shares my concerns on this issue. Why, then, is the man who now has her old job committed to expanding the use of stop and search? Why is Sajid Javid willingly ignoring the evidence and moving away from cross-party agreement? By pandering to the right of his party, he risks deepening society's divides.

Instead of relying on the ineffectual and racially unjust practice of stop and search, we must stop stigmatising black men and search for more intelligent, long term solutions to the very problems that foster criminal activity in the first place. Ultimately, we must either abandon our reliance on stop and search or abandon any hope for a criminal justice system grounded in equality, impartiality and fairness.

**The Rt Hon David Lammy MP, Member of Parliament for Tottenham**



# 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.
- 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.

## 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.
- 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.

- 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.

## **London data point to patterns of geographic and individual profiling**

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

## **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.
- 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.

## **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.
- 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.

# 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 example<sup>1</sup>, differential patterns of enforcement have been identified across a range of jurisdictions<sup>2</sup>. 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 Wales<sup>3</sup>. What we present below 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.**

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

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

Striking ethnic disparities are identified throughout the process of drug law enforcement, with people from black and minority ethnic groups being over-represented from initial point of contact through to sentencing. Our analysis shows that policing remains central to this process, and that stop and search continues to play a key role despite striking reductions in the overall use of the powers. Reductions in stop and search have not been distributed evenly and residual activity has become more heavily concentrated on drugs, often for minor possession offences, and black and minority ethnic groups. Although all ethnic groups have experienced sharp reductions in the absolute number of stop-searches, the rate at which black people are disproportionately subject to such encounters relative to white people has increased. Disparities between ethnic groups have been compounded by the emergence of differential outcomes as black suspects are arrested as a result of stop and search at a higher rate than white suspects, but given out of court disposals at a lower rate. As well as identifying newly emerging trends, the analysis builds on earlier work by showing that the over-policing of black and minority ethnic communities cannot be fully explained by the concentration of law enforcement resources in deprived areas. It also shows how ethnic disparities introduced earlier in the process are perpetuated by sentencing decisions in court, producing outcomes that are startlingly unequal. While this confirms earlier findings we are able to show for the first time that enforcement activities around cannabis possession remain a key driver of disproportionality right through to prosecution and sentencing.

The evidence presented in this report provides an important corrective to the defensive rhetoric that has developed in response to the reform of stop and search. This rhetoric pivots around claims that police are afraid of using their stop and search powers in case they are accused of racism; that ethnic disparities are a 'myth'; and that stop and search is a 'vital tool' in the fight against knife crime. None of these claims stand-up to empirical scrutiny. While police narratives about stop and search revolve around knives, gangs, organised crime groups, drug supply, county lines and modern slavery, our analysis tells a different story - one of deprived, minority communities being over-policed and selectively criminalised for minor drug possession offences that are largely ignored in other contexts and for other groups.

## Assessing ethnic disparities

The following analysis is based on the standard methodology developed by the Home Office and Ministry of Justice to assess ethnic disparities across the criminal justice system, drawing on official statistics covering police and courts (see the Methodological Appendix for details). Both the Home Office and the Ministry of Justice use disproportionality ratios to examine the typical experiences of different ethnic groups. These ratios are calculated by comparing rates of contact with criminal justice agencies for black and minority ethnic groups with rates of contact for white people: a ratio greater than 1.0 indicates that people from minority groups have higher rates of contact than white people, while a ratio of less than 1.0 indicates that they have lower rates of contact. Population estimates from the 2011 Census were used to calculate the disproportionality ratios presented below. The Census remains the most robust source of information about the ethnic make-up of the general population and our approach corresponds with that taken by the Home Office and the Ministry of Justice. Our results have been checked and validated by replicating the analysis using more recent population estimates from the Annual Population Survey (see Methodological Appendix).

It is important to be clear about what disproportionality does and does not tell us. Disproportionality provides a useful measure of different ethnic groups' experience of the criminal justice system, but does not explain what is causing any evident disparities. The Ministry of Justice makes clear that the 'identification of differences should not be equated with discrimination' because 'there are many reasons why apparent disparities may exist which would require further investigation'<sup>4</sup>. Despite this clarification, some commentators have insisted that disproportionality is a flawed measure because rates of stop and search are calculated on the basis of the general residential population rather than the 'street population' that is 'available' to the police<sup>5</sup>. This criticism fails to understand the distinction the Ministry of Justice makes between disproportionality and discrimination (or individual racism)<sup>6</sup>. Disproportionality may be caused by individual racism, but does not depend on it. Ethnic disparities may occur in the absence of individual racism due, for example, to apparently neutral policies and procedures that effect some groups more than others – this is part of what the Stephen Lawrence inquiry referred to as 'institutional racism'<sup>7</sup>. There is some evidence that differences between the 'residential population' and the 'available population' help to account for disproportionality in the use of stop and search<sup>8</sup>. These are important findings because they suggest that organisational decisions about where to concentrate stop and search activity are part of what is driving disproportionality by helping to determine who is made 'available' to officers. The available population, in other words, is best seen as a mechanism that potentially helps to

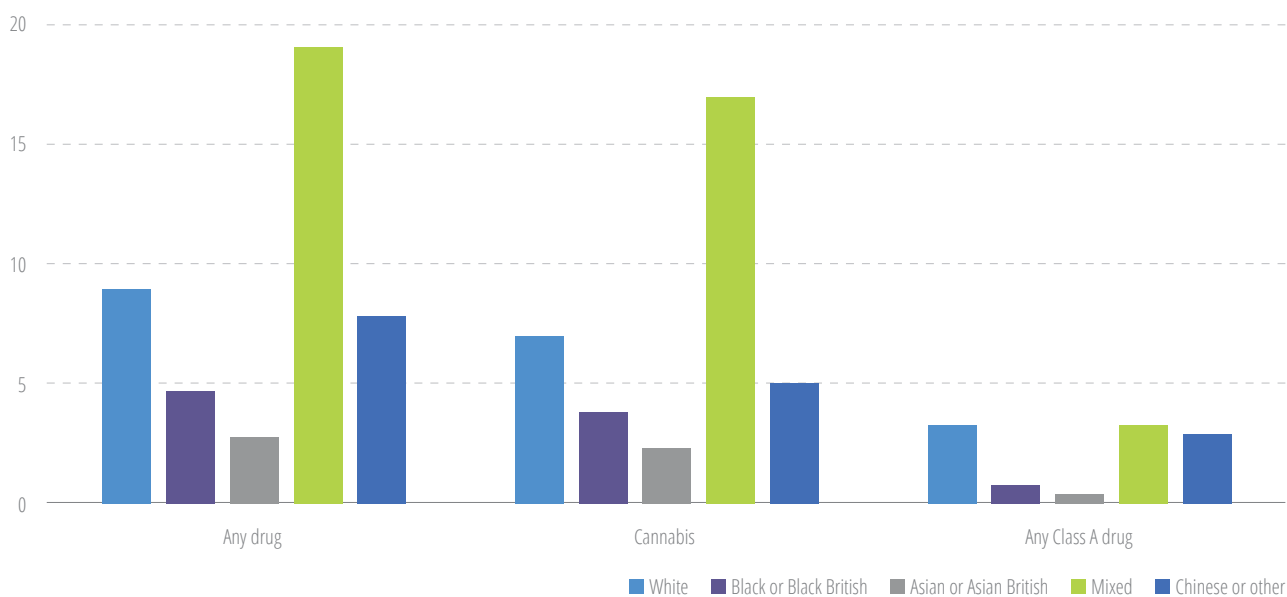
explain how disproportionality is produced rather than as a negation of its existence (as critics claim). Even if the available population fully ‘explains’ disproportionality it does not alter the fact that, across the general population, black and minority ethnic groups are subject to higher rates of stop and search than white people.

## A note on ‘race’, crime and drugs

Evidence of disproportionality is consistent with discrimination even if it does not prove that observed disparities are the result of unfair treatment. Concerns about discrimination are sharpened if ethnic disparities in contact with police and other criminal justice agencies cannot be explained by variations in offending. Official criminal justice statistics, including arrest rates, are a poor indicator of patterns of offending because they are produced by enforcement activities that may be shaped by biases in decision-making. Criminal justice statistics, in other words, cannot separate out ‘true’ offending rates from the potential impact of discrimination. Police recorded crime is also subject to significant sources of error. Evidence of significant under-recording and the distorting influence of targets has raised serious doubts about the validity of these data, with the result that police recorded crime has been stripped of its designation as National Statistics<sup>9</sup>.

Self-report surveys provide the most reliable basis for assessing levels and patterns of offending<sup>10</sup>. Studies using this approach in England and Wales have consistently found that that black and minority ethnic groups offend at a similar or lower rate than white people, even though they are subject to higher rates of arrest<sup>11</sup>. Repeated self-report studies have indicated that black and minority ethnic groups tend to use drugs at a lower rate than white people, with detailed analysis demonstrating that this is partly a function of broader lifestyle differences, including levels of alcohol consumption, culturally distinct orientations to intoxication, and religious influences<sup>12</sup>. The Crime Survey for England and Wales 2016/17 confirmed previous findings, with black, Asian and Chinese/other respondents reporting lower rates of drug use in the ‘last year’ than their white counterparts (see Figure 1).

Figure 1 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 2016/17<sup>13</sup>

Patterns of drug use also vary by ethnicity. In so far as black and Asian people use drugs, they tend to focus on less harmful substances with a lower legal classification. Black respondents, for example, reported using cannabis at slightly more than half the rate of white people, but Class A drugs at less than quarter the rate of white people. The heightened rates of any drug use and cannabis use reported by the 'mixed' group are partly, at least, a function of its relatively young age structure compared with other groups<sup>14</sup>. Drug use in the 'mixed' group, as in black and Asian groups, tends to focus on less harmful substances with a lower legal classification: members of the 'mixed' group reported using any drug or cannabis at more than twice the rate of white people, but Class A drugs at an almost identical rate as white people.

Information about involvement in drug supply is more limited, but does not fundamentally alter the picture. The available evidence indicates that drug dealing is not particularly common among black and minority ethnic groups and may well be more prevalent amongst white people<sup>15</sup>.

Given that self-reported drug use and other forms of offending are not especially prevalent among black and minority ethnic groups, we must look elsewhere for an explanation of why these groups are subject to much more intense levels of law enforcement activity.

# Policy Context: Reform and Resistance

**Ethnic disparities in policing and the criminal justice system have come into much sharper focus since *The Numbers in Black and White* was published. A historic independent review of 'race' and the criminal justice system, chaired by David Lammy MP, was published in September 2017 containing 35 recommendations for judges, prosecutors and prisons<sup>16</sup>. In a separate development, stop and search has been subject to unprecedented process of reform with the ostensible aim of tackling long-standing ethnic disparities. These reforms have proved controversial and have been sharply contested by police leaders who insist they have gone too far.**

## The Lammy Review

The Lammy Review was commissioned by two Prime Ministers 'to make recommendations for improvement with the ultimate aim' of reducing the proportion of black and minority ethnic offenders in the system<sup>17</sup>. This initiative was said to reflect 'a growing sense of urgency, across party-political lines, to find solutions to this inequity'<sup>18</sup>. The terms of reference focused on the prosecutorial and court systems, prison and other secure institutions, and rehabilitation in the wider community. Although policing was notably absent from this list, its influence was apparent. The Review noted that decisions by police determine who is made available for prosecution and has significant knock-on effects: 'Arrest rates are generally higher across minority ethnic groups in comparison to the white group' and the disproportionate representation of such groups 'starts at the beginning' of the criminal justice journey<sup>19</sup>. The Review also noted that policing has a second, important legacy, affecting how people view the criminal justice system as a whole. Grievances over policing tactics, particularly the disproportionate use of stop and search, it noted, drain trust in the system among black and minority ethnic communities.

The evidence submitted to the Lammy Review included analysis by the Ministry of Justice, which sought to identify key pinch-points in the criminal justice system where ethnic disproportionality becomes more pronounced<sup>20</sup>. This analysis confirmed previous findings that policing is a key driver of disproportionality<sup>21</sup>. Large ethnic disparities were evident at the point of arrest with small contributions emerging at subsequent stages. The analysis also confirmed that disproportionality is especially marked in relation to drug offences. Earlier studies found that black people are subject to particularly high rates of stop and search for drugs<sup>22</sup>, and that black, Asian and 'mixed race' young people are considerably more likely than their white counterparts to have been arrested as a result of proactive police work, which often focuses on robbery and drug offences<sup>23</sup>. The Ministry of Justice analysis found that arrests for drug offences were disproportionately high, and noted that drugs provided the only offence group where custodial sentences were consistently more likely for men from black and minority ethnic groups, as well as for black women.



The Lammy Review concluded that people from black and minority ethnic groups ‘still face bias, including overt discrimination’ in parts of the criminal justice system<sup>24</sup>. Rather than trying to decode the intentions behind these biases, the Review focussed on treatment and outcomes, noting that ‘the prescriptions for fair treatment are remarkably similar, whatever the diagnosis of the problem’<sup>25</sup>. According to Lammy, the best way of ensuring fair treatment is to subject decision-making to scrutiny because bringing decisions out into the open encourages individuals to check their own biases, and helps to identify and correct them. What this might mean in practice, it was noted, can vary depending on the context, from publishing more data to allowing outside scrutiny, to governance arrangements that hold individuals to account within organisations. Although the specifics might vary, Lammy maintained that the principle of ‘explain or reform’ should be applied consistently: if criminal justice agencies ‘cannot provide an evidence-based explanation for apparent disparities between ethnic groups then reforms should be introduced to address those disparities’<sup>26</sup>.

## Stop and search reform

Police use of stop and search and the disproportionate impact on black and minority ethnic communities has come under much greater scrutiny since *The Numbers in Black and White* was published. The need for greater scrutiny was laid bare by Her Majesty’s Inspectorate of Constabulary (HMIC) when it carried out its first ever thematic inspection of stop and search following the 2011 riots. Visits to all 43 territorial police forces in England and Wales uncovered ‘alarming’ and ‘disturbing’ evidence of non-compliance with the statutory requirements enshrined in the Police and Criminal Evidence Act (PACE)<sup>27</sup>. Slightly more than a quarter of the stop and search records that were examined ‘did not include sufficient grounds to justify the lawful use of the power’<sup>28</sup>. This failing was attributed to low levels of understanding of what constitutes ‘reasonable grounds’, poor supervision, and an absence of oversight by senior officers. Fewer than half of forces complied with the requirement to make arrangements for the public to scrutinise the use of stop and search powers; almost half ‘did nothing to understand the impact of stop and search encounters upon communities’; and very few sought out the views of the people and communities most affected<sup>29</sup>. Although the majority of forces were monitoring rates of stop and search by ethnicity, black people were subject to the use of the powers at more than seven times the rate of white people. Given the concerns about discrimination, moreover, the Inspectorate noted that ‘surprisingly little attention’ was being paid to the effectiveness of the powers in reducing or detecting crime, pointing to an arrest rate of below 10 per cent.

Theresa May, the then Home Secretary, told Parliament that the findings of the inspection were ‘deeply concerning’<sup>30</sup>. When stop and search is misapplied, she noted, ‘nobody wins. It is a waste of police time. It is unfair, especially to young, black men. It is bad for public confidence in the police’. To improve matters the Home Secretary announced a ‘comprehensive package of reform’ that ‘should contribute to a significant reduction in the overall use of stop and search, better and more intelligence-led stop and search and improved stop-to-arrest ratios’. As part of this package, she announced that the Home Office and the College of Policing would launch a new ‘Best Use of Stop and Search’ (BUSS) scheme and that the HMIC would include stop and search in the annual PEEL Inspections covering effectiveness, efficiency and legitimacy.

The reforms that followed the HMIC's initial thematic inspection were geared towards tightening-up existing regulatory arrangements and very few of them addressed 'race' and disproportionality directly. An attempt was made to clarify what constitutes 'reasonable grounds for suspicion' by revising the relevant Code of Practice<sup>31</sup>. The BUSS scheme was launched in August 2014, with all 43 territorial police forces signing-up, and has provided the principle mechanism through which reform is being delivered. The scheme aims to achieve 'greater transparency, community involvement in the use of stop and search powers and to support a more intelligence-led approach, leading to better outcomes'<sup>32</sup>. To this end, it focuses on:

- Extending the amount of information police forces record and publish.
- Providing members of the public with opportunities to observe police practice, including the potential use of stop and search.
- Creating a 'community trigger' which requires police to explain how the powers are being used if there is a large volume of complaints.
- Restraining the use of 'exceptional' powers that do not require 'reasonable suspicion'.
- Ensuring that forces monitor the impact of the scheme<sup>33</sup>.

In so far as 'race' is addressed explicitly, it is addressed through the lay observation scheme and monitoring requirement. With reference to lay observation, it is said to be 'important for the public, particularly young people and people from Black and Minority Ethnic communities, to be able to see the police conducting their work in a professional way'<sup>34</sup>. In terms of 'Race and Diversity Monitoring', forces are reminded of their duty under equalities legislation to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. To support the aim of improving relationships between the police and the public, participating forces are also required to actively monitor their use of stop and search powers: 'Forces participating in the Scheme will ensure that the impact of the Best Use of Stop and Search Scheme is monitored, particularly as it relates to individuals from Black and Minority Ethnic groups and young people'<sup>35</sup>. There is no mention of disproportionality and nothing is said about how discrimination might be eliminated.

One of the more direct attempts to tackle ethnic disparities has taken the form of training developed by the College of Policing in partnership with the Equality and Human Rights Commission. This training focuses on practical legal decision-making, unconscious bias (with particular reference to 'race'), and procedural justice. It was piloted by six forces in 2015 to mixed effect. Although the training had some small positive immediate effects on officers' knowledge, attitudes and anticipated behaviours - some of which were sustained at a three-month follow-up - no effects were found on their recorded stop and search practices (i.e. the quality of written grounds for search or arrest rates)<sup>36</sup>. Nor were any effects found on the way officers said they would treat a suspect during a confrontational stop and search or the relevance of 'race' / ethnicity in officer decision-making. The national training was rolled-out in 2016 with the aim of helping officers recognise and challenge unconscious bias, and demonstrate clear, objective and reasonable grounds before conducting a search<sup>37</sup>.

## Reform and resistance

Recent reforms have been accompanied by a sharp reduction in the use of stop and search; sustained improvements in the quality of the 'grounds' recorded by officers; and a marked increase in the arrest rate<sup>38</sup>. Although these trends point towards a more careful and considered use of the powers, the reforms have proved controversial and have provoked a defensive reaction. Police leaders have repeatedly called for an increase in the use of stop and search to address knife crime amid claims that reform has gone 'too far'<sup>39</sup> and officers are afraid of using their powers in case they are accused of racism<sup>40</sup>. While aspects of this narrative have been endorsed by senior politicians, including Theresa May's successors as Home Secretary<sup>41</sup>, the backlash against reform came to a head when Iain Duncan Smith, former leader of the Conservative Party, called for 'a dramatic increase' in stop and search to 'harass the hell' out of gang leaders<sup>42</sup>. Duncan Smith was promoting a report produced by the Centre for Social Justice – a 'think tank' he founded – which claims that ethnic disparities in stop and search are a 'myth' that 'must be challenged'<sup>43</sup>. This kind of defensive rhetoric is actually where myths are made and is full of obfuscation and misdirection. Stop and search is not 'a vital tool' in combating knife crime or 'gang' violence, ethnic disparities are genuine, and there is no credible evidence that police are reluctant to use their powers because they are afraid of being accused of racism:

- Police statistics show that relatively few stop-searches are targeted at weapons and many more are targeted at low-level drug possession offences<sup>44</sup>.
- Repeated studies have found stop and search is ineffective as a means of tackling knife crime and other forms of serious violence<sup>45</sup>.
- The kind of aggressive police tactics advocated by Duncan Smith are counter-productive and are more likely to promote than prevent violence<sup>46</sup>.
- Ethnic disparities are tangible, persistent, and widening.

# The National Picture: Stop and Search for Low-Level Drug Offences

## Key points:

- Stop and search is becoming increasingly concentrated on drug offences. Half of all stop-searches in 2010/11 were targeted at drugs, rising to almost two-thirds by 2016/17.
- The intensity of the focus on drugs varies sharply between forces: 82 per cent of stop-searches in Merseyside were for drugs compared to 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 policy and organisational culture.
- Most drug searches are for low-level street possession.
- Police forces are making operational decisions to target low-level drug possession offences over other crimes.

There is a functional fit between street level drug law enforcement and high discretion stop and search. Because drug use is a consensual activity it rarely comes to light through victim or witness reports, which means police have to rely on more proactive methods to deal with such offences than other forms of street crime<sup>47</sup>. The proportion of stop-searches targeting drug offences has increased since 2010/11 as overall use of the powers has fallen. Police conducted 303,228 recorded stop-searches across England and Wales in 2016/17, which was the lowest number for 15 years, and represented a sharp decline from a peak of 1.2 million in 2010/11 (see Figure 2)<sup>48</sup>. The reduction in stop and search has been less marked for drugs (down to 32 per cent of the 2010/11 peak) than for other offences (down to 18 per cent). As a result, the use of the powers has come to concentrate more heavily on drugs: half (49 per cent) the stop-searches conducted in 2010/11 were targeted at such offences, rising to almost two-thirds (62 per cent) by 2016/17. This greater concentration on drugs has come primarily at the expense of stolen property and going equipped to commit burglary, theft or deception (see Figure 3). The focus on weapons has remained relatively modest despite recent rhetoric about knife crime: 12 per cent of stop-searches were for offensive weapons in 2016/17 compared with 11 per cent in 2010/11.

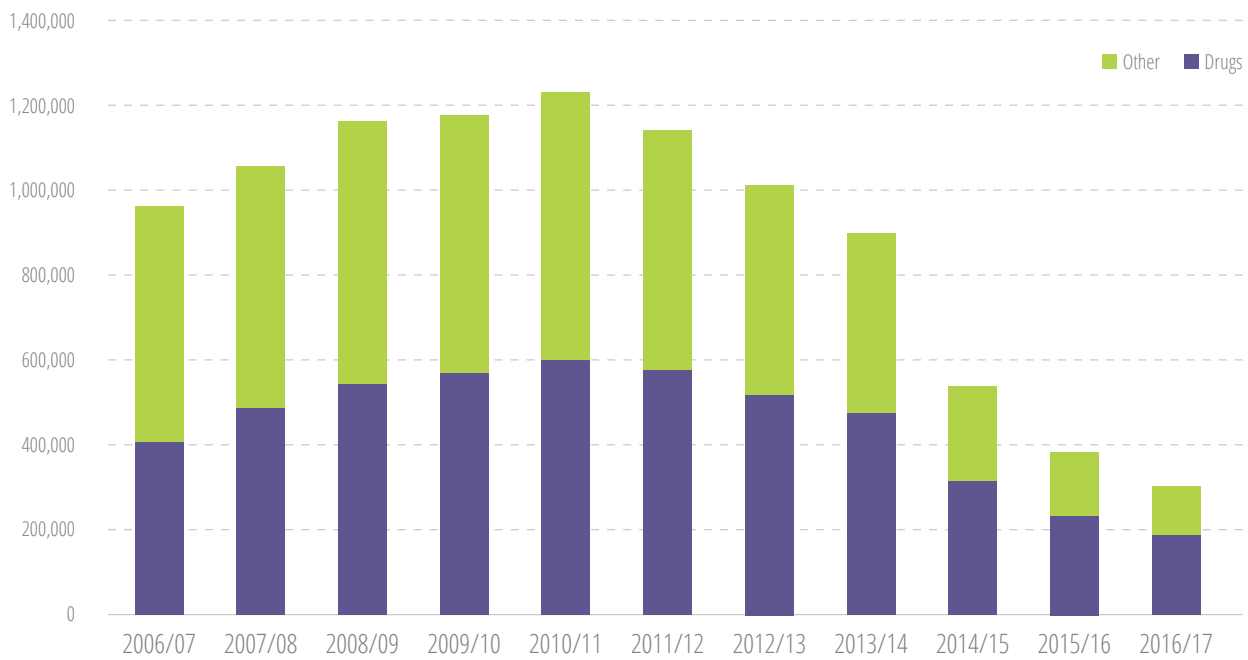
The majority of stop-searches targeted drugs in all but five forces during 2016/17, though the intensity of

this focus varied (Figure 4). The concentration on drugs was greatest in Merseyside, where 82 per cent of stop-searches were targeted at such offences, and lowest in Durham, where 46 per cent were so targeted. Striking variations were evident between similar force-areas. Greater Manchester and West Midlands, for example, are among the most similar forces to Merseyside in terms of demographic, social and economic characteristics related to crime<sup>49</sup>, but a much smaller proportion of their stop-searches were for suspected drug offences (54 and 51 per cent respectively). The very different approaches taken by forces covering areas with similar crime-relevant profiles suggests that the intensity of the focus on drugs is a matter of policy and organisational culture<sup>50</sup>.

Police statistics do not indicate which drugs were searched for or whether the suspected offence was for possession or supply because officers are not required to routinely record this information. Detailed analysis undertaken by HMIC as part of its initial thematic inspection indicated that most drug searches are for low-level street possession<sup>51</sup>. This was considered to be a concern because such offences 'did not feature highly, if at all, in force priorities', suggesting that the use of stop and search was 'not always being targeted effectively in response to force priorities - whereas, for example, stopping and searching on suspicion of knife possession could be linked to a force priority to reduce violent crime'<sup>52</sup>. Similar analysis of over 8,000 stop-search records conducted as part of the 2017 PEEL legitimacy Inspection found that 70 per cent of drug searches and 45 per cent of all stop-searches were for suspected drug possession, suggesting, once again, that 'in many cases' such activity 'is still not being targeted towards tackling priority crimes'<sup>53</sup>. Since 2010/11 more than 80 per cent of drug offences recorded by police have been possession offences and more than 60 per cent have been for cannabis possession<sup>54</sup>. Extrapolating from these figures indicates that more than a third of all stop-searches are for suspected cannabis possession offences (the exact proportion varies from 34 to 39 per cent depending on the year). It follows that police forces are making operational decisions to target low-level drug possession offences over other crimes.

Figure 2

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



Source: Police powers and procedures

Figure 3

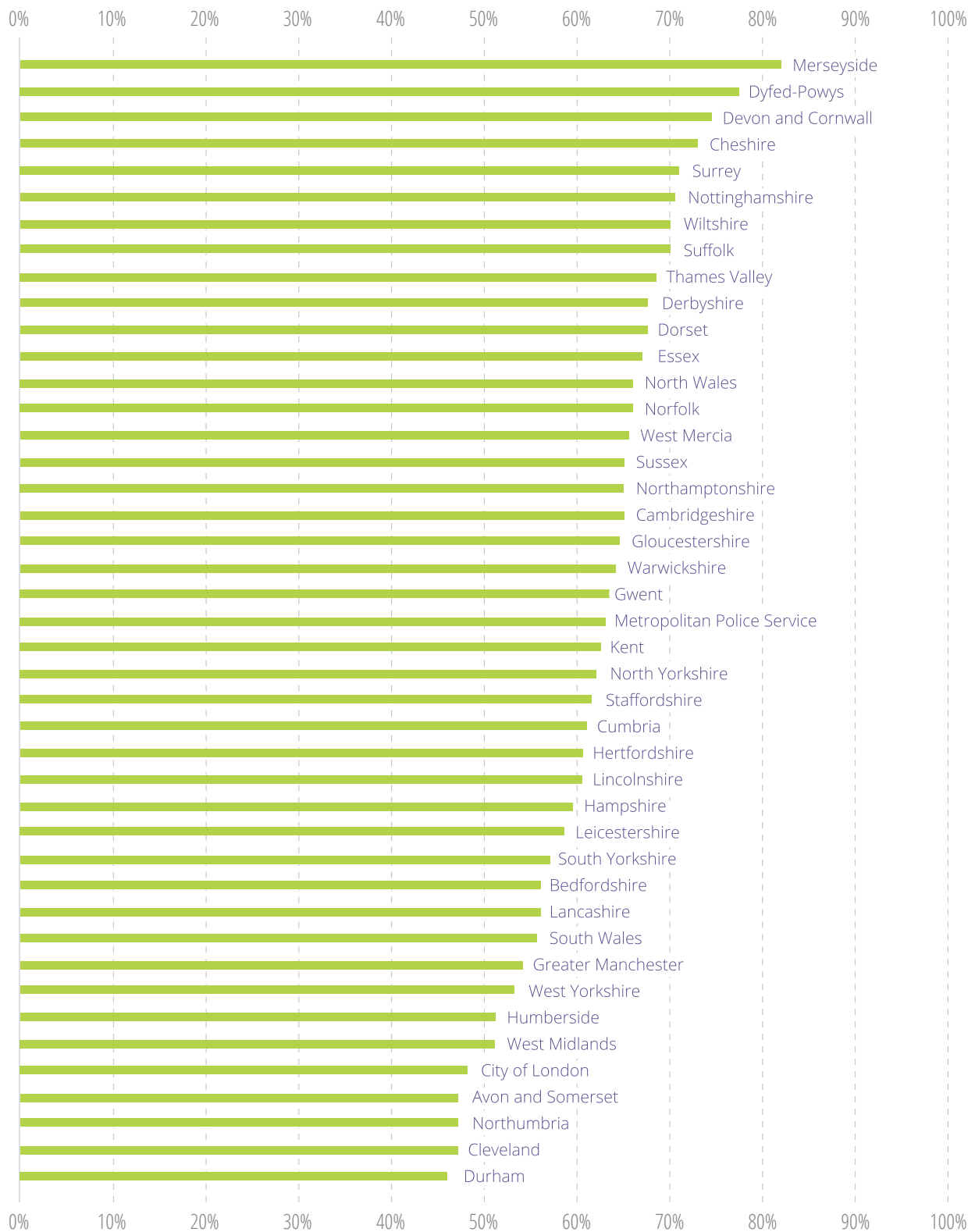
Percentage of stop-searches in England and Wales by reason, 2006/7 to 2016/17



Source: Police powers and procedures

Figure 4

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



Source: Police powers and procedures

# Disproportionality in Stop and Search

## Key points:

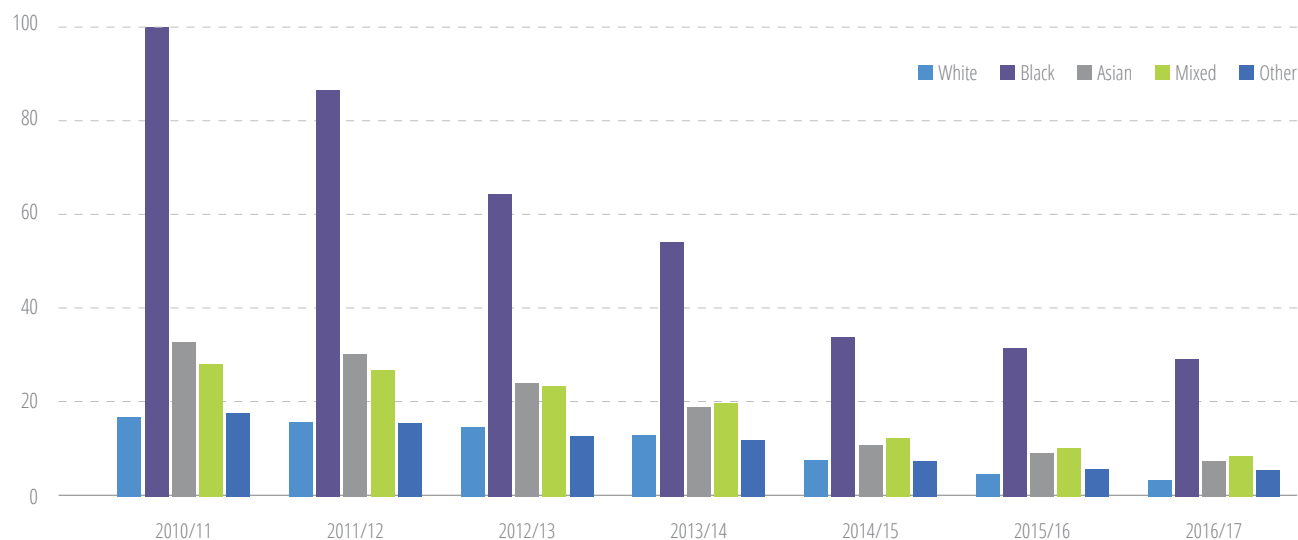
- Disproportionality has increased as the use of stop and search has declined, indicating that the remaining use of the powers is more heavily concentrated on black and minority ethnic groups. Black people were stopped and searched at more than eight times the rate of white people in 2016/17. Asian people and those in the 'mixed' group were stopped and searched at more than twice the rate of white people.
- Stop-searches for drugs are more disproportionate than stop-searches for other offences. 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.
- The 'find' rate for drugs is lower for black than white people suggesting drug searches on black people may be on based weaker grounds for suspicion than those on white people.

Stop and search is becoming more disproportionate (see Figure 5A). By 2016/17 black people were stopped and searched at 8.4 times the rate of white people, while Asians and those in the 'mixed' group were stopped and searched at more than twice the rate of white people. Although the number of stop-searches has fallen sharply for all ethnic groups, residual use of the powers has become more heavily concentrated on black people and, to a lesser extent, those of 'mixed' heritage.

Reductions in the use of stop and search were initially more marked for black and minority ethnic groups than white people, which meant disproportionality fell in the short-term. Black / white disproportionality fell from 6.0 to 4.1 between 2010/11 and 2013/14. This initial trend was fuelled by sharp early reductions in the use of the powers across several large urban forces with ethnically diverse populations, including the Metropolitan Police Service (MPS) and Greater Manchester Police (GMP). Over the longer term, however, reductions in stop and search have been most marked among white people even though they had relatively low rates of exposure at the outset. Between 2010/11 and 2016/17 the rate of stop and search fell by 79 per cent for white people, 77 per cent for Asian people, 71 per cent for black people, 70 per cent for the 'mixed' group, and 69 per cent for the 'other' group. This meant the trend towards lower rates of disproportionality was quickly reversed and ethnic disparities widened: the rate of black / white disproportionality more than doubled between 2013/14 and 2016/17, reaching its highest level for more than 20 years<sup>55</sup>.



Figure 5A Stop and search - all reasons - by self-defined ethnicity in England and Wales, 2010/11 to 2016/17  
(rates per 1,000 and disproportionality ratios)



|              | Disproportionality ratios (compared to white) |         |         |         |         |         |         |
|--------------|---|---------|---------|---------|---------|---------|---------|
|              | 2010/11                                       | 2011/12 | 2012/13 | 2013/14 | 2014/15 | 2015/16 | 2016/17 |
| <b>White</b> | 1.0   | 1.0     | 1.0     | 1.0     | 1.0     | 1.0     | 1.0     |
| <b>Black</b> | 6.0   | 5.5     | 4.4     | 4.1     | 4.4     | 6.5     | 8.4     |
| <b>Asian</b> | 2.0   | 1.9     | 1.6     | 1.4     | 1.4     | 1.9     | 2.2     |
| <b>Mixed</b> | 1.7   | 1.7     | 1.6     | 1.5     | 1.6     | 2.1     | 2.4     |
| <b>Other</b> | 1.1   | 1.0     | 0.9     | 0.9     | 1.0     | 1.2     | 1.6     |

Source: Police powers and procedures

The pattern is very similar for stop-searches targeting drugs, though rates of disproportionality are generally higher (see Figure 5B). By 2016/17, black people were stopped and searched at 8.7 times the rate of whites for drugs and 7.9 times the rate of whites for other offences. Asian people were stopped and searched at 2.7 times the rate of whites for drugs and 1.4 times the rate of whites for other offences, while people in the 'mixed' and 'other' groups were stopped and searched for drugs and other offences at a similarly disproportionate rate.

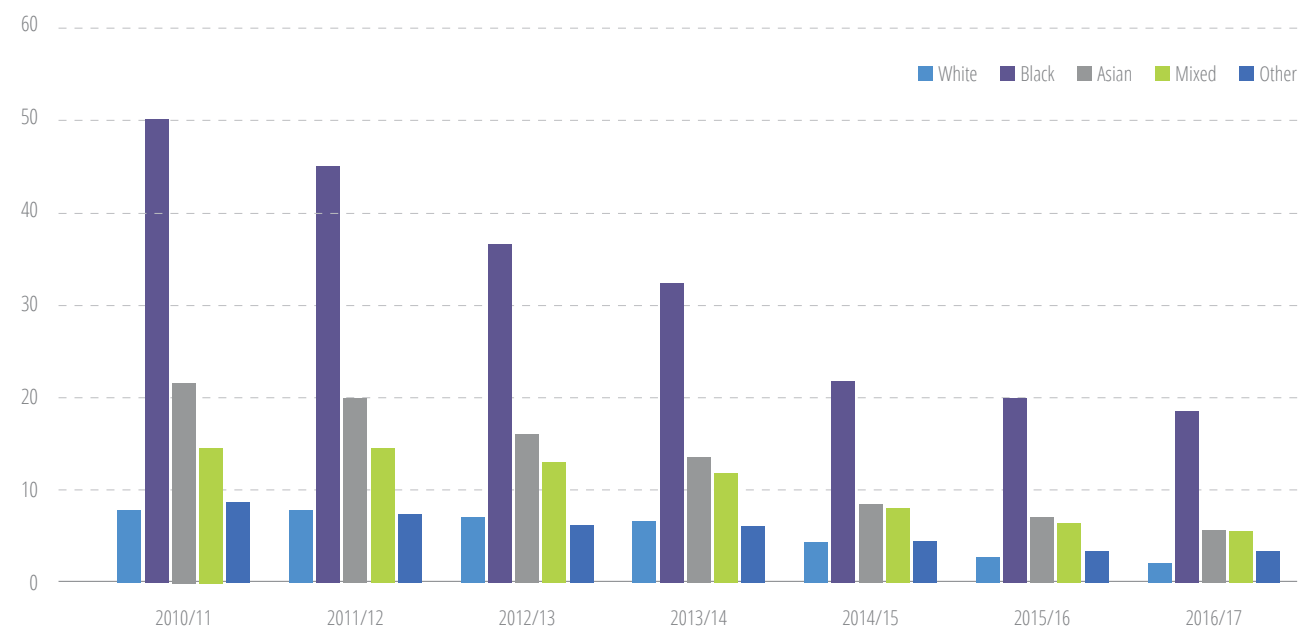
Disproportionality has featured prominently in the ongoing review of stop and search conducted by Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS)<sup>56</sup>. The 2017 PEEL inspection acknowledged that the disproportionate use of stop and search on black and minority ethnic groups 'continues to threaten trust and confidence in the police'. It also registered concerns that forces 'are not able to demonstrate that the use of stop and search powers is consistently reasonable and fair', and 'many forces are unable to explain' why people from black and minority ethnic groups are subject to such interventions at a heightened rate<sup>57</sup>. Detailed analysis of more than 8,000 records raised particular doubts about the fairness of stop-searches targeting drugs. Although reasonable grounds were judged to have been established for almost all the drug searches, the find-rate varied between ethnic groups. The Inspectorate argued that finding the item that was searched for provides "one of the best measures of effectiveness and indicates that the grounds for the officer's suspicions are likely to have been strong"<sup>58</sup>. Unlike arrests and other criminal justice outcomes, the find rate does not include cases where the searched

for item was not found. The overall find rate for all stop-searches was broadly similar across ethnic groups, but drug searches were less likely to yield the suspected item for black suspects than white suspects and those from other ethnic groups. This was consistently the case with the find rate for:

- Drug searches overall (33 per cent white; 26 per cent black).
- Suspicion of possession searches (36 per cent white; 30 per cent black).
- Searches based only on smell of cannabis (37 per cent white; 29 per cent black).

The disparity in find rates was said to be ‘troubling’ because ‘it suggests that the use of stop and search on black people might be based on weaker grounds for suspicion than its use on white people, particularly in respect of drugs’<sup>59</sup>. While there ‘may be a number of reasons for these findings’, the Inspectorate insisted ‘they require an explanation that the service is currently unable to provide’<sup>60</sup>.

Figure 5B 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)



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

Source: Police powers and procedures

# The Local Picture: Variations Across Forces

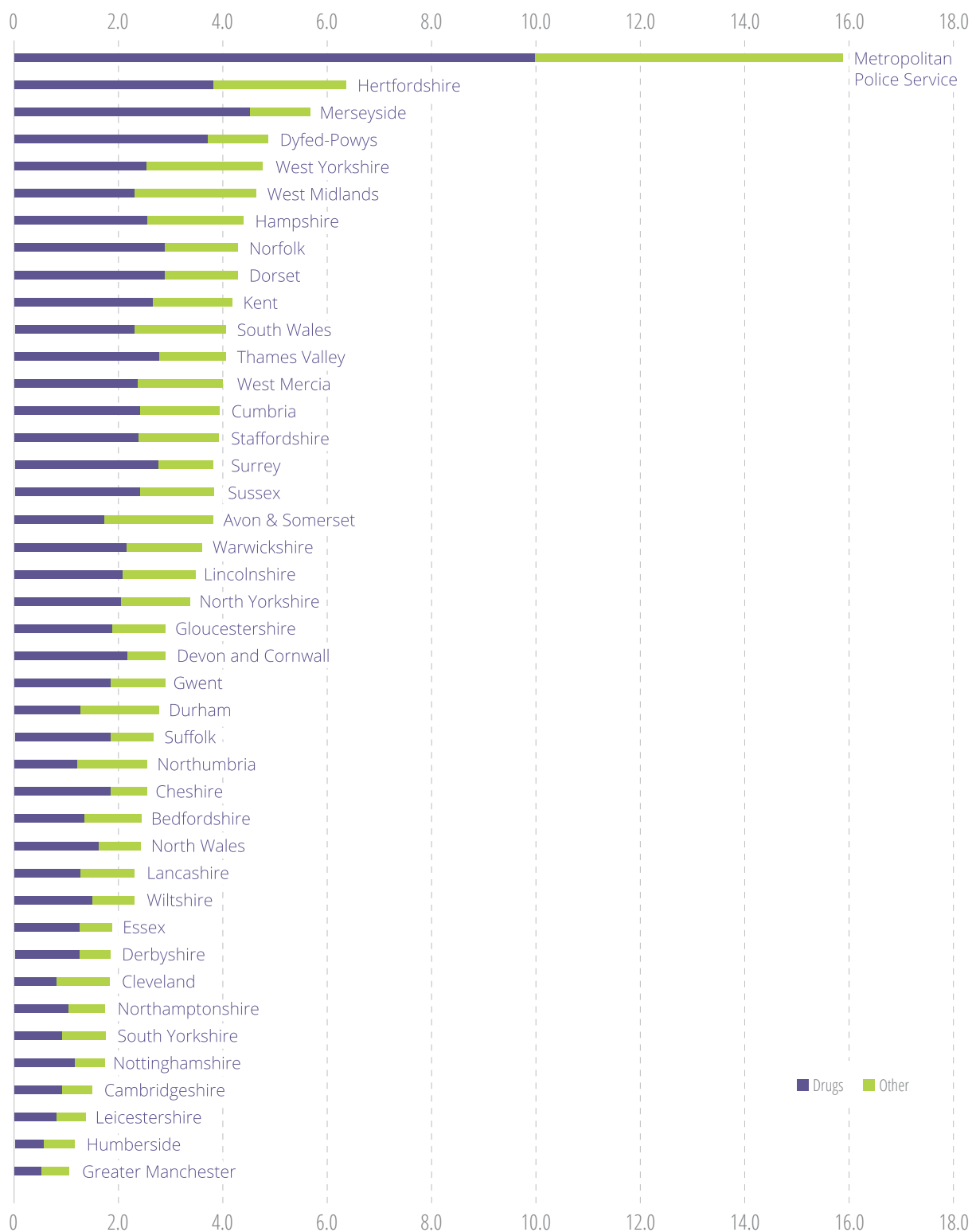
## Key points:

- There are striking differences between forces 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 practice.
- 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 reside in the capital.
- Every force in England and Wales stopped and searched black people at a higher rate than white people 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 cut their use of stop and search without seeing correspondingly sharp increases in disproportionality. Others have seen relatively modest reductions in stop and search alongside high and increasing rates of disproportionality.
- Differences between forces indicate that discrimination remains an important driver of disproportionality.

When the Equalities and Human Rights Commission (EHRC) published a critical review of stop and search in 2010, it identified sharp variations between forces in their overall use of the powers as well as their rates of disproportionality<sup>61</sup>. Variations in overall rates of stop and search are an important component of disproportionality and are only tangentially related to crime, suggesting they are largely the result of difference in police policy and practice<sup>62</sup>. While some forces make much greater use of the powers than others, distinct patterns of residence mean some ethnic groups are more exposed than others. The 'London effect' illustrates the point<sup>63</sup>. What happens in London has a major impact on black and minority ethnic groups' overall experience of stop and search and on rates of disproportionality across the country as a whole. This is not because police in London are especially disproportionate, but because the overall rate of stop and search is high and because a large proportion of the minority population lives in the capital.

Figure 6:

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



Source: Police powers and procedures

Notes

1. 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]
2. 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.

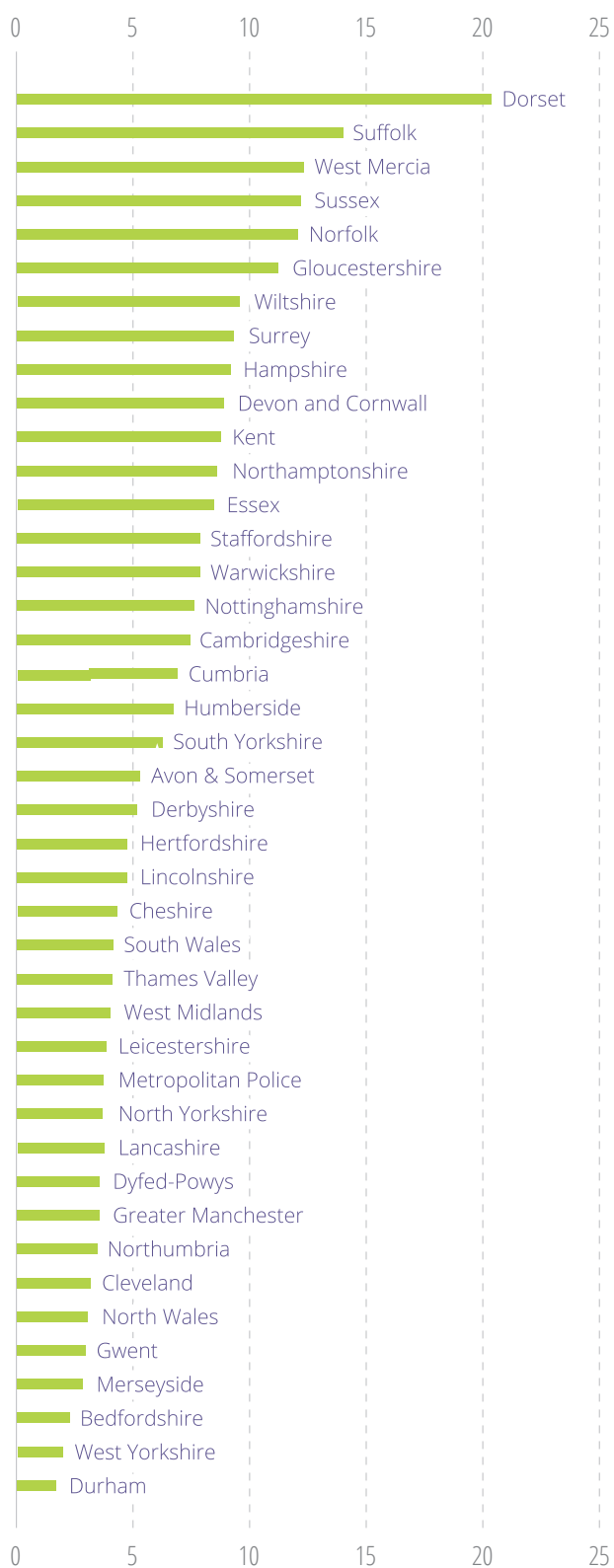
Overall rates of stop and search continue to vary sharply between forces, and the MPS remains by far the biggest user of the powers (see Figure 6). Since 2010/11 the MPS has been responsible for anywhere between a third to almost half (32 to 45 per cent) the total number of stop-searches carried out across England and Wales per year. In terms of key demographic, social and economic characteristics related to crime, the Metropolitan Police is most similar to West Midlands, Greater Manchester, and West Yorkshire Police, but makes much greater use of stop and search than any of these forces. While West Midlands and West Yorkshire have relatively high rates of use compared with other forces, Greater Manchester has the lowest rate of all 43 territorial forces.

Black and minority ethnic groups are particularly susceptible to the concentration of stop and search activity in London due partly to their patterns of residence: the 2016 Annual Population Survey indicates that 11 per cent of the white population across England and Wales is resident in London compared with 55 per cent of the black population, 36 per cent of the Asian population, and 44 per cent of the 'mixed' / 'other' population. Even if stop and search was entirely proportionate within London (and it is not), the high overall rate of use in the capital would disproportionately affect black and minority ethnic groups because of their patterns of residence, creating disparities across the country as a whole. Although the MPS has a lower than average rate of disproportionality (see below), the high rate of stop and search and ethnically diverse population means it accounts for a large proportion of stop-searches on black and other minority groups. Between 2010/11 and 2016/17 the MPS was responsible for:

- More than three-quarters (75 to 85 per cent) of total number of stop-searches on black people in England and Wales per year.
- Between half to two-thirds (53 to 66 per cent) of stop-searches on Asian people.
- Roughly half (47 to 59 per cent) of stop-searches on people in the 'mixed' group.
- Up to three-quarters (56 to 78 per cent) of stop-searches on people in the 'other' group.
- But less than a third of the stop-searches on white people (20 to 30 per cent).

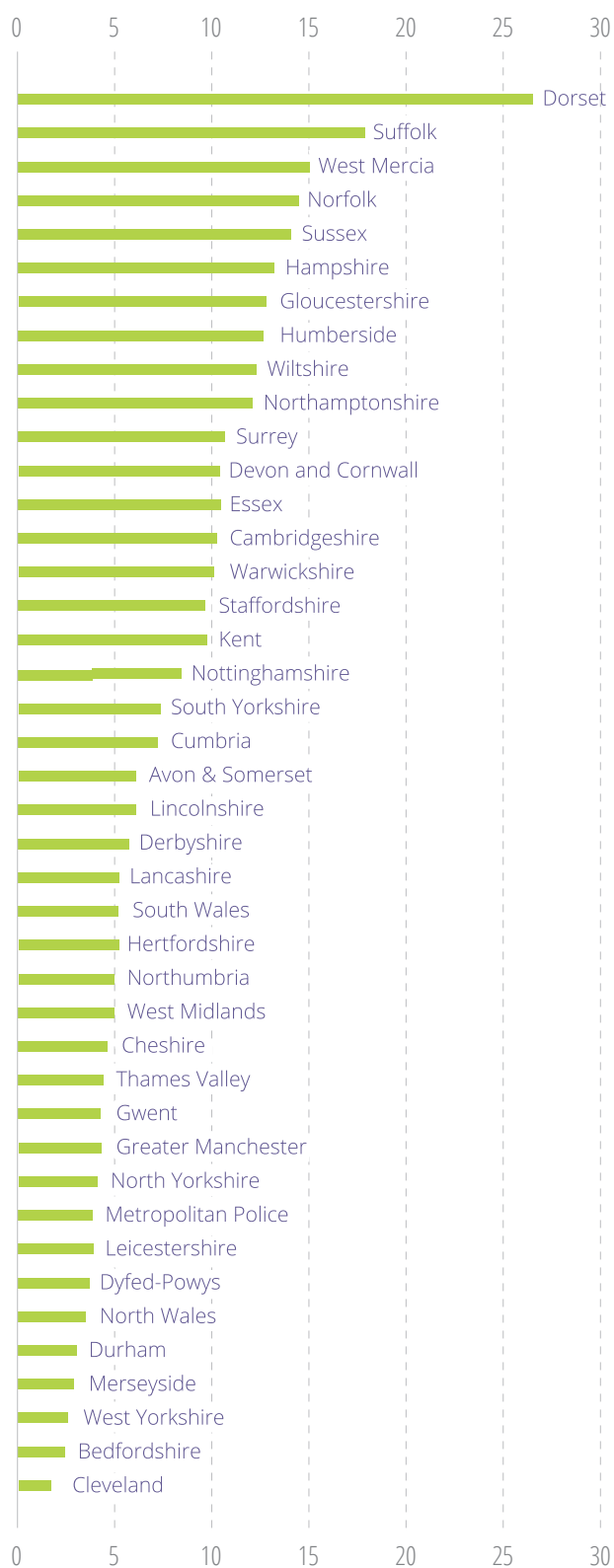
Ethnic disparities were already pervasive and 'entrenched' when the EHRC's report was published<sup>64</sup> and have been magnified since then. The systemic nature of the problem is most clearly evident in relation to the over-policing of black communities. Every police force in England and Wales stopped and searched black people at a higher rate than white people during 2016/17, and this pattern was evident for all suspected offences as well drug offences (see Figure 7A and 7B). The degree to which black people are targeted relative to white people increased in all but three forces for all stop-searches between 2010/11 and 2016/17; and in all but five forces for stop-searches targeting drugs. Although black people were stopped and searched at a heightened rate in every force, the scale of the disproportionality varied markedly and the general pattern was broadly similar to that described by the EHRC for the period from 2003/4 to 2006/7. Then, as now, forces in the north of England tended to have lower black / white disproportionality ratios, while smaller forces in the south, and some in the midlands, often had the highest disparities:

Figure 7A:  
Black / white disproportionality ratios  
for all stop and searches by force (2016/17)



Source: Police powers and procedures

Figure 7B:  
Black / white disproportionality ratios  
for stop and searches targeting drugs by force (2016/17)



Source: Police powers and procedures

- Dorset had the highest rate of black / white disproportionality each year from 2010/11 to 2016/17. Sussex and West Mercia were also consistently among the five most disproportionate forces throughout this period. Devon and Cornwall, Gloucestershire, Norfolk, Suffolk, Surrey, Warwickshire, and Wiltshire tended to have relatively high rates of black / white disproportionality over the period as a whole (based on their average ranking).
- Dorset consistently had the highest rate of black / white disproportionality for stop-searches targeting drugs between 2010/11 and 2016/17. West Mercia was among the five most disproportionate forces for drug searches in each of these years, and was joined by Sussex from 2012/13. Devon and Cornwall, Gloucestershire, Hampshire, Norfolk, Suffolk, Wiltshire and Warwickshire also tended to have relatively high rates of black / white disproportionality for stop-searches targeting drugs over the period as a whole (based on their average ranking).
- Durham and West Yorkshire consistently had some of the lowest rates of black / white disproportionality for all stop-searches between 2010/11 and 2016/17, and were among the five least disproportionate forces over the period as a whole (based on their average ranking). Cleveland, North Yorkshire, Northumbria, Merseyside, Greater Manchester, and Humberside also tended to have relatively low rates of black / white disproportionality, along with Bedfordshire and North Wales, over the period as a whole.
- Durham was among the five forces with the lowest rates of black / white disproportionality for stop-searches targeting drugs each year from 2010/11 to 2016/17. Merseyside and Northumbria also tended to have relatively low rates of black / white disproportionality for drug searches, alongside Bedfordshire and North Wales over the period as a whole (based on their average ranking).
- Disproportionality varies sharply even among similar forces: Dorset, West Mercia and Sussex, for example, had considerably higher rates of black / white disproportionality in 2016/17 than Thames Valley, North Yorkshire, and Leicestershire respectively (see Figure 7A and &B). Durham, Bedfordshire and West Yorkshire, on the other hand, had considerably lower rates of black / white disproportionality than Northamptonshire, Hampshire, and South Yorkshire respectively.

While some forces have substantially moderated their use of stop and search without generating a correspondingly sharp increase in disproportionality, others appear to have been more resistant to change. Bedfordshire and Gwent cut their use of the powers by approximately 80 per cent between 2010/11 and 2016/17, yet reduced their rates of black / white disproportionality (although Gwent did see a sizeable increase in disproportionality for the 'mixed' group – see below). Cleveland, Leicestershire, and Greater Manchester saw even larger cuts in their use of the powers (down by more than 90 per cent), but managed to maintain relatively moderate rates of black / white disproportionality. Dorset and West Mercia, by contrast, combined relatively modest reductions in their overall stop and search activity with persistently high rates of disproportionality (see case studies).

The disproportionate use of stop and search appears to be less entrenched in relation to other minority ethnic groups. A quarter of forces had lower rates of Asian / white disproportionality in 2016/17 than they had in 2010/11, and a fifth stopped and searched Asian people at the same or lower rate than they

stopped and searched white people. West Mercia was the only force that was among the five forces with the highest rates of Asian / white disproportionality each year between 2010/11 and 2016/17 (see case study). The rate of Asian / white disproportionality in this force was consistently more than double the rate in Warwickshire - a similar and neighbouring force. A small cluster of other forces tended to stop-search Asian people at a highly disproportionate rate over the period as a whole (their average ranking was inside the top 10) and were among the five most disproportionate forces in 2016/17. This cluster included South Yorkshire, Staffordshire, and North Yorkshire, which all stopped and searched Asian people at 3.0 or more times the rate of white people in 2016/17. A very similar pattern was evident in relation to stop-searches targeting drugs, albeit with slightly higher rates of disproportionality. While West Mercia Police stopped and searched Asian people for drugs at 4.9 times the rate of white people in 2016/17, North Yorkshire, Staffordshire and South Yorkshire did so at between 3.6 and 4.7 times the rate of white people.

Rates of stop and search for the 'mixed' group increased relative to white people in the vast majority of forces (36 out of 42) between 2010/11 and 2016/17. By 2016/17 members of the 'mixed' group were stopped and searched at a disproportionately high rate in all but four forces. Although differences between forces were less consistent than for other groups, Thames Valley had one of the five highest rates of 'mixed' / white disproportionality in 2014/15, 2015/16 and 2016/17. By 2016/17 members of the 'mixed' group were stopped and searched by Thames Valley Police at 3.1 times the rate of white people. Other forces with high rates of 'mixed' / white disproportionality included Suffolk (4.4), Nottinghamshire (3.7), Gwent (3.2), and South Yorkshire (3.0).

There was relatively little evidence of disproportionality in relation to the 'other' group, but one force - Kent - appears to have stopped and searched people from the other group at an extraordinarily high rate relative to white people (at more than 20 times the rate in 2016/17).

The 2017 PEEL Legitimacy inspection found that the disproportionality rate for Chinese people (who are included in the 'other' category) was incorrect for Kent and had been inflated by mistakes in data-recording and collation. This force was the most disproportionate of all forces in relation to the 'other' group during five out of six years between 2011/12 and 2016/17, however, with ratios of 15.0 or above in each of the last three years, which may suggest there is a more fundamental issue. The general pattern was similar for stop-searches targeting drugs, with Kent Police stopping and searching members of the other group for such offences at almost 23 times the rate of white people in 2016/17.



## Case Study - Dorset Police

Dorset Police has been slow to show the kind of reductions in stop and search that have been evident elsewhere. Use of stop and search increased in Dorset during 2012/13 and 2013/14 to reach their highest level for over 10 years. Marked reductions have been evident since then, but they remain relatively modest compared with other forces: a reduction of 52 per cent in Dorset from 2010/11 to 2016/17 compares with an average of 71 per cent for all forces in England and Wales. Consequently, the overall rate of stop and search in Dorset has climbed from below average to above average.

Disproportionality also remains exceptionally high. Dorset has been responsible for the highest rate of black / white disproportionality across England and Wales in each year from 2010/11 to 2016/17. As the absolute number of stop-searches has fallen, disproportionality has increased and, by 2016/17, Dorset Police stopped and searched black people at more than 20 times the rate of white people; and at more than 25 times the rate for suspected drug offences. In May 2017 the force was accused of racial profiling after Oraine Johnson, a black actor, was stopped outside of Bridport Arts Centre 'for looking like a drug dealer' just hours before he was due to perform in a production about racism and discrimination<sup>65</sup>.

The 2017 PEEL Legitimacy inspection of Dorset Police identified significant concerns in several areas<sup>66</sup>:

- *Unconscious bias*: the Inspectorate considered that awareness of unconscious bias among staff and officers required improvement and recommended that: 'The force should ensure that all members of the workforce have a sufficient understanding of unconscious bias'<sup>67</sup>.
- *Effectiveness and force priorities*: the Inspectorate found that analysis of the effectiveness of stop and search activity, including its effect on the crime rate and local priorities, was 'not evident'<sup>68</sup>. It also concluded 'that local or national priorities do not influence the use of stop and search to the extent that we would expect', noting that evidence was not provided to show how use of the powers relates to the priorities contained in the force's police and crime plan or specified areas of risk. Nor was it made clear 'that stops related to the more serious offence of supplying drugs rather than the possession of drugs'.<sup>69</sup> The Inspectorate recommended that the force 'should evaluate how stop and search activity reflects its priorities, to provide further reassurance to communities that its use of stop and search is fair and effective'<sup>70</sup>.
- *External scrutiny*: the Inspectorate advised that the force should improve its external monitoring to enable the community to review all aspects of its stop and search activity.

Dorset Police has been a long-standing source of concern and was one of five forces that faced potential legal compliance action as a result of the EHRC's critical review of stop and search. The Commission

considered Dorset to be 'a particular area of concern' because it had the highest rate of black / white disproportionality across England and Wales in four out of five years from 2003/4 to 2007/8 (it had the second highest rate in the remaining year) . While recognising that the black population is very small in Dorset, the EHRC challenged explanations provided by the force and specifically rejected claims that the number of stop-searches of black people was inflated by visitors and students in Bournemouth - such visitors and students would not be included in the Census population for Dorset, thereby exaggerating the rate of disproportionality. The EHRC's analysis of data provided by Dorset Police showed that 82 per cent of the black people stopped and searched in Bournemouth were local residents, and stop and search rates remained exceedingly high even if students, visitors and 'not stated' were excluded. Despite this, Dorset Police has continued to attribute its high rate of disproportionality to a focus on 'black drug dealers'<sup>71</sup> and members of 'organised crime groups'<sup>72</sup> who are not resident in the area.

## Case Study - West Mercia Police

West Mercia Police has also been slow to demonstrate the kind of reductions in stop and search that have been evident elsewhere and more than maintained its level of activity until 2014/15. Subsequent reductions have been relatively modest, with a 54 per cent reduction in the number of stop-searches between 2010/11 and 2016/17, which is well below the average of 71 per cent across England and Wales. As a result, the overall rate of stop and search in West Mercia has climbed from below average to above average.

Disproportionality has been magnified in West Mercia and has become more entrenched. The force was responsible for one of the five highest rates of black / white disproportionality each year from 2010/11 to 2016/17. By 2016/17 West Mercia Police was stopping and searching black people at more than 12 times the rate of white people for any reason and at 15 times the rate of white people for drugs. The force was also responsible for the highest rate of Asian / white disproportionality for all stop-searches and drug searches in six out of seven years (it was second in the remaining year). By 2016/17 West Mercia Police was stop-searching Asian people at 4.1 times the rate of white people for any reason and at 4.9 the rate of white people for drugs. Finally, the force had one of the five highest rates of 'mixed' / white disproportionality over the period as a whole. By 2016/17 West Mercia Police was stop-searching people in the 'mixed' group at 2.7 times the rate of white people for any reason and at 3.1 times the rate for drugs.

The 2017 PEEL Legitimacy inspection judged that improvement was required in the extent to which West Mercia Police treats all of the people it serves with fairness and respect and in how well it ensures that its workforce behaves ethically and lawfully<sup>73</sup>. Although the force was said to have responded well to the findings from the previous inspection, significant concerns were identified about disproportionality and the extent to which the force's activity reflects local and national priorities:

- *Local and national priorities*: the inspection found that 'local or national priorities do not influence the use of stop and search to the extent we would expect'<sup>74</sup>. As an example, it noted that 117 of the 200 (59 per cent) stop-search records that were reviewed related to drugs offences even though such offences do not feature as a high priority in the police and crime plan or the control strategy. While the force attributed the number of drug searches to certain policing operations aimed at tackling drugs supply, 84 of the 117 or 72 per cent of the searches for drugs related to possession only offences.
- *Disproportionality*: the force tracks stop and search activity linked to operations, claiming that any disproportionality is driven by events, not discrimination. Despite this claim, the Inspectorate noted that the force 'recognises it needs to do more to improve its understanding' in this area<sup>75</sup>.

The Inspectorate concluded that West Mercia Police 'would benefit from reviewing its ability to evaluate how any disproportionality is linked to policing operations and the extent to which its activity reflects its priorities, to provide further reassurance to communities that its use of stop and search is fair and effective'<sup>76</sup>.

Although West Mercia Police was not among the five forces that faced potential legal compliance action following the EHRC's critical review, its use of stop and search was identified as a cause for concern. West Mercia had some of the highest rates of white / Asian disproportionality each year from 2003/4 to 2007/8 and demonstrated increasing evidence of black / white disproportionality relative to other forces. In 2007/8 it had the seventh highest rate of black / white disproportionality in England and Wales.

The identification of marked differences between apparently similar forces that had no obvious explanation was an important feature of the EHRC's analysis and supported the conclusion that discrimination was a significant reason why black and Asian people are more likely to be stopped and searched than white people. Despite substantial reductions in the use of stop and search since the EHRC review was published, the kinds of differences that were identified between forces remain and it follows that the conclusion regarding the role of discrimination still holds. The EHRC took the view that 'unless forces could convincingly evidence that their race inequalities were justified their practice would be unlawful and discriminatory'<sup>77</sup>. Seven years later, the 2017 PEEL Legitimacy Inspection highlighted particular concerns 'about the over-representation of black people in stop and search figures, and the extent to which forces are able to explain this disparity'<sup>78</sup>.

# London Calling: Geographic & Individual Profiling

## Key points:

- Overall rates of stop and search are higher among inner than outer London boroughs. Disproportionality ratios tend to be higher towards the west than east of the city.
- Variations between boroughs are strongly linked to levels of deprivation. Overall rates of stop and search tend to be highest in areas of deprivation and inequality.
- Rates of stop and search appear to be more sensitive to deprivation and inequality than to crime. The concentration of stop and search activity in deprived boroughs cannot be explained by the prevalence of drug use or specifically cannabis use.
- Black Londoners tend to be concentrated in more deprived boroughs where overall rates of stop and search are high.
- 'Race' confounds the general relationship between stop-and-search and deprivation. Rates of stop and search for black people do not vary according to levels of deprivation.
- While stop and search is associated with deprivation and inequality, disproportionality is associated with wealth and affluence. Affluent boroughs are characterised by very low rates of stop and search for white people and high rates of black / white disproportionality. This pattern is consistent with ethnic profiling because it indicates that black people are singled out for suspicion.

The particular concentration of stop and search activity in London provides an opportunity to explore patterns and potential drivers of disproportionality in greater detail. London is a global city, characterised by considerable diversity and inequality, with a disproportionate number of the country's poorest and richest households<sup>79</sup>. When *The Numbers in Black and White* was published it was clear that drug policing and the use of stop and search varied sharply across the capital. A general pattern was identified with overall rates of stop and search seemingly higher in more deprived areas, and racial disparities seemingly most marked in affluent, mainly suburban areas. We replicated this earlier analysis using more recent data and more formal analytical techniques. While the results broadly confirm our earlier findings, they indicate that the link between stop and search and deprivation is complicated and confounded by 'race'.

Although the concentration of police activity in areas of deprivation is partly a function of recorded crime, it cannot be fully explained in this way. The most harmful manifestations of drug use are linked to poverty and deprivation, but drug use per se is not and is found across the social spectrum<sup>80</sup>. Findings from the 2016/17 Crime Survey for England and Wales indicate that rates of drug use are similar regardless of levels of deprivation<sup>81</sup>:

- 8.0 per cent of adults living in the most deprived areas reported having used drugs during the last year compared with 8.7 per cent of those in middling areas and 8.3 per cent of those in the least deprived areas.
- 6.4 per cent of adults living in the most deprived areas reported having used cannabis during the last year compared with 6.9 per cent of those in middling areas and 6.2 per cent of those in the least deprived areas.

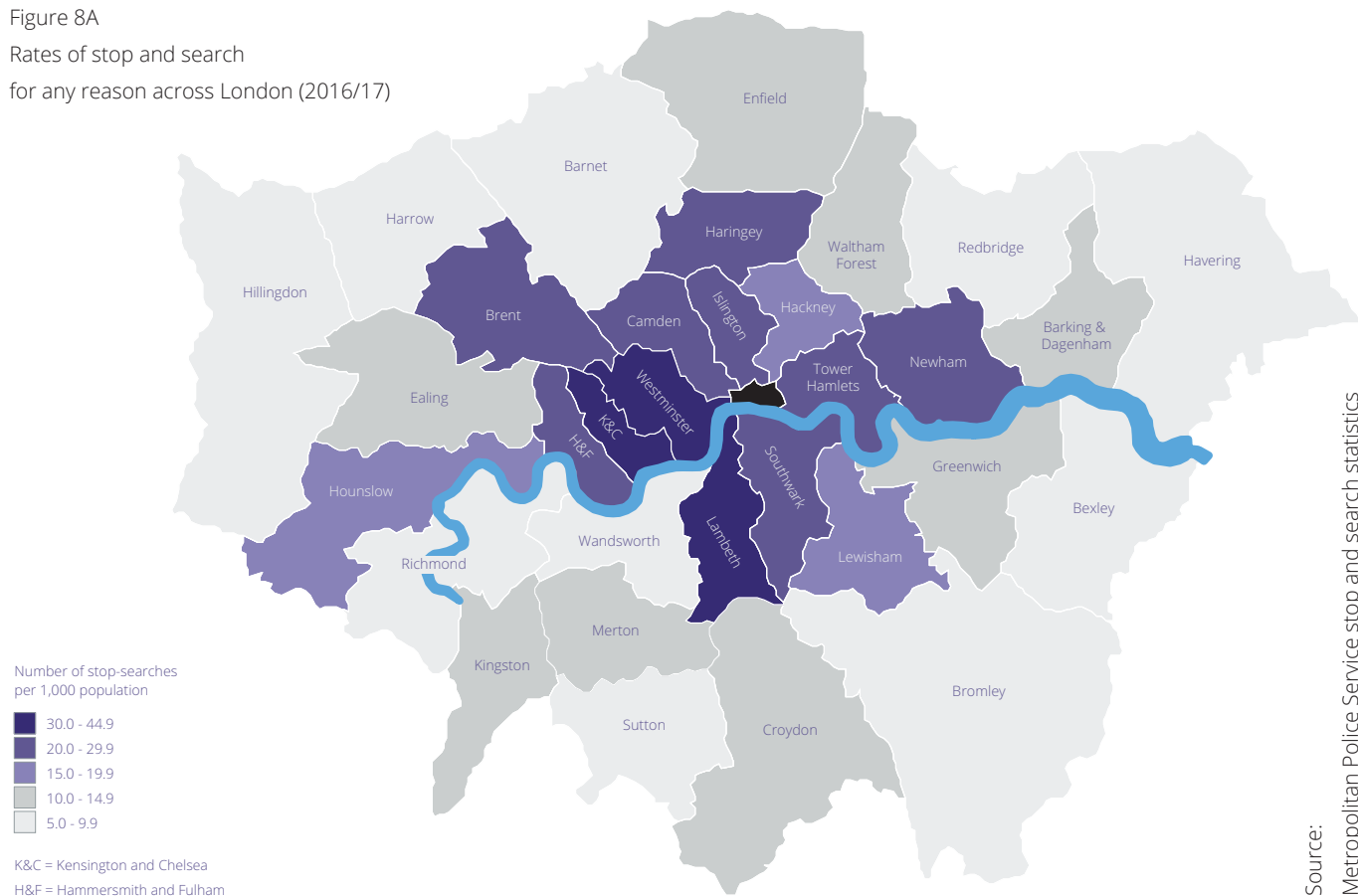
Given the similarity of these rates of use and the extent to which stop and search focuses on drug possession, particularly of cannabis, it follows that the concentration of police activity in deprived areas is a result of policy decisions about where to do what. The decision to focus drug law enforcement on inner city drug markets has been identified as a key driver of ethnic disparities in the U.S, and there is evidence of similar processes in the U.K<sup>82</sup>. British studies have found that stop and search tends to be concentrated in crime 'hot-spots', but these clusters are 'hotter' than we would predict based on the distribution of crime<sup>83</sup>. Such a concentration often translates into high rates of stop and search for members of black and minority ethnic groups because they tend to live in areas where this activity takes place. Police activity, in other words, tends to be targeted at areas with relatively large black and minority ethnic communities, but where local crime rates do not appear to (fully) justify such attention.

## Overall rates of stop and search

Metropolitan Police data indicate that officers conducted 16.0 stop-searches per 1,000 population across London from October 2016 to September 2017. This overall rate varied sharply between boroughs, ranging from 5.7 to 43.8, and there was a clear distinction between inner and outer London (see Figure 8A). The average rate of stop and search for inner London boroughs was double the rate for outer London boroughs at 22.4 and 10.7 per 1000 respectively<sup>84</sup>:

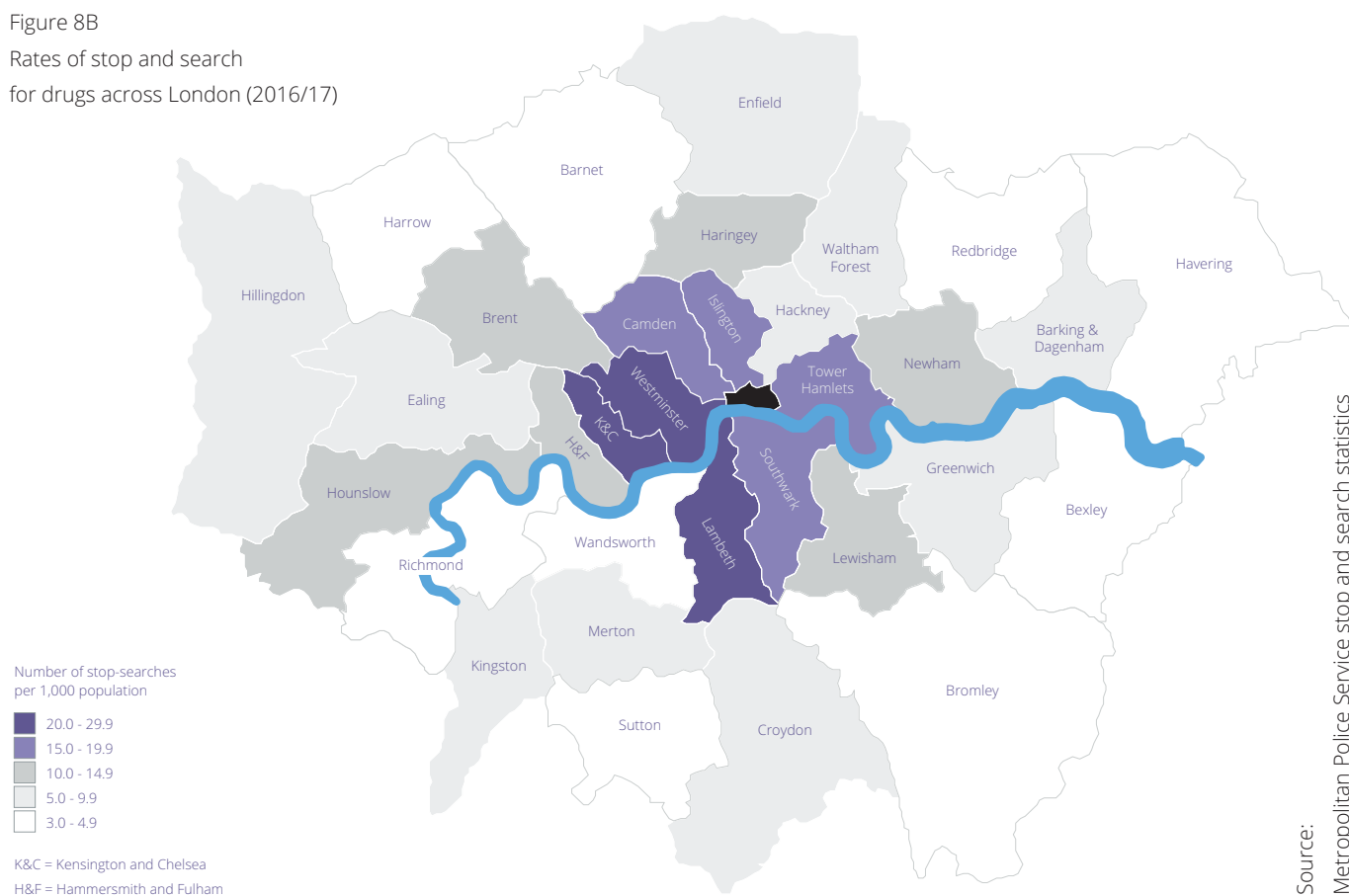
- The highest rates of stop and search were evident in Westminster, Kensington and Chelsea, Lambeth, Southwark, and Islington, all of which are inner London boroughs.
- The lowest rates of stop and search were evident in Barnet, Havering, Richmond, Redbridge, and Bexley, all of which are outer London boroughs.

Figure 8A  
 Rates of stop and search  
 for any reason across London (2016/17)



Source:  
 Metropolitan Police Service stop and search statistics

Figure 8B  
 Rates of stop and search  
 for drugs across London (2016/17)



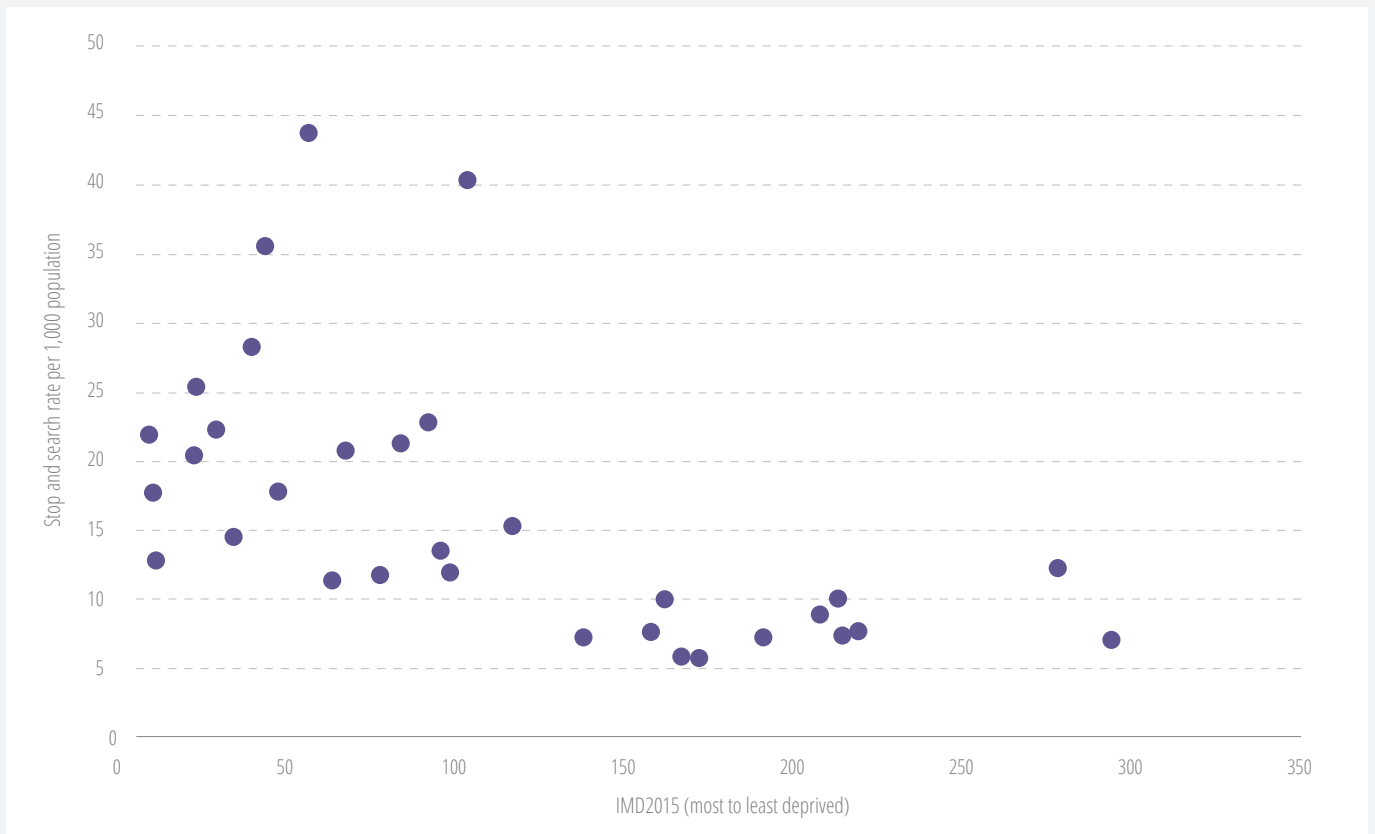
Source:  
 Metropolitan Police Service stop and search statistics

A very similar pattern was evident in relation to stop-searches targeting drugs (see Figure 8B). The overall rate of 9.8 drug searches per 1,000 population included marked variations between boroughs, with rates ranging from 3.3 to 24.8. These variations followed the same geographic pattern as all stop-searches, with clear differences between inner and outer London. The average rate of stop-searches for drugs in inner London boroughs was double the rate for outer London boroughs at 15.0 and 7.1 per 1,000 respectively<sup>85</sup>. The highest and lowest rates were evident among the same boroughs as all stop-searches with a few exceptions: Camden replaced Islington among the five boroughs with the highest rate of drug searches, while Bromley and Wandsworth (the only inner borough on the list) replaced Bexley and Redbridge among the five boroughs with the lowest rate of drug searches.

Differences between inner and outer London boroughs were partly a function of deprivation and inequality. Variations in rates of stop and search were strongly associated with the Index of Multiple Deprivation (IMD-2015)<sup>86</sup>. The more deprived boroughs generally had higher rates of stop and search, though this relationship was not perfectly linear (see Figure 9A and 9B). The very highest rates of stop and search - for drugs and all reasons - were evident in Kensington and Chelsea, and Westminster, which are not among the most deprived boroughs, but are among the most unequal. While poverty, inequality and social exclusion are 'a London-wide problem', these boroughs have the highest levels of income inequality and contain areas of considerable affluence alongside pockets of extreme deprivation<sup>87</sup>. It is, perhaps, precisely under these circumstances, where rich and poor live in close proximity, that the disciplinary and order-maintenance functions of the police are likely to be most prominent.

Although IMD-2015 includes a crime 'domain', it makes a relatively modest contribution to the overall measure and seems to be responsible for the smaller part of the association with stop and search activity. An alternative indicator of deprivation and inequality developed as part of the London Poverty Profile does not include crime-related measures and correlated very strongly with IMD-2015 ratings and fairly strongly with overall rates of stop and search<sup>88</sup>. Although the London Poverty Profile indicator was less strongly correlated with rates of stop and search than was the IMD-2015, the differences were not great. This suggests that, across London at least, use of stop and search is more sensitive to poverty and deprivation than crime.

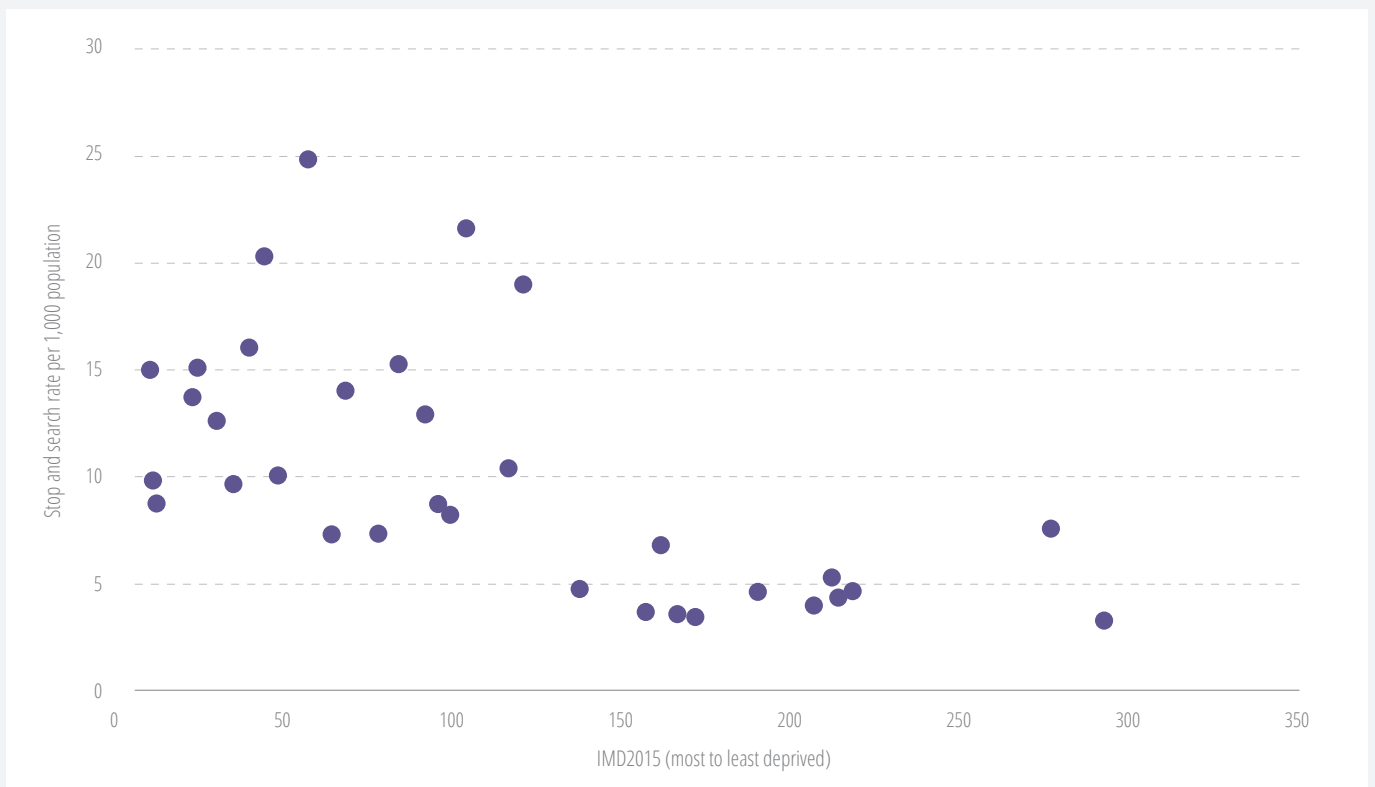
Figure 9A Overall rates of stop and search for any reason across the 32 London boroughs by deprivation (2016/17)



Source: Metropolitan Police Service stop and search statistics

rs= -0.70, p < .01

Figure 9B Overall rates of stop and search for drugs across the 32 London boroughs by deprivation (2016/17)



Source: Metropolitan Police Service stop and search statistics

rs= -0.71, p < .01



The relationship between stop and search and deprivation has important implications for the production of ethnic disparities because some minority groups tend to be concentrated in more deprived boroughs. Patterns of residence vary sharply according to levels of deprivation for white, black and 'other' groups, but not the Asian group<sup>89</sup>. Differences are most marked in relation to white and black groups, with white people tending to live in less deprived areas and black people tending to live in more deprived areas<sup>90</sup>:

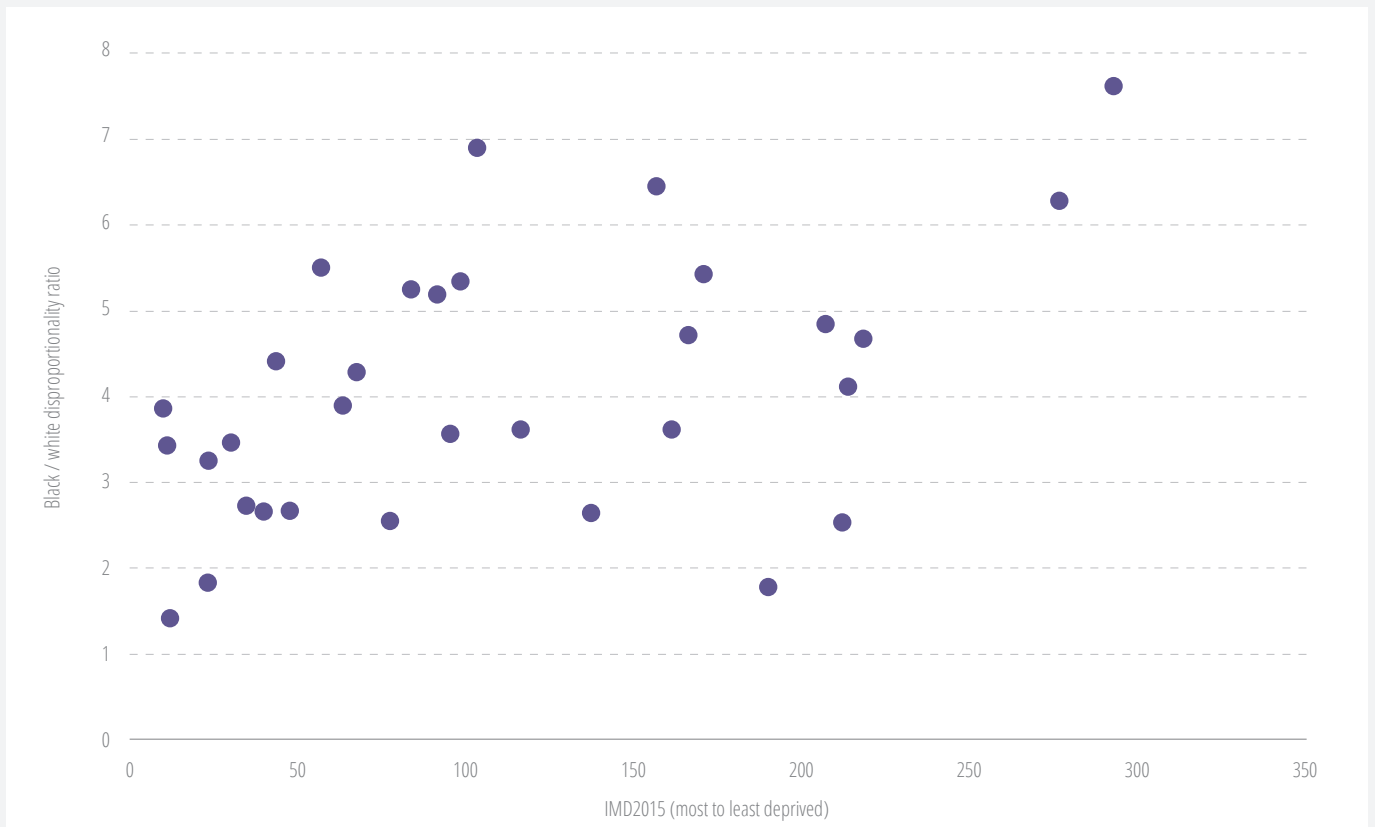
- White people make-up an average 52 per cent of the population in the most deprived boroughs, rising to 71 per cent in the least deprived boroughs.
- Black people constitute an average 16 per cent of the population in the most deprived boroughs, falling to six per cent in the least deprived boroughs.

Even if there is no disproportionality within individual boroughs, black Londoners would be exposed to higher rates of stop and search than white people due to their patterns of residence: that is, because they tend to live in more deprived boroughs where rates of stop and search are high.

## Ethnic disparities

Stop and search is used extensively in boroughs with relatively large black populations<sup>91</sup>, but this is only part of what is driving disproportionality. While stop and search is associated with deprivation and inequality, disproportionality is associated with affluence and wealth. This is because 'race' complicates and confounds the relationship between stop-search and deprivation. The general pattern of higher rates of stop-search in more deprived boroughs holds for white and Asian people, but not for black people or those in the 'other' group. White and Asian people's experience of stop and search is strongly related to deprivation in the sense that they tend to be stopped and searched in deprived areas. Black people's experience is not related to deprivation in the same way because they are subject to similarly heightened rates of stop and search in deprived areas, affluent areas, and everything in between. The same basic pattern is evident for all stop-searches and those targeting drugs<sup>92</sup>. Because rates of stop and search are reduced for white people in affluent boroughs, but remain high for black people, it is here that disparities are most marked (see Figure 10A and 10B). The combination of very low rates of stop and search for white people and high rates of black / white disproportionality is consistent with ethnic profiling because it indicates that black people are singled out for suspicion.

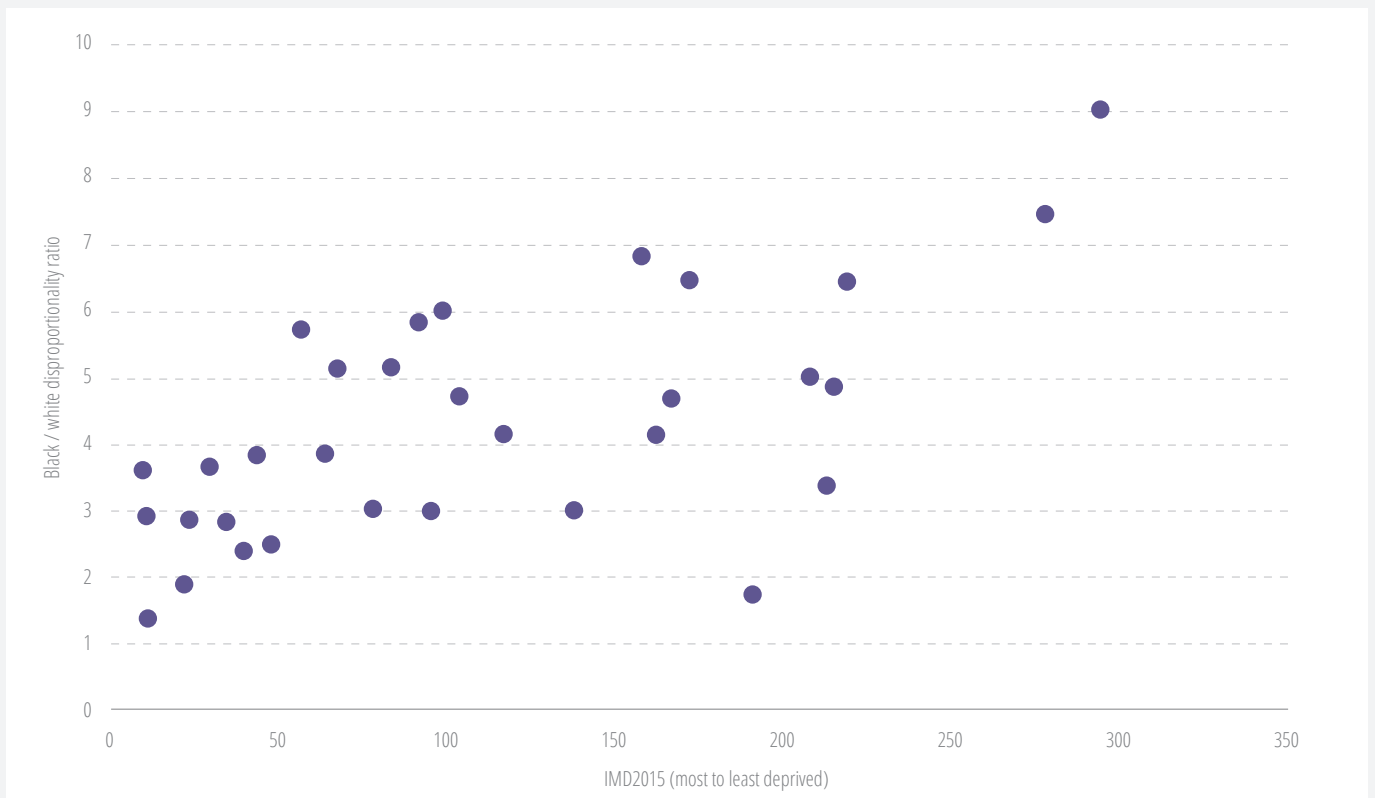
Figure 10A Black / white disproportionality for all stop-searches across the 32 London boroughs by levels of deprivation (2016/17)



Source: Metropolitan Police Service stop and search statistics

rs= 0.44, p < .05

Figure 10B 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

Black / white disproportionality correlated more strongly with IMD-2015 for drug searches than for all stop-searches and this may well reflect the particularly proactive nature of drug law enforcement. Because officers are granted considerable latitude over who to intercept for drug offences, this means there is greater scope for conscious and unconscious racial stereotypes to take effect<sup>93</sup>.

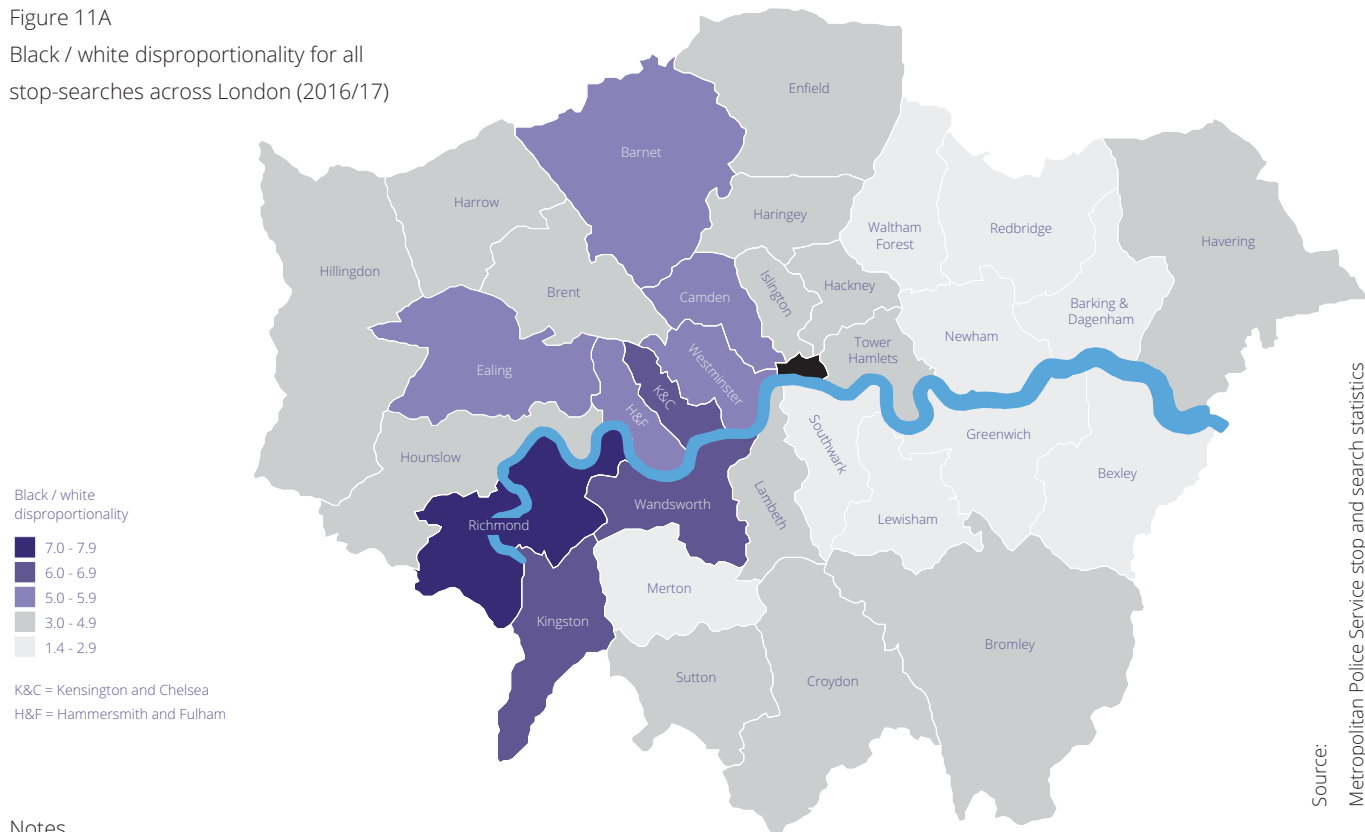
What this all means for the geography of stop and search is illustrated in Figure 11A and 11B. Black people were stop-searched at 4.0 times the rate of white people across London as a whole (for all reasons and for drugs), but this ratio varied between different parts of the city. While overall rates of stop and search differed between inner and outer London, this distinction was not significant in relation to ethnic disparities<sup>94</sup>. High rates of disproportionality were evident in inner London boroughs, (Kensington and Chelsea, Wandsworth, and Westminster) and outer London boroughs (Richmond and Kingston). The key geographic distinction in relation to ethnic disproportionality seems to be between East and West London. While the highest rates of black / white disproportionality were found centrally and to the West, the lowest were found centrally and to the East:

- Richmond had the highest rate of black / white disproportionality for all stop-searches and those targeting drugs at 7.6 and 9.0 respectively (it was also the most disproportionate borough when *The Numbers in Black and White* was published).
- Kingston had the second highest rate of black /white disproportionality for drug searches and the fourth highest for all stop-searches at 7.5 and 6.3 respectively.
- Wandsworth had the third highest rate of black / white disproportionality for all stop-searches and those targeting drugs at 6.4 and 6.8 respectively.
- Harrow had the fifth highest rate of black / white disproportionality for drug searches at 6.4 (and the twelfth highest for all stop-searches at 4.7).

Some of the lowest rates of black / white disproportionality were evident in Barking and Dagenham, Bexley, Newham and Greenwich for all stop-searches, while most of these boroughs also had low rates of disproportionality for drug searches, along with Southwark and Lewisham. Barking and Dagenham, and Bexley had the lowest rates of disproportionality for all stop-searches at 1.4 and 1.8 respectively, and for drug searches at 1.4 and 1.7 respectively.

Asian people were stopped and searched at a similar rate to white people across London as a whole: 1.2 for all stop-searches and 1.5 for drugs. Rates at which Asian people were subject to such interventions compared to white people did not vary significantly between inner and outer London boroughs or with levels of deprivation<sup>95</sup>. Asian / white disproportionality was highest for all stop-searches in the most deprived inner boroughs of Tower Hamlets (3.4) and Hackney (2.2), but was also relatively high in the affluent inner borough of Wandsworth (2.0), and the outer boroughs of Havering (2.1) and Ealing (1.8)<sup>96</sup>. The situation was very similar for drug searches with the highest rates of Asian / white disproportionality in Tower Hamlets (4.2), Hackney (2.8), Wandsworth (2.7), Richmond (2.6), and Ealing (2.6)<sup>97</sup>.

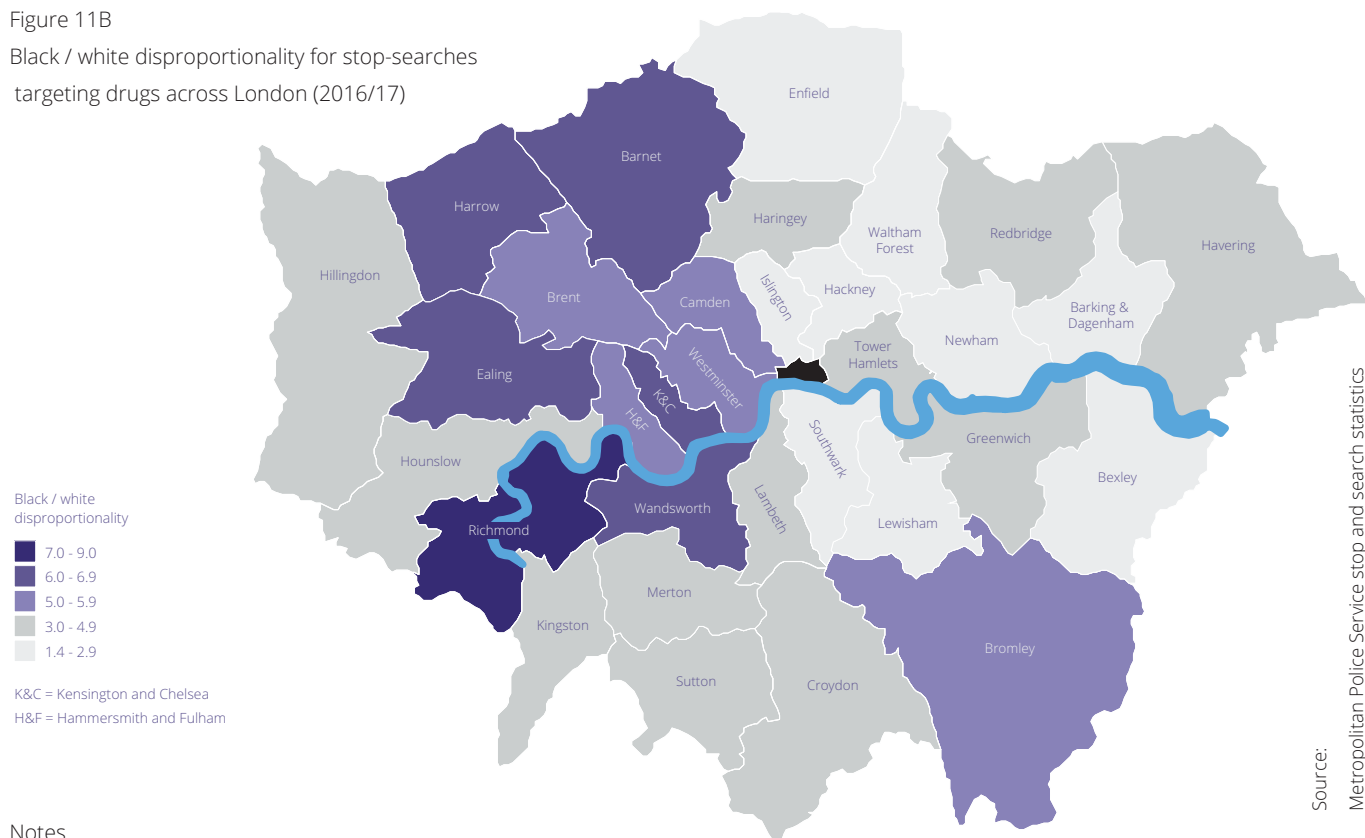
Figure 11A  
 Black / white disproportionality for all  
 stop-searches across London (2016/17)



Notes

1. The results presented here are based on population estimates from the 2011 Census and are largely consistent with results based on the 2016 APS, albeit with some notable differences. Barnet and Harrow were not among the five most disproportionate boroughs based on Census-estimates, but had the joint-third highest rate based on APS-estimates. Kensington and Chelsea had the second highest rate of black / white disproportionality according to Census-estimates, but the 13th highest according to APS-estimates.

Figure 11B  
 Black / white disproportionality for stop-searches  
 targeting drugs across London (2016/17)



Notes

1. The results presented here are based on population estimates from the 2011 Census and are largely consistent with results based on the 2016 APS.

People in the 'other' ethnic group were stopped and searched at almost the same rate as white people across London as a whole and there was little evidence of disproportionality in any of the boroughs. The highest rates of other / white disproportionality were evident in Hammersmith and Fulham for all stop-searches (1.9) and drugs (2.2). Only one other borough had a disproportionality rate of 1.5 or above for all stop-searches (Kensington and Chelsea at 1.5) and three other had a rate of 1.5 or higher for drugs (Harrow at 1.8, Richmond at 1.6, and Kensington and Chelsea at 1.5)<sup>98</sup>.

# Arrests & Out of Court Disposals: Making a Bad Situation Worse

## Key points:

- Stop and search provides an important gateway into the criminal justice system for drug offences, accounting for 39 per cent of all arrests for drugs compared with three per cent of arrests for other offences.
- The rate at which stop and search leads to the discovery of stolen or prohibited items is similar for all ethnic groups although the 'find rate' for drug searches is lower for black than white people.
- The rate at which stop and search results in further action leading to a criminal justice outcome is similar for all ethnic groups, but there are marked differences in the type of action taken.
- The balance between arrests and out of court disposals differs between ethnic groups, exacerbating disparities introduced by the initial stop and search encounter. 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 face prosecution, pushing them deeper into the criminal justice system.
- 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 have been maintained for black people.
- Almost one-fifth of all arrests of black people result from stop and search, which is more than three times the proportion for white people: 17 per cent compared with 5 per cent. For drugs, 57 per cent of arrests of black people result from stop and search compared with 31 per cent for white people. These disparities suggest that the disproportionate application of stop and search is largely a function of police policy and decision-making rather than crime.

Concerns about disproportionality have concentrated on the initial stop and search encounter, with little attention being given to outcomes. Something important is missed as a result because differential outcomes reinforce and exacerbate ethnic disparities produced by the initial encounter. The proportion of stop-searches resulting in arrest has increased sharply in recent years as the number of searches has declined. An increase in the arrest rate may suggest that police are taking 'a more targeted' approach to the use of the powers<sup>99</sup>, but has affected black people disproportionately, pushing them further into the criminal justice system. The gap in arrests is a recent development and cannot be explained by differences in detection rates or in the extent to which formal action is taken. The key driver, at this stage, is not whether action is taken, but the *type* of action that is taken. While stop-searches of black people are more likely to end in arrest than those of white people, they are less likely to result in an out of court disposal.

## Arrests

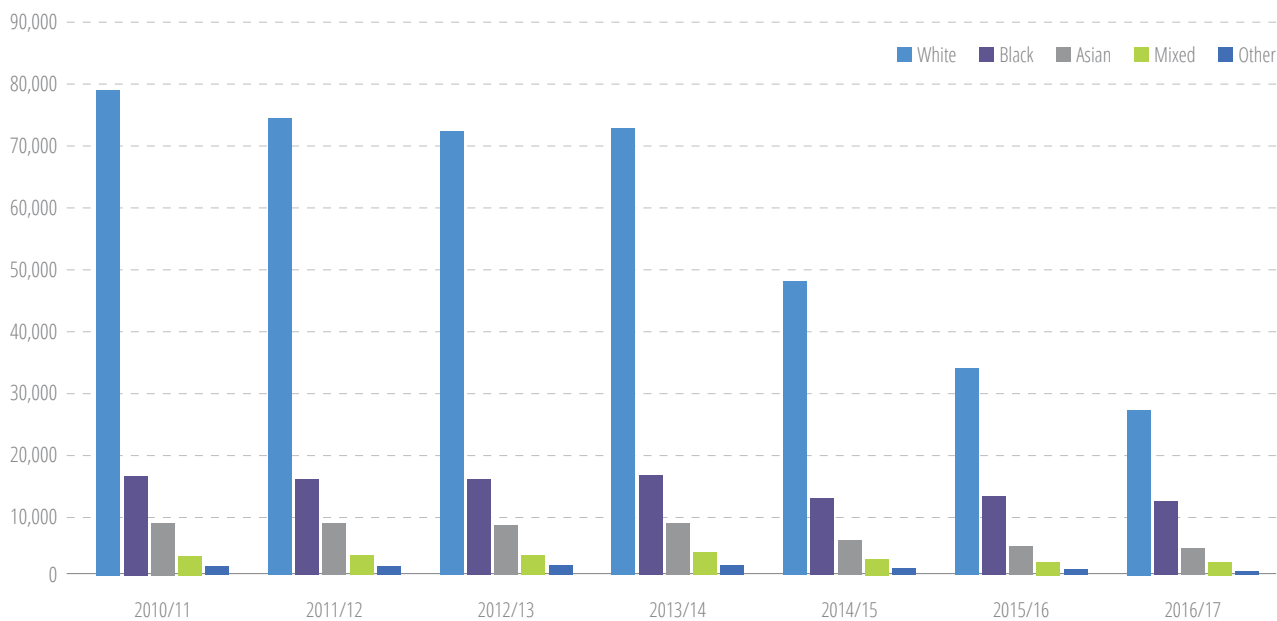
The proportion of stop-searches resulting in arrest increased from 9 per cent in 2010/11 to 17 per cent in 2016/17 (and from 7 to 14 per cent for drugs). While doubts about effectiveness remain, the increased arrest rate means stop and search continues to provide an important gateway into the criminal justice system for certain types of offences, particularly drug offences. Well over a third (39 per cent) of all arrests for drug offences in 2016/17 resulted from stop and search compared with only three per cent of arrests for other offences<sup>100</sup>.

An increase in the arrest rate may suggest a more targeted use of the powers, but this trend has been accompanied by the emergence of marked ethnic disparities. Prior to recent reductions in the use of stop and search, the arrest rate was similar for most ethnic groups, averaging out at 10 or 11 per cent for white, black, and 'mixed' groups in the five years to 2010/11 compared with 8 per cent for Asians and 13 per cent for 'other'. By 2016/17 the arrest rate had increased to 22 per cent for black people and 20 per cent for the 'mixed' group compared with 16 per cent for white people and Asians, and 15 per cent for 'other'. A similar pattern was evident in relation to drug searches. Arrest rates averaged out at 8 per cent for white, black, 'mixed' and other groups, and 6 per cent for Asians up to 2010/11, before increasing to 20 per cent for blacks, 17 per cent for the 'mixed' group, 14 per cent for Asians, 13 per cent for white people, and 12 per cent for 'other'. The heightened arrest rate for black people from drug searches is particularly notable given evidence from the 2017 PEEL inspection that the 'find rate' was lower, suggesting the grounds may have been weaker<sup>101</sup>.

The increase in the arrest rate for black people has gone a long way towards off-setting the reduction in the number of stop-searches for this group (see Figure 12A and 12B). While resulting arrests fell by two-thirds for white people (66 per cent) between 2010/11 and 2016/17, they fell by a quarter (26 per cent) for blacks. Arrests from drug searches halved for white people (falling by 52 per cent), but remained stable for blacks (6,845 in 2010/11 compared with 6,846 in 2016/17). The full impact of these developments becomes clear when we consider arrests from stop and search in the context of all arrests. Arrests resulting from other forms of police activity provide a useful comparator - albeit one that may also be subject to bias - because they take some account of offending behaviour<sup>102</sup>. Almost one-fifth of arrests of black people in 2016/17 resulted from stop and search, which was more than three times the proportion for white people: 17 per cent for blacks compared with 9 per cent for Asians, 8 per cent for 'mixed', 7 per cent for 'other', and 5 per

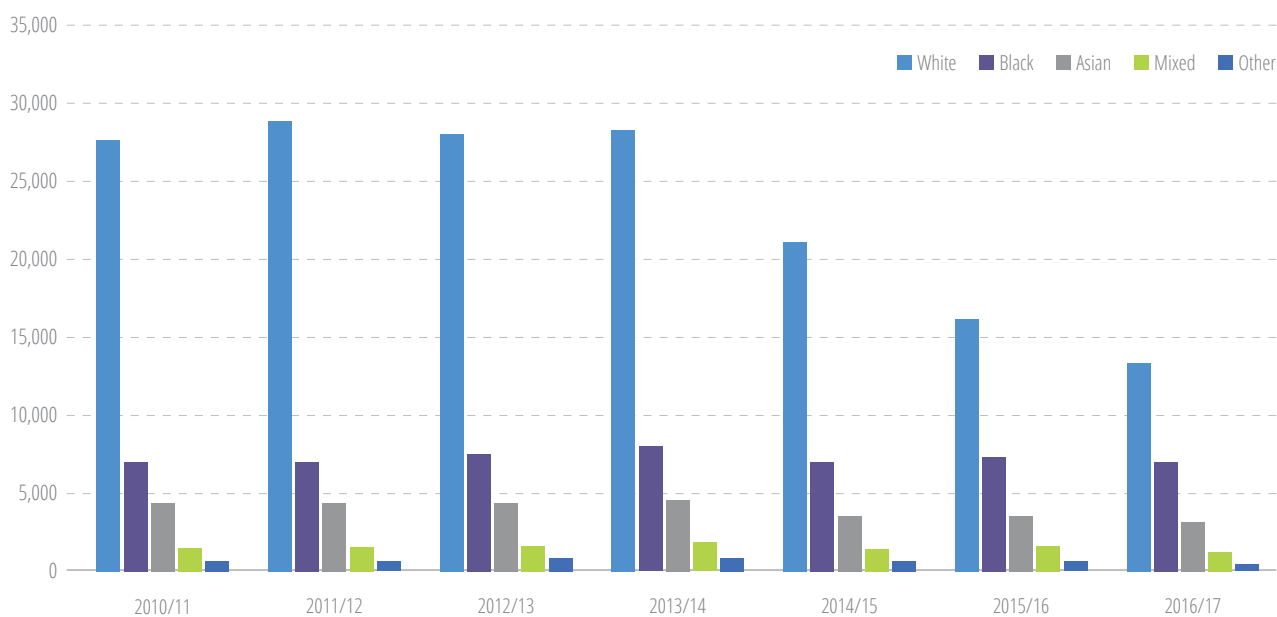
cent for white people<sup>103</sup>. For drug offences, almost three-fifths of arrests of black people resulted from stop and search, which was almost twice the proportion for white people: 57 per cent for blacks compared with 49 per cent for Asians, 33 per cent for 'mixed', 31 per cent for white people, and 30 per cent for 'other'. These differences indicate that the disproportionate application of stop and search is largely a function of police policy and decision-making rather than crime. If black people offend at the heightened rate implied by stop and search activity then why is this not reflected in arrests generated by other forms of police activity?

Figure 12A Arrests from stop and search for any reason in England and Wales 2016/17 (number)



Source: Police powers and procedures

Figure 12B Arrests from stop and search for drugs in England and Wales 2016/17 (number)



Source: Police powers and procedures



## Detection rates and 'no further action'

Ethnic disparities in arrests resulting from stop and search cannot be explained by detection rates. Black people are no more likely to be found in possession of stolen or prohibited articles that may justify an arrest than are people from other ethnic groups. The detection rate in 2016/17 was very similar regardless of ethnicity, with nothing being found in 69 to 72 per cent of stop-searches for each ethnic group. Nor can the heightened arrest rate for black people be explained by differences in the rate at which police take formal action. Very similar 'find rates' were reflected in the proportion of cases where 'no further action' was taken in 2016/17: 68 per cent for black people compared with 71 per cent for white people, 70 per cent for Asians, 66 per cent for 'mixed', and 69 per cent for 'other'.

## Out of court disposals

When stop and search leads to the identification of something that warrants further action, it does not necessarily mean arrest. Officers may, depending on the circumstance and nature of the offence, resolve the matter through an out of court disposal, which can take the form of an 'on the street' fine (penalty notice for disorder or PND), a warning, caution, or community resolution<sup>104</sup>. While most, though not all, of these disposals require an admission of guilt, they avoid the prospect of prosecution and further punishment. Penalty notices, warnings and community resolution do not count as a conviction or ordinarily form part of a criminal record, but may show up on Disclosure and Barring Service (DBS) checks at the discretion of the Chief Constable. Although cautions do not constitute a conviction, they can show up on DBS checks and are disclosed on all enhanced checks. With the challenges of 'austerity', out of court disposals have become 'a crucial part of delivering on' the National Police Chief Council's 'Policing Vision 2025'. As part of this strategy, the Council has endorsed the use of 'conditional out of court disposals' on the basis that they provide 'efficient and effective processes' for dealing 'with lower level offending whilst providing rehabilitative opportunities and reparation for victims, which allows... investigators to focus on serious and complex crime'<sup>105</sup>.

Stop and search distributes out of court disposals unevenly, inverting the pattern that is evident for arrests. While black people were subject to higher arrests rates than white people in 2016/17 (22 per cent compared with 16 per cent), they were given out of court disposals at a lower rate (9 per cent compared with 11 per cent). Stop-searches of black people resulted in arrest at almost two-and-half times the rate they resulted in an out of court disposal, whereas stop-searches of white people resulted in arrest at less than one-and-a-half times the rate they resulted in an out of court disposal<sup>106</sup>:

- Cannabis or khat warnings were the most common out of court disposal (as the principal outcome) resulting from stop and search. They were issued at a similar rate for all ethnic groups, but at a slightly lower rate for black people: 6.6 per cent (black); 7.4 per cent (white); 8.7 per cent (Asian); 8.8 per cent ('mixed'); and 9.0 per cent ('other').
- PNDs were the only out of court disposal given to black people at a higher rate than white people:

1.6 per cent (black); 1.2 per cent (white); 2.5 percent (Asian); 1.5 per cent ('mixed'); and 1.5 per cent ('other'). People from black and minority ethnic groups may be more willing to accept a PND because – unlike other out of court disposals – it does not require an admission of guilt.

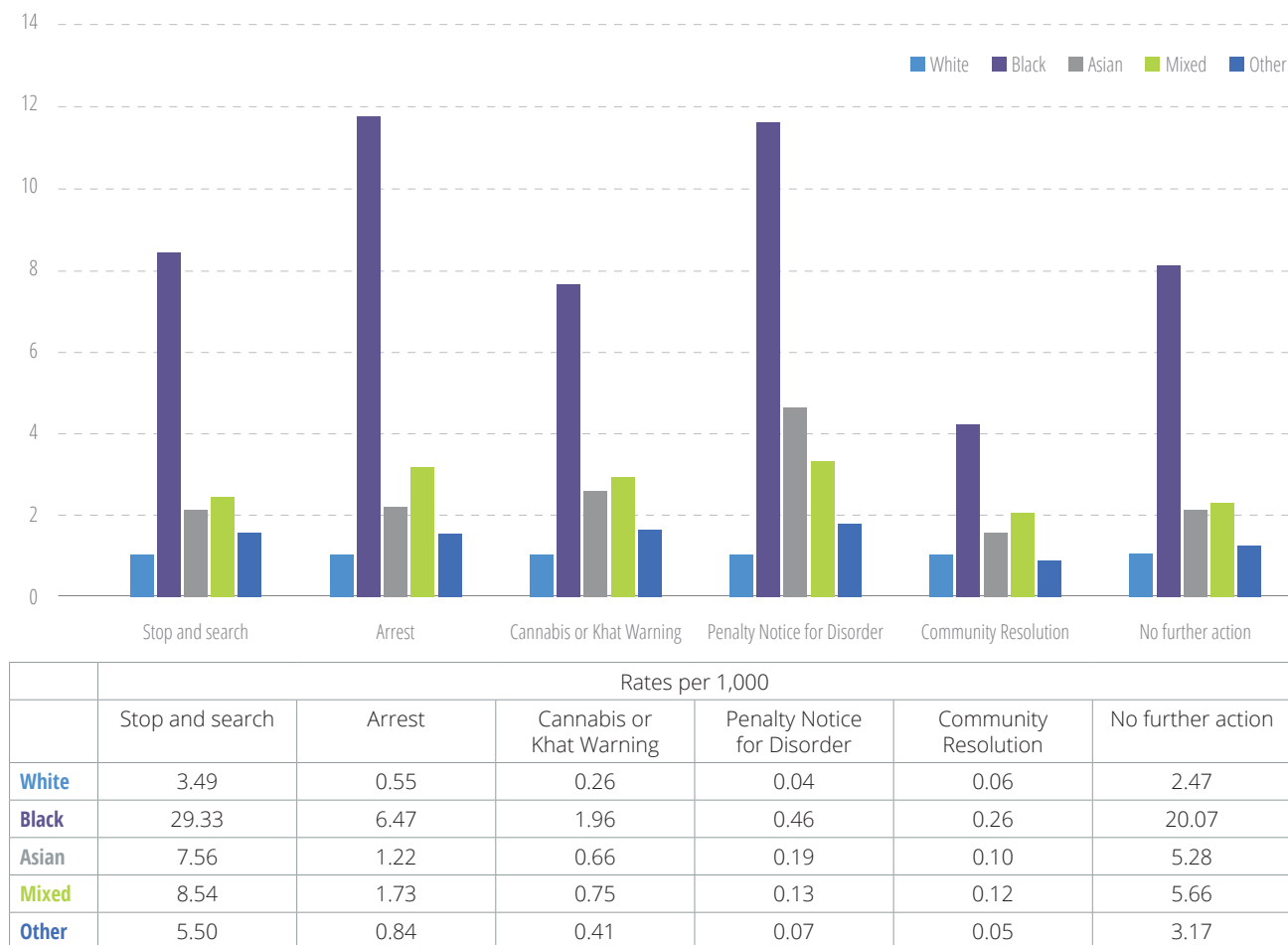
- Community resolutions provided the principal outcome at twice the rate for white than black people, though they were not a widely used for any group: 1.8 per cent (white); 0.9 per cent (black); 1.3 percent (Asian); 1.5 per cent ('mixed'); and 1.2 per cent ('other').

## Drivers of disproportionality

Looking across the general population as a whole, it is clear that stop and search distributes the full range of criminal justice outcomes disproportionality. Given that black people were stopped and searched at eight times the rate of white people, we might expect resulting criminal justice outcomes to be similarly skewed. As it is, the differential outcomes described above reinforce and exacerbate the initial disparities introduced by stop and search. Arrests resulting from stop and search were more disproportionate in their focus on black people than the initial use of the power, while community resolution were less disproportionate (see Figure 13). Black people were arrested at 11.8 times the rate of white people as a result of stop and search, while Asian people and those of 'mixed' heritage were arrested at 2.2 and 3.1 times the rate of white people.

Cannabis and khat warnings were issued to black and Asian people as a result of stop and search at 7.6 and 2.6 times the rate of white people, which is similar to the disparities that are evident in relation to the initial use of the powers<sup>107</sup>. Given that such warnings are only issued for possession offences and the respective rates of self-reported drug/cannabis use noted above (see Figure 1), these disproportionality ratios provide clear evidence of over-policing of black and minority ethnic communities.

Figure 13 Ethnic disparities for stop and search and associated outcomes in England and Wales 2016/17 (disproportionality ratios)



Source: Best Use of Stop and Search scheme

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 possession<sup>108</sup>. Based on these figures we can safely assume that the vast majority of warnings were for cannabis.

Arrests from stop and search are considerably more disproportionate than arrests from other forms of police activity. While black people were arrested as a result of stop and search at 11.8 times the rate of white people in 2016/17, they were arrested at 2.9 times the rate of white people as a result of other interventions. For drug offences, black people were arrested at 13.6 times the rate of white people as a result of stop and search, but 4.5 times the rate of white people as a result of other interventions.

Ethnic disparities in outcomes from stop and search suggest a number of drivers may be at work, relating to both individual and organisational functioning. Statistical evidence on the use of police powers, including stop and search, is consistent with research on police prejudice and stereotyping, and the role of

discretion<sup>109</sup>. Taken together these different sources indicate that ethnic biases are most likely to take effect where decisions involve subjective judgements and there is scope for discretion. There is also some, albeit fairly historical, evidence that black people are less likely to benefit from police discretion through under-enforcement because of a dynamic rooted in mutual mistrust and suspicion<sup>110</sup>.

The Lammy Review has highlighted how the justice system rewards those who admit to crimes when charged, noting that many out of court disposals are open only to those who admit guilt. It argues that such arrangements work against black and minority ethnic defendants, citing evidence that they are less likely to enter guilty pleas even though this means risking court and potentially lengthier sentences. Lammy attributed the reluctance to admit offences to a lack of trust in the system and it may well be that similar processes are at work in relation to out of court disposals. If suspects refuse to admit an offence they foreclose the possibility of being given a caution<sup>111</sup> or cannabis warning<sup>112</sup> and make it less likely they will be given a PND<sup>113</sup>. Under these circumstances, officers may feel they have little option but to arrest and charge.

Officers' options may be further constrained by feedback loops. Cannabis warnings can only be issued for a first offence<sup>114</sup> and cautions are discouraged for 'repeat offenders'<sup>115</sup>, which means the availability of such options is likely to be curtailed in the context of heavily concentrated, disproportionate policing, particularly if it involves repeated adversarial contact with the same group of people<sup>116</sup>. Where communities are 'over policed', selective enforcement is inevitable and this is likely to be a particular problem with high discretion stop-searches targeted at 'known offenders' in 'crime hotspots'.

# Sentencing: Perpetuating Injustice

## Key points:

- More than 40,000 people were prosecuted for drug offences in 2017. More than half these prosecutions were for possession offences and more than a third were for the possession of cannabis.
- Half (50 per cent) those prosecuted for drug possession were fined at an average of £124; the average fine for cannabis possession was £108.
- More than 1,000 people were sentenced to immediate custody for drug possession offences with an average sentence of 3.6 months: 339 were sentenced to immediate custody for cannabis possession with an average sentence of 1.7 months.
- Black people were prosecuted for drug offences at more than eight times the rate of white people and at 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.
- Black people made up a quarter of those convicted of cannabis possession even though they comprise less than four 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.

Police policy and practice play a key role in determining who is made available for prosecution and may be pushed deeper into the criminal justice system. The precise contribution that stop and search makes in this regard cannot be isolated from other forms of police activity because court statistics do not distinguish between these different routes. Sentencing outcomes are available for all indictable and 'either way' offences heard in magistrates' court or Crown Court. Such outcomes clearly demonstrate how the impact of policing, including the use of stop and search, reverberates throughout the criminal justice system. Stop and search is, as noted above, responsible for a substantial proportion of arrests for drug offences (39 per cent in 2016/17), particularly those involving black people (57 per cent), and create ethnic disparities that

are maintained through to every form of sentencing outcome, including immediate custody.

Fewer people are being taken to court than previously, particularly for indictable or either way offences<sup>117</sup>: the number of defendants prosecuted for such offences fell by more than a third (38 per cent) between 2010 and 2017. The downward trend has been evident for drug offences and has been more marked for possession (down by 44 per cent) than supply (down by 26 per cent) offences<sup>118</sup>. Despite this, people are still being prosecuted, convicted, and punished for drug offences, including possession, in significant numbers:

- 42,070 people were prosecuted for drug offences across England and Wales in 2017, representing 15 per cent of all those proceeded against for indictable offences.
- More than half the people prosecuted for drug offences were prosecuted for possession (60 per cent) and more than a third (36 per cent) were prosecuted for cannabis possession.
- Half (50 per cent) of those prosecuted for drug possession were fined at an average of £124; for cannabis possession the average fine was £108.
- 1,017 people were sentenced to immediate custody for drug possession offences at average of 3.6 months; 339 people were sentenced to immediate custody for cannabis possession at an average of 1.7 months.

Reductions in prosecutions have not been distributed evenly across the population and this unevenness has exacerbated ethnic disparities. The greatest reductions have been evident for white people as well as those in the 'mixed' and 'other' groups, almost halving in each case (down by 48, 47 and 47 per cent respectively). More modest reductions have been evident for black and Asian people, with the number of prosecutions falling by approximately one-third in each case (33 and 36 per cent respectively). For black people this resulted in a marked increase in the rate at which they are prosecuted relative to white people: from 2.8 times in 2010 to 3.7 times in 2017. Asian people, by contrast, went from being prosecuted at a lower rate than white people to being prosecuted at an almost identical rate (from 0.8 to 1.0 times). The increasingly disproportionate representation of black people among those prosecuted for indictable offences is not simply a function of the seriousness of the offences for which they are charged:

- Approximately a fifth (17 to 20 per cent) of black defendants were prosecuted for drug possession offences per year from 2010 to 2017 compared with approximately one-tenth of white defendants (8 to 11 per cent). Slightly less than a fifth of Asian (15 to 16 per cent) and 'mixed' heritage (15 to 17 per cent) defendants were prosecuted for drug possession offences. For the 'other' group, the proportion of prosecutions that were for drug possession hovered around one-in-ten (8 to 12 per cent).
- Cannabis possession accounted for 12 to 14 per cent of prosecutions of black defendants per year, which was more than two or three times the proportion for white people (4 to 6 per cent). The proportion for Asians and those in the 'mixed' group was fairly stable at 10 to 12 per cent in each case, while the proportion for the 'other' group varied from 5 to 8 per cent.

- More black people were prosecuted for cannabis possession than for the supply of Class A or B substances combined: 3,229 and 2,453 respectively at a ratio of 1:1.32. The balance was reversed for white people: 6,892 for cannabis possession and 7,955 for the supply of Class A or B substances at a ratio of 1 : 0.87.

Substantial ethnic disparities are evident in the prosecution of indictable offences, including drug offences, and across the range of sentencing outcomes (see Table 1). While these disparities are largely driven by what happens earlier in the criminal justice process, they are slightly moderated by the conviction rate, which was marginally lower for black and minority ethnic groups than for white people: the overall conviction rate in 2017 was 85 per cent for white defendants and 79 per cent for black defendants, while the conviction rate for drug offences was 93 and 88 per cent respectively. The lower conviction rate for black and minority ethnic groups slightly moderated ethnic disparities, compared with prosecutions, and suggests that a larger proportion of weaker cases were getting to court for these groups.

Ethnic disparities are considerably more marked for drug offences than for all indictable offences: black people were prosecuted for drug offences at 8.6 times the rate of white people in 2017 compared with 3.7 times the rate for all offences; while those in the 'mixed' group were prosecuted at 3.1 and 1.4 times the rate of white people respectively. Asian people were prosecuted at a very similar rate to white people for all offences, but at almost twice the rate for drug offences. Similar differentials were carried through into convictions and sentencing outcomes for each ethnic group, though there is one area where court decisions seem to be accentuating pre-existing disparities. Analysis of sentencing data undertaken for the Lammy Review found that black and minority ethnic defendants at Crown Court are more likely to receive prison sentences for drug offences than white defendants, even when factors such as past convictions are taken into account. While noting that there are areas requiring further study, including the role of aggravating and mitigating factors, the Review concluded that 'there is currently no evidence-based explanation for these disparities'. Such disparities are reflected in the higher rate at which black defendants are sentenced to immediate custody for drug offences than white people, particularly when this high rate of disproportionality is compared with the more modest rate for suspended sentences. The same pattern was noted in *The Numbers in Black and White* based on sentencing statistics for 2010.

Ethnic disparities vary between drug offences and are particularly marked for cannabis possession (see Figure 14). Although self-report surveys indicate that black and Asian people use cannabis at a lower rate than white people, they are convicted for cannabis possession at 11.8 and 2.4 times the rate respectively. Black people and members of other minority ethnic groups are also convicted of possessing Class A drugs at higher rate than white people despite their lower rates of self-reported use. While disproportionality ratios are high in relation to convictions for the supply of Class A drugs, there is no reason to suppose that these disparities are free from the kind of biases that are evident in relation to possession offences.

It was noted above that the number of drug arrests resulting from stop and search has fallen sharply for white people, while remaining stable for black people, and a similar pattern is evident in relation to convictions for cannabis possession (see Figure 15). The number of convictions for this offence fell by 59

per cent for white people between 2010 and 2017, but only 23 per cent for blacks (compared with 40 per cent for Asians, 54 per cent for 'mixed', and 25 per cent for 'other'). As result, black people have come to make-up a greater proportion of those who are taken to court and punished for cannabis possession offences. By 2017, they constituted approximately a quarter of those convicted (26 per cent), fined (27 per cent) and imprisoned (25 per cent) for this offence<sup>119</sup>.

Table 1

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

| Drug offences                     | Rate per 1,000 population |       |       |       |       | Disproportionality of white people |       |       |       |       |
|-----------------------------------|---------------------------|-------|-------|-------|-------|------------------------------------|-------|-------|-------|-------|
|                                   | 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           | Rate per 1,000 population |       |       |       |       | Disproportionality of white people |       |       |       |       |
|-----------------------------------|---------------------------|-------|-------|-------|-------|------------------------------------|-------|-------|-------|-------|
|                                   | 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  |

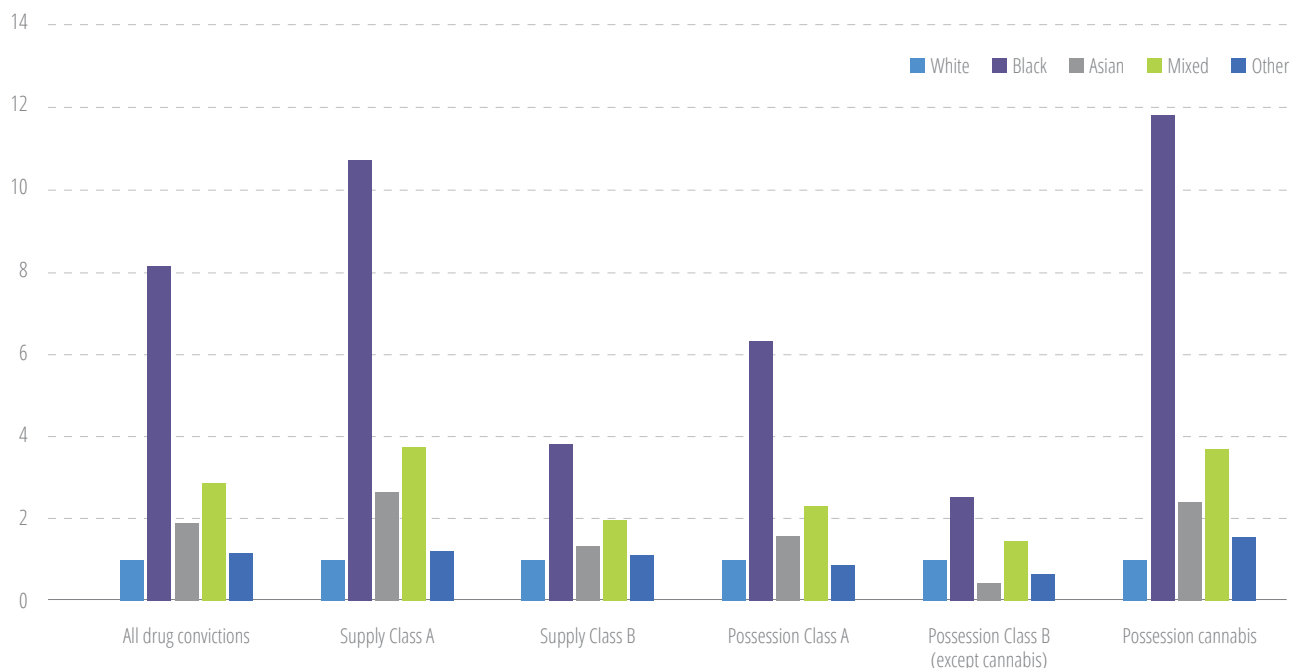
Source: Criminal justice system statistics

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.



Figure 14 Convictions for drug offences by ethnicity - England and Wales, 2017 (disproportionality ratios)



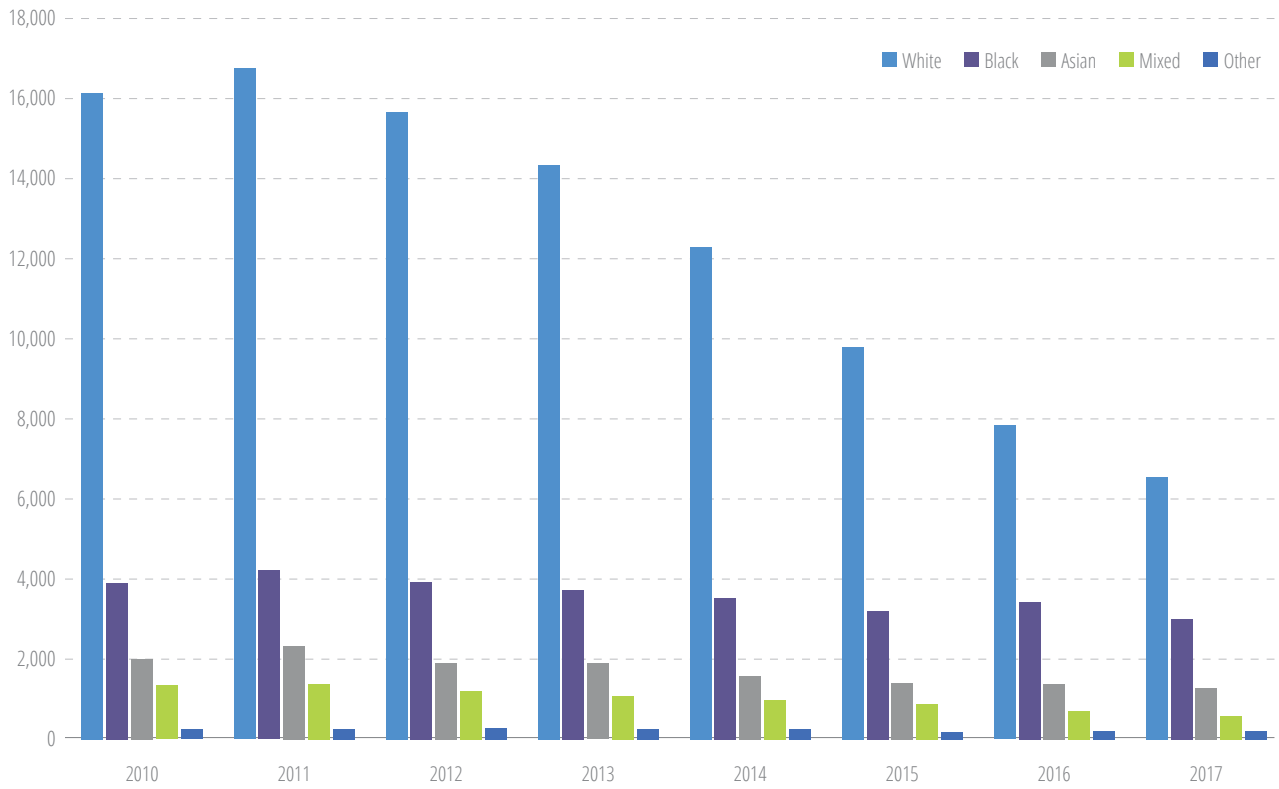
|              | Rates per 1,000      |                |                |                    |                                      |                     |
|--------------|----------------------|----------------|----------------|--------------------|--------------------------------------|---------------------|
|              | All drug convictions | Supply Class A | Supply Class B | Possession Class A | Possession Class B (except cannabis) | Possession cannabis |
| <b>White</b> | 0.41                 | 0.07           | 0.08           | 0.09               | 0.02                                 | 0.14                |
| <b>Black</b> | 3.35                 | 0.75           | 0.29           | 0.59               | 0.06                                 | 1.61                |
| <b>Asian</b> | 0.78                 | 0.19           | 0.10           | 0.15               | 0.01                                 | 0.33                |
| <b>Mixed</b> | 1.19                 | 0.26           | 0.15           | 0.21               | 0.03                                 | 0.51                |
| <b>Other</b> | 0.48                 | 0.08           | 0.08           | 0.08               | 0.02                                 | 0.21                |

Source: Criminal justice system statistics

Notes

1. Figures have not been given for Class C substances because of the small number of cases: 168 for supply and 338 for possession where the ethnicity of the defendant was provided. The vast majority of defendants for both categories of offence were white: 89 and 92 per cent respectively.
2. Rates per 1,000 are subject

Figure 15 Court convictions for cannabis possession by ethnicity in England and Wales (number, indicatable offences only)



Source: Criminal justice system statistics

# Discussion

Much has changed since *The Numbers in Black and White* was published, but much has stayed the same. Police have apparently addressed the concerns that were identified following the riots in 2011 – the sharp reduction in the number of stop-searches, improvements in the ‘grounds’ for a search, and increased arrest rates all points towards a more careful and considered use of the powers. While these changes give the appearance of a Service that is learning from past mistakes, however, they have been achieved in ways that ensure an essential continuity of purpose. Stop and search has been disproportionate for as long as the statistics have been published<sup>120</sup>, contributing to marked disparities throughout the criminal justice system<sup>121</sup>. The entrenched and persistent nature of this pattern has all the hallmarks of what has been described – in a different context – as ‘locked in inequality’<sup>122</sup>. What is driving the problem has been identified repeatedly. After the 1981 Brixton ‘riots’, Lord Scarman pointed to ‘the ill-considered, immature and racially prejudiced actions of some officers’<sup>123</sup> and linked the ‘disastrous impact’ of stop-and-search to organisational policies that did not command support from the local population<sup>124</sup>. Almost two decades later, Lord Macpherson did what Scarman refused to do and explicitly framed the problem as one of ‘institutional racism’<sup>125</sup>. Then, when the Home Secretary – Theresa May – presented the findings of the HMIC’s initial thematic inspection to Parliament, she declared<sup>126</sup>:

...when innocent people are stopped and searched for no good reason, it is hugely damaging to the relationship between the police and the public. In those circumstances it is an unacceptable affront to justice.

The Home Secretary’s statement that the misuse of stop and search is ‘especially’ unfair ‘to young, black men’<sup>127</sup> was echoed by several of her backbench colleagues. One described the ‘misuse of stop and search’ as ‘probably the worst form of legal racial abuse in our country’<sup>128</sup>, while another asserted that the figures on stop and search are ‘a stain on British policing’, before asking: ‘Do not the figures indicate that, sadly, in a large number of cases it is nothing but the colour of the skin of the person being stopped that has caused the stop-and-search to happen?’<sup>129</sup>. The Home Secretary concurred, agreeing that the situation was ‘disgraceful’<sup>130</sup>.

## Continuity of purpose

The package of reforms introduced by the Government has increased scrutiny and yielded improvements in the use of stop and search, but as an exercise in anti-discrimination it has been a stark failure.

Reductions in stop and search have been sharpest for white people, even though they had relatively modest rates of exposure at the outset, and disproportionality has become more marked: black people are now stopped and searched at more than eight times the rate of white people, while Asian people and those with 'mixed' heritage are stopped and searched at more than twice the rate of white people. Some forces have maintained relatively moderate rates of disproportionality while substantially cutting their use of stop and search, and a few have managed to reduce ethnic disparities. Most have not, however, and some forces have combined relatively modest reductions in their use of the powers with persistently high rates of disproportionality. Almost a decade after the EHRC published its critical review of stop and search, disproportionality ratios continue to vary sharply between forces, including those that are similar to one other, and in ways that cannot be explained, indicating a significant degree of discrimination<sup>131</sup>.

The problem of disproportionality is no longer simply a matter of who gets stopped and searched. Ethnic disparities have been reinforced and exacerbated by the emergence of differences in immediate outcomes, with a higher arrest rate for black than white people. Such differences cannot be explained by detection rates and are a function of differences in the type of action taken by police when stolen or prohibited items are found. Black people, in particular, are more likely to be arrested, but less likely to be given an out of court disposal. It follows, that resulting arrests are more disproportionate than initial stop and search encounters. By 2016/17 black people were arrested as a result of stop and search at almost 10 times the rate of white people. The proportion of *all* arrests that result from stop and search is much larger for black than white people, indicating that the disproportionate use of the powers is primarily driven by police policy and decision-making rather than crime.

Ethnic disparities created by stop and search, and other forms of police activity, lead to starkly differing rates of prosecution and conviction. While these disparities are reflected across the full range of sentencing outcomes, there is one key area where they are exacerbated by decisions taken at court: black defendants are given immediate custodial sentences for drug offences at a much higher rate - relative to white people - than they are given suspended sentences.

Drugs are central to the problem of disproportionality: most stop and search activity is targeted at suspected drug offences, often involving low-level possession; disproportionality is slightly more marked for drug searches than stop-searches for other reasons; the 'find rate' from drug searches is lower for black than white people, suggesting weaker grounds; but the arrest rate is higher. Astonishingly, the number of arrests of black people for drug offences from stop and search has been maintained despite the overall use of power falling to a quarter of its previous level. Arrests of white people for drugs have fallen sharply. This has significant knock-on effects for the prosecution of drug offences, most of which involve nothing more than possession, providing prima facie evidence of discrimination. Black and Asian people have lower rates of self-reported cannabis use than white people, but are convicted of cannabis possession at 11.8 and 2.4 times the rate respectively. More black people are prosecuted and convicted for cannabis possession than for the supply of Class A and B drugs combined. This, to borrow a phrase, is an 'affront to justice' for the

reasons described by former U.S President, Barack Obama, when discussing the legalisation of recreational cannabis in Washington and Colorado:

It's important for it to go forward because it's important for society not to have a situation in which a large portion of people have at one time or another broken the law and only a select few get punished... Middle-class kids don't get locked up for smoking pot, and poor kids do. And African-American kids and Latino kids are more likely to be poor and less likely to have the resources and the support to avoid unduly harsh penalties.

While the role of discrimination can be documented most clearly in relation to cannabis possession, there is no reason to suppose that it is limited to this area. What happens in relation to cannabis possession is indicative of a more general pattern.

## Drugs, social control and race

Given that self-reported drug use and other forms of offending are not particularly widespread among black and minority ethnic groups, we must look elsewhere for an explanation of why they are subject to heightened rates of stop and search. Although stop and search is ostensibly an investigative power, it is only tangentially related to crime and is bound up with the more diffuse police mandate of 'order maintenance'<sup>132</sup>. The notion that stop and search is used for anything other than the stated purpose of crime control is often considered controversial in the context of 'race', but is self-evident when we consider other characteristics<sup>133</sup>. Stop and search is not applied evenly across the population and is skewed according to various demographics: of the 120,000 or so stop-searches the Metropolitan Police conducted in the 12-months to the end of July 2018, 94 per cent were of males and 75 per cent were of people under 30 years of age<sup>134</sup>. While these concentrations loosely reflect patterns of offending behavior, they cannot be wholly explained by them. Males, for example, tend to offend at a considerably higher rate than females, but not to the extent that these figures imply – at least, not for some of the key offence categories that stop and search is used to target. The Crime Survey for England and Wales reports that six per cent of women and 12 per cent of men used drugs during the last year, while more detailed analysis has shown there is little evidence of a 'gender gap' among young adults<sup>135</sup>. Detailed statistical analyses, using multivariate techniques, have confirmed that males are more likely to be stopped and searched than females even when various other factors, including offending behavior, are controlled for<sup>136</sup>. Although the overwhelming focus on males is largely taken for granted, it conveys something important about the function of stop and search: that it has less to do with the immediacies of crime control and more to do with containing and disciplining categories of people who are considered a threat to a particular vision of social order.

Detailed multivariate analyses also confirm that the disproportionate policing of black and minority ethnic groups cannot be explained by rates of offending. One such study found that police stops focus on the 'usual suspects', whereby prior contact with police, having friends who have had prior contact with police, and ethnicity seem to matter more than self-reported offending behaviour<sup>137</sup>. Another, more recent, study confirmed that people from most minority groups were more likely to be stopped and searched than their white counterparts even when a range of personal and behavioural characteristics were taken into account, concluding that the analysis 'provides significant evidence for continued stereotyping by police and, perhaps, institutional racism'<sup>138</sup>.

The process by which ethnic disparities are produced has been illuminated by observational studies of police work. While noting that explicitly racist language has been more or less eliminated from the police vocabulary, one study noted that 'police culture continues to impact adversely on minority groups in ways identified in earlier research'<sup>139</sup>. Officers displayed an on-going antipathy towards minority groups and retained enduring stereotypes that impacted on their conduct: 'the assumption that minority ethnic males were responsible for drugs crime could result in stop and search powers being used against this group'<sup>140</sup>. Another observational study reported that stop and search tended to be embraced enthusiastically by officers who favoured an adversarial style of policing, which was prevalent in 'high crime areas' and created a dynamic of mutual antagonism between police and a group of young, mainly black, teenagers who were suspected of being criminally active or engaged in gang activity<sup>141</sup>. Members of this group were subject to 'rigorous enforcement', including targeted stop and search, as police sought to demonstrate who was in 'control of the streets'. Complementary statistical analysis showed that, proportionately, black, Asian and 'mixed' race young people were considerably more likely than white young people to have been arrested as a result of proactive police work. Black youth, in particular, were found to be over-represented among arrests for robbery and drugs.

A broadly similar situation has been documented in the United States, where the enforcement of drug laws has been identified as a key driver of ethnic disparities across the criminal justice system. African Americans are arrested and imprisoned for drug offences at a much higher rate than white people and in ways that cannot be explained by involvement in drug crime<sup>142</sup>. Detailed statistical analysis indicates that these disparities have arisen primarily from racial profiling by police, deliberate decisions to focus drug law enforcement on inner city drug markets, and deliberate decisions to attach the longest prison sentences to drug offenses for which blacks are disproportionately arrested<sup>143</sup>. Our analysis points to something similar in the context of England and Wales, demonstrating that the selective enforcement of drug laws is a potent source of discrimination. Police policy and decision-making are an important immediate driver of ethnic disparities, and our analysis identifies two key decision points: first, the decision about where and on whom to conduct stop and search; and second, the decision about what to do with those caught in possession of stolen or prohibited items. In terms of the first decision point, detailed analysis of the 32 London boroughs indicates that stop and search is targeted at deprived areas (with ethnically diverse populations) and black people. This mirrors the situation that has been documented in the U.S in that it implicates deliberate

decisions to concentrate drug law enforcement efforts on deprived, inner city neighbourhoods, and ethnic profiling:

- *Geographic profiling*: overall rates of stop and search are generally higher in more deprived areas, particularly those with high levels of inequality. While this pattern reflects the general distribution of recorded crime, it is not fully explained by it<sup>144</sup>. Concentrating stop and search activity in areas of deprivation and inequality fuels disproportionality because black and some other minority ethnic groups tend to live in such areas in relatively large numbers. The general relationship between stop and search and deprivation does not hold for black people, however, because they are subject to such interventions at an elevated rate regardless of levels of area-based deprivation.
- *Individual profiling*: while overall rates of stop and search are generally higher in areas of deprivation and inequality, ethnic disparities are not. Disproportionality is associated with wealth and affluence, rather than deprivation and inequality. While white people are subject to substantially reduced rates of stop and search in affluent areas, black people continue to be subject to heightened rates of intervention. This pattern indicates that black people are singled out for stop and search in affluent areas and is consistent with a greater degree of individual profiling. Such decisions may reflect biases, implicit or otherwise, whereby the presence of black people is considered incongruent, and therefore suspicious, in such locations. Judgements about whether somebody or something is 'out of place' in a particular location or context feature prominently in the 'working rules' by which officers develop suspicion and target stop and search activity<sup>145</sup>. These judgements are informed by various cues, including behaviour and style of dress as well as 'race' and whether a person is deemed to have the 'right' to be in a particular location. An observational study of policing in England and Wales found that many searches were based on weak grounds and were likely to have been unlawful, falling disproportionately on socially marginal young men, black people, and 'regulars'<sup>146</sup>. While decisions to conduct searches tended to draw on broad generalisations and stereotypes, officers often spoke about the importance of appearance that was incongruent in the sense of people not fitting an area or the type of car they were driving. Searches were not dictated by blanket stereotyping, however, and suspicion was found to be contingent and highly situated, with officers using different frames of reference to make sense of a range of circumstances. Assumptions about 'race' and poverty may mean that black people are deemed to be 'out of place' in wealthy areas, particularly if they are dressed in ways that are also considered to be incongruent with the location, triggering suspicion even if there are no objective indicators to support such a conclusion.

Black people found in possession of stolen or prohibited articles as a result of stop and search are more likely to be prosecuted than white people. While such disparities may reflect biases in individual decision-making, they are the logical conclusion of existing patterns of enforcement and policies regarding the allocation of out of court disposals. Where out of court disposals are only available for a first offence (as is the case with cannabis warnings) or are discouraged for 'repeat offenders' (as is the case with cautions) the over-policing of particular communities can create feed-back loops that selectively constrain the future

availability of these options. When policing is concentrated in 'crime hotspots' and targeted at 'known offenders', it is inevitable that the law will be differentially enforced for volume crimes such as cannabis possession. This, in turn, will selectively disqualify some offenders from receiving out of court disposals. Requiring an admission of guilt may also disadvantage people from black and minority ethnic groups in the allocation of out of court disposals. The lack of trust in the system highlighted by the Lammy Review may mean fewer people from these groups are willing to confess to having committed an offence<sup>147</sup>, leaving police with little option but to arrest.

## Effectiveness and alternatives

When giving evidence to the Stephen Lawrence Inquiry, David Muir, a senior church leader, stated that 'the experience of black people over the last 30 years has been that we have been over policed and to a large extent under protected'<sup>148</sup>. Stop and search forms a key part of this dynamic because it imposes a 'double burden' of high costs (over policing) and minimal benefits (under protection)<sup>149</sup>. The costs weigh heavily on black communities and include the embarrassment and humiliation of being singled out for suspicion in public; the uneven distribution of criminal records, often for low-level offences, and the consequent disruption of education, work, family and community life; and the erosion of trust and confidence in police. While stop and search contributes to the broader pattern of over policing, it is also part of the problem of under protection. Repeated studies have found that stop and search has little, if any, measureable impact on crime across a range of offences, including knife crime and serious violence.

A Home Office study conducted shortly after the Stephen Lawrence Inquiry concluded that stop and search has 'a small impact on the detection and prevention of crime'<sup>150</sup>. Use of the powers was found to have 'a minor role in detecting offenders for the range of all crimes that they address, and a relatively small role in detecting offenders for such crimes that come to the attention of the police'<sup>151</sup>. Comparisons between forces found 'no statistically significant association' between the number of arrests from stop and search (adjusted for the size of the population) and overall clear-up rates: some forces made a large number of arrests from stop and search, but had low clear-up rates, while others made few arrests from stop and search, but had high clear up rates<sup>152</sup>. Stop and search also appeared to have a very limited disruptive impact on crime by intercepting those going out to commit offences: it was estimated "that searches reduce the number of 'disruptable' crimes by just 0.2%"<sup>153</sup>. Nor were trends in crime clearly related to the use of the powers, providing 'little solid evidence that searches have a deterrent effect'<sup>154</sup>. While stop and search had little impact on crime, it was said to have 'a negative impact on confidence in the police', both as a result of the 'direct impact on those searched, which tends to fall disproportionately on ethnic minorities, and because of a wider perception of police racism associated with disproportionality'<sup>155</sup>.

The Home Office study suggested that stop and search might be an effective deterrent where it is used intensively in a particular location, citing the example of section 60 searches at sports events. Section 60 of the *Criminal Justice and Public Order Act 1994* grants police an 'exceptional' power that can be deployed when a senior officer reasonably believes that incidents involving serious violence or the carrying of weapons may take place. Once it has been authorised, this power can be used by officers to stop and search anybody in a specified area for an initial period of up to 15 hours without the usual requirement



for 'reasonable' grounds<sup>156</sup>. Section 60 searches were originally introduced to help deal with football hooliganism, but have become much more widely associated with knife crime. The number of section 60 searches increased dramatically with the introduction of *Operation Blunt 2*, a pan-London anti-knife operation, in May 2008, and the Home Office's *Tackling Knives Action Plan* (TKAP) a month later<sup>157</sup>. An evaluation of TKAP found it had no measurable impact on levels of knife crime<sup>158</sup>. Homicide data pointed to reductions in the number of victims and principal suspects in the target age group across England and Wales, but these reductions were not proportionately greater in areas participating in the TKAP initiative than non-TKAP areas. While hospital admissions for assault involving the target age group also declined, these reductions were only evident in the non-TKAP areas. Given the findings, the authors concluded: 'it is impossible to directly attribute reductions in the TKAP areas' to the intervention<sup>159</sup>. A separate evaluation of *Operation Blunt 2* came to a similar conclusion<sup>160</sup>. Drawing on nine measures of police recorded crime as well as London Ambulance Service data on calls for weapons-related injuries, it found: 'that there was no discernible crime-reducing effects from a large surge in stop and search activity at the borough level during the operation'<sup>161</sup>.

Another recent study, based on ten years of police and crime data for London, supported previous studies by indicating that increasing levels of stop and search are 'likely to have at best a very marginal effect on emerging crime problems'<sup>162</sup>. Although the analysis identified a weak association between stop and search and some forms of crime, 'the effect was at the outer margins of statistical and social significance'<sup>163</sup>. There was no evidence of an effect on robbery and theft, vehicle crime or criminal damage, and inconsistent evidence of very small effects on burglary, non-domestic violent crime and total crime. The authors 'struggled' to find evidence of an effect on violent crime, and the only effects they did find were 'far smaller than for any of our other findings'<sup>164</sup>. Analysis using ambulance incident data for calls related to 'stab, shot, or weapon wounds' produced no statistically significant results, and separate analysis of section 60 searches indicated that the sudden surge in use had no effect on the underlying trend in non-domestic violent crime. The only strong evidence was for effects on drug offences, but the authors were cautious even here. Reductions in drug detections do not necessarily signify a reduction in offending and may simply reflect ways in which people adapt their behaviour to avoid getting caught. Increased stop and search, for example, may encourage people to hide their drugs more carefully or to move to areas where police are less active, leading to fewer detections.

The weight of evidence indicates that drug policing is largely ineffective and counter-productive. Established drug markets have proved highly resilient in the face of significant seizures, and market disruptions are mostly the result of happenstance rather than concerted enforcement efforts: there are no clear examples of large-scale arrests of dealers disrupting a market and it is extremely difficult for enforcement agencies to achieve sufficient reductions in supply to increase retail price<sup>165</sup>. Police crackdowns can reshape local drug markets, but they are resource intensive and their effects are typically short-lived: drug-related activities are often displaced to other areas and return once the operation is over<sup>166</sup>. While policing can mitigate some of the harms associated with drug markets, it also has the potential to make the situation worse<sup>167</sup>. The United Nations Office on Drugs and Crime has acknowledged various 'unintended consequences' of drug control, including the creation of 'a huge *criminal black market*'<sup>168</sup>. A recent government evaluation of the UK drug strategy also acknowledged 'that violence is an unintended consequence of enforcing drug laws'<sup>169</sup>,

citing a systematic review of the international evidence which found that increasing law enforcement efforts is typically followed by an escalation in violence<sup>170</sup>.

Investing in standard enforcement activities carries significant opportunity costs. Rather than insisting that stop and search is 'a vital tool in the fight against crime', police should adopt evidence-based approaches of proven efficacy. Problem-oriented policing looks beyond standard enforcement approaches and places considerable value on preventative responses that do not depend on the criminal justice system, engaging other public agencies, the community, and the private sector. This approach often draws on situational crime prevention to modify conditions that are conducive to crime and disorder. Both problem-oriented policing and situational crime prevention have been repeatedly found to be more effective than standard law enforcement tactics<sup>171</sup>. Focused deterrence or 'pulling levers' is a problem-oriented strategy that targets specific criminal behaviours carried out by a small number of chronic offenders who are vulnerable to sanctions and punishment. Offenders are directly confronted with carefully collected evidence of their involvement and are informed that continued offending will result in all potential sanctions, or levers, being applied. While enforcement is targeted at those who continue to offend, desistance is rewarded through positive incentives, including access to social services as well as education and job opportunities. Focused deterrence was pioneered by *The Boston Gun Project*, which led to a sharp reduction in youth homicide, and has been widely replicated in the form of *Operation Ceasefire*. A recent meta-analysis concluded that focussed deterrence is a very promising approach that has medium-sized crime reduction effects<sup>172</sup>.

The value of looking beyond standard enforcement approaches has been amply demonstrated by Scotland's much lauded approach to tackling knife-crime and gang-related violence<sup>173</sup>. Knife crime began to be treated as a 'public health' issue in 2005 after the United Nations identified Scotland as the most violent country in the developed world. Initial efforts sought to tackle the problem through more enforcement, including extensive use of stop and search, and longer sentences for carrying a knife, but this approach was not successful. A mapping exercise was followed by the development of a gangs exit programme that sought to encourage those involved into diversionary activities, getting them back into education, training and work, and helping to rehouse those who needed to get away from a violent neighbourhood. The gang exit strategy was buttressed by an educational component as Medics Against Violence went into schools to speak to young people about the consequences of violence, and older pupils were trained to talk to younger pupils. The exit programme is said to have successfully removed about half the young people involved in 'gangs' and Scotland's homicide rate has halved over the last decade, while the number of hospital admissions due to assault with a sharp object has fallen by almost two-thirds (62 per cent) in Glasgow.

## Addressing disproportionality

The failure of recent reforms to reduce ethnic disparities should not come as a great surprise. Implicit bias training aside, none of the reforms directly address the mechanisms that are driving the problem. What has happened since the HMIC's initial thematic inspection shows that it is possible to ensure greater compliance with statutory regulations and bring about marked improvements in the overall use of stop and search, yet do nothing to alleviate ethnic disparities. It follows that disproportionality will only be tackled effectively by identifying key drivers and putting specific measures in place to combat them. This means

addressing the selective enforcement of drug laws; the over policing of areas with large black and minority ethnic populations; officer discretion and the potential for ethnic profiling; and differential outcomes resulting from stop and search.

HMICFRS has expressed particular concern about the disproportionate use of stop and search, 'which many forces are unable to explain'<sup>174</sup>, noting that it has 'the potential to erode public trust and confidence in the police, particularly amongst black people, despite the reductions in the use of stop and search powers'<sup>175</sup>. As part of the 2017 PEEL Legitimacy inspection, the Inspectorate recommended that all police forces should seek to understand disproportionality and, where necessary, should be able to demonstrate that they have taken action to reduce it. Among other things, it was noted that forces should monitor the prevalence of possession-only drug searches, and the extent to which this activity aligns with local or force level priorities. Such recommendations go some way towards addressing organisational drivers of disproportionality, but greater attention should be given to area-based drivers. In particular, HMICFRS should assess the potential for the kind of geographic profiling we have identified, both within and between forces. To this end, it should consider whether individual force's overall rates of stop and search are proportionate compared with similar forces and whether this activity is distributed evenly across the force area based on objective indicators of the types of crime that are being targeted.

Insofar as HMICFRS has addressed the potential for ethnic profiling, it has recommended that forces should ensure all officers who use stop and search are provided with, and understand, training on unconscious bias. Evidence of unconscious or implicit racial bias has been widely validated and it 'would be remarkable if criminal justice practitioners were not affected'<sup>176</sup>. Studies have also established that such biases are malleable and can be moderated, at least over the short-term<sup>177</sup>. Links with discriminatory behaviour have been harder to establish<sup>178</sup>, however, though proponents maintain that small statistical effects can have large social consequences<sup>179</sup>. The evaluation of the College of Police training on unconscious bias found some small positive effects on officers' knowledge and attitudes, but not on their stop and search practices<sup>180</sup>, and the national roll-out has not prevented an escalation in disproportionality. This is broadly in line with findings from a recent meta-analysis, which found that changes in implicit bias do not mediate changes in behaviour<sup>181</sup>.

Given the limitations associated with implicit bias training, greater attention should be given to external regulation. Decision-breaks and real-time supervision could be used to limit officer discretion in high risk situations. Our analysis demonstrates that stop-searches of black people for drugs in relatively affluent areas are a significant source of disproportionality. To off-set tendencies towards ethnic profiling under such circumstances, searching officers could be required to check their grounds with a supervising officer and secure authorisation before proceeding with the search. This should help to prevent officers from acting 'automatically' on the basis of stereotypes or a general sense that somebody or something is incongruous, without establishing objective grounds for a search. An example of how breaks can be used to counter biases and reduce ethnic disparities is provided by Las Vegas Police Department's response to particular problems with the use of force on people from minority groups after foot chases in non-white neighbourhoods. Recognising that it would be difficult for officers to stop and think about whether implicit racial biases were influencing their behaviour under such circumstances, the Department introduced a

new policy that an officer engaged in a pursuit would no longer be allowed to lay hands on the suspect and another officer would be required to step in if force was necessary<sup>182</sup>. This policy resulted in a significant reduction in use of force on people from minority groups.

Out of court disposals have the potential to mitigate some of the harms associated with the over-policing and the selective criminalisation of black and minority ethnic communities, but are failing to do so because of disparities in their allocation. Specific provisions are required to address the barriers that appear to be disadvantaging black and minority ethnic groups in the use of such disposals. This means providing disposals, other than the PNDs, that do not require an admission of guilt - the 'deferred prosecution' model pioneered by West Midlands Police provides a useful template here as it was designed to address racial disparities and enable offenders to participate without the requirement that they first admit an offence<sup>183</sup>. Steps should also be taken to relax restrictions on the number of times somebody can receive an out of court disposal. The National Police Chief Council's strategy on out of court disposals proposes a two tier framework of community resolution or conditional caution, 'where rehabilitative, reparative, or punitive conditions are attached to each disposal'<sup>184</sup>. The proposed two-tier system could result in an overly rigid 'two strikes and you're out' approach, which leads to greater use of prosecution for drug possession offences<sup>185</sup>. Without the kinds of procedural adjustments identified above, ethnic disparities and the potential for discrimination will likely remain.

Cannabis and khat warnings are set to be replaced by Community Resolution with a health intervention or something similar under the new framework, but it is not currently clear what such interventions might involve. In developing further guidelines, the National Police Chief's Council should give due regard to innovative diversion schemes developed by several forces in England and Wales (see text box – diversion schemes). As well as potentially mitigating some of the harms associated with selective enforcement, the Home Office has acknowledged that out of court disposals provide a proportionate response to cannabis possession and 'avoid unnecessary and expensive court proceedings'<sup>186</sup>. If nothing else, prosecuting people to fine them a fraction of what the process costs or sending them to prison to serve a token custodial sentence is fiscally imprudent, particularly at a time of austerity.

The more equitable allocation of out of court disposals would have positive knock-on effects in terms of alleviating ethnic disparities in prosecution and sentencing. Limiting discretion by introducing tighter guidelines on prosecutorial decision-making, the disclosure of criminal records at court, and sentencing outcomes would provide further safeguards against discrimination.

## Reform-resistance

Further regulation of stop and search is likely to be resisted. When the College of Policing issued guidance in 2016 that 'the smell of what the officer believes to be cannabis on its own will not normally justify... the search of a person who smells of cannabis'<sup>187</sup> it proved controversial. This guidance was supported by subsequent analysis which indicated that references to the smell of cannabis in officers' grounds did not increase the likelihood of an arrest or other criminal justice outcome, and that a focus on suspect behaviour is more likely to lead to productive searches<sup>188</sup>.

## Diversion Schemes

Durham Police has implemented an innovative diversion scheme, 'Checkpoint', covering a range of low-level offences, included drug possession and some low-level supply offences where the offender is determined to be a user-dealer<sup>189</sup>. This scheme diverts people after arrest on the condition that they undertake a four month programme to address their offending behaviour. Engagement with the programme leads to a suspension of criminal justice proceedings, while successful completion results in no further action being taken<sup>190</sup>. Initial findings from the pilot period indicate that those who were diverted to Checkpoint had lower reoffending rates than those who were subject to out of court disposals, such as cautions<sup>191</sup>.

Avon and Somerset Police has introduced an on the street diversion programme in Bristol for those caught in possession of drugs for personal use<sup>192</sup>. The 'Drug Education Programme' (DEP) was launched as a pilot in 2016 and initial findings from the first six months of the programme indicate that participants were less likely to re-offend than those who had gone through the criminal justice system during the six months immediately before the programme started. As well as reductions in self-reported drug use among participants, other perceived benefits of the programme include significant savings in police time (referring somebody to DEP is a relatively quick process) and improved relations between police and people who use drugs. The success of the programme in Bristol has been followed by a decision to roll it out across the rest of the force area.

The West Midlands Police and Crime Commissioner has recommended that people caught with drugs for personal use be diverted away from the criminal justice system, arguing that 'drug use and dependence should first and foremost be treated as a health issue rather than a criminal justice one'<sup>193</sup>. West Midland's Police has piloted an innovative programme, 'Turning Point', which gave defendants the opportunity to go through a structured intervention, such as drug treatment, instead of facing criminal charges<sup>194</sup>. Compliance with the intervention saw charges dropped, while non-compliance saw the defendant prosecuted. Evaluation of the programme indicated that the scheme improved victim satisfaction, reduced reoffending, and created cost-savings. Many aspects of the Turning Point model are still used by West Midlands Police, while the Lammy Review recommended that this 'deferred prosecution' model should be rolled out across England and Wales for adults and youth offenders<sup>195</sup>.

The 2017 PEEL Legitimacy inspection found that officers in many forces were unaware of the guidance and recommended that forces encourage officers to consider multiple strong grounds, with a focus on behaviour rather than situational factors<sup>196</sup>. Chief Constable Andy Cooke of Merseyside Police challenged

the Inspectorate's endorsement of the College's position, arguing that the guidance is 'wrong' and insisting: 'Smell of cannabis is sufficient to stop search and I will continue to encourage my officers to use it particularly on those criminals who are engaged in serious and organised crime'<sup>197</sup>. A revised set of guidance has since been issued, which no longer includes the original statement on the smell of cannabis, noting there are 'no stated cases on this issue', but maintains: 'it is not good practice for an officer to base his or her grounds for search on a single factor, such as the smell of cannabis alone or an indication from a drugs dog'<sup>198</sup>. A week or so after the Centre for Social Justice report was published, calling for an increase in stop and search and claiming that disproportionality is a 'myth', Mr Cooke - who was appointed Chief Constable in July 2016<sup>199</sup> - was quoted in the national press as saying that 'stop and search is not racist' and is 'our greatest power'<sup>200</sup>. Attributing concerns about disproportionality to statistics from a few boroughs in London, Mr Cooke insisted "it's not the case across the rest of the country". He also claimed that the reduction in stop and search was a 'significant factor' in the increase in violence, noting "we need to redress the balance and the damage that's been done over a number of years."

Chief Constable Cooke's comments are typical of the kind of obfuscation and misdirection that are being used to challenge the reform of stop and search. Disproportionality is not limited to a few London boroughs, but is an entrenched problem that is evident in every borough and every territorial police force across England and Wales. Claims that stop and search is 'our greatest power' and is a 'significant factor' in the increase in violence, ignore the evidence that it has little, if any, impact on crime, including violent crime, and misrepresent the way the powers are being used. Only 5.9 per cent of 'reasonable suspicion' stop-searches conducted in Merseyside during 2016/17 were targeted at offensive weapons, compared with 10.8 per cent across England and Wales as a whole. These figures increase only slightly if we include section 60 searches (7.5 per cent and 11.0 per cent respectively). More than four-fifths of stop-searches in Merseyside were targeted at drugs and the rate of drug searches seems excessive when compared with similar forces. The number of drug searches per 1,000 population in Merseyside was more than three times the average for its most similar forces (4.6 compared with 1.4). As well as being one of Merseyside's most similar forces, Greater Manchester is a neighbouring force, which had the joint lowest rate of stop and search for drugs across England and Wales. Using the smell of cannabis to selectively target people who are thought to be 'criminals... engaged in serious and organised crime' is incompatible with PACE and potentially unlawful. If police have reason to suspect that someone is engaged in serious and organised crime, and this is why a stop and search is being conducted, then it should constitute the grounds. Otherwise the due process protections provided by PACE are circumvented and officers are effectively unaccountable for their use of the powers.

Chief Constable Cooke is not alone in making the case for greater use of stop and search. Similar sentiments have been expressed by the Commissioner of the Metropolitan Police<sup>201</sup> and the Chairperson of the National Police Chiefs' Council<sup>202</sup>. Recent reports that some forces, including Merseyside, 'have dramatically increased their use of stop and search amid rising violence'<sup>203</sup>, have been followed by an announcement that all forces in England and Wales are being encouraged to make greater use of the powers as part of a week-long operation to tackle knife crime<sup>204</sup>. The Home Secretary has also announced that police may be given enhanced stop and search powers to target acid, drones and laser pointers<sup>205</sup>.

# Conclusion

The last five years or so have seen the most concerted effort to regulate the use of stop and search since the introduction of PACE in 1984. These efforts have achieved some striking results, prompting suggestions that ‘forces have made good progress in ensuring stop and search powers are used legitimately and fairly’<sup>206</sup>. But nothing has been done to alleviate ethnic disparities even though they provided one of the principal motivations for reform. Despite encouraging early signs that stop and search was becoming less disproportionate in its focus on black and minority groups, these disparities have widened. The current situation is reminiscent of what happened after the Stephen Lawrence Inquiry, when reforms aimed at reducing disproportionality met a largely defensive response from police and were successfully resisted<sup>207</sup>. Once again, senior police leaders seem more concerned about defending their organisational reputation than delivering a fair and effective service that protects vulnerable communities from harm: claiming that officers are scared to engage in stop and search for fear of being accused of racism<sup>208</sup>, when ethnic disparities are wider than ever, is cynical and self-serving; insisting that stop and search offers a solution to knife crime<sup>209</sup>, when the evidence tells us otherwise, is a betrayal of the police mandate to prevent crime; and the net result is that impacted communities will remain over-policed and under-protected.

The problems that motivated reform have not gone away. If the misuse of stop and search was, as Richard Fuller MP declared, ‘the worst form of legal racial abuse in our country’<sup>210</sup> in 2014, it remains so. Given the particular and enduring nature of the problem, specific safeguards are required that target key drivers of disproportionality, and a degree of compulsion is necessary. As noted by the EHRC, ethnic disparities that cannot be convincingly explained and evidenced should be considered ‘unlawful and discriminatory’<sup>211</sup>. Part of the problem here is that HMICFRS is an inspectorate, not a regulator, and has powers to secure information, but not to give orders for change<sup>212</sup>. Rather than granting police new stop and search powers, the government should honour the pledge made by the current Prime Minister - and former Home Secretary - in response to a specific question about disproportionality: ‘if the voluntary code does not work we will introduce primary legislation’<sup>213</sup>.

# 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 months<sup>214</sup>.
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 sentence<sup>215</sup>.

# Methodological Appendix

Section 95 of the *Criminal Justice Act 1991* requires that the Secretary of State publishes information to enable those involved in the system to avoid discrimination on the grounds of race, sex or any other improper grounds<sup>216</sup>. Since the introduction of this legislation the Home Office, and latterly the Ministry of Justice, has regularly published statistics showing the rate at which people from different ethnic groups come into contact with criminal justice agencies. The Ministry of Justice publishes a compendium of *Statistics on Race and the Criminal Justice System* every other year to provide a 'perspective on the typical experiences of different ethnic groups'<sup>217</sup>. Additional data on 'race' and policing are published annually by the Home Office as part of the *Police Powers and Procedures* series<sup>218</sup>. Both publications assess ethnic disparities on the basis of disproportionality ratios, which compare rates of contact with the criminal justice system across different ethnic groups. The white group is used as the benchmark against which the experience of minority ethnic groups is compared: dividing the rate for each minority group by the rate for the white group gives the disproportionality ratio.

Our analysis is based on several sources of data. Stop and search statistics were taken from the *Police Powers and Procedures* series<sup>219</sup>. This series covers all 43 territorial police forces in England and Wales, and indicates how many stop-searches are carried out under different legal powers, the ethnicity of the people who are subject to these searches, the reason given by the officer for the search, and the number of searches that lead to arrest. While ethnicity data were provided for 90 per cent of stop-searches recorded in 2016/17, there were notable variations between forces, several of which did not record this information in a quarter of cases or more. If a large proportion of the missing data is for people from black and minority ethnic groups, then disproportionality ratios would be significantly higher than reported<sup>220</sup>.

Other potentially significant gaps in recording relate to stops where police ask members of the public to account for themselves - their actions, behaviour, presence in an area or possession of anything - but do not go on to search them (known as 'stop and account'), and other powers that are akin to stop and search<sup>221</sup>. All forces were required to record stop and account until 2011 and very few continued to do so after the requirement was removed. Section 163 of the Road Traffic Act 1988 gives officers the power to stop motor vehicles without any procedural requirements and ask the driver for their licence, and ask the driver and any passengers questions. Section 38 of the Police Reform Act 2002 gives Police Community Support Officers powers to search for and seize alcohol and / or tobacco from young people under the age of 18 years where they reasonably believe that the person is in possession of these items and has refused to surrender them. HMIC raised concerns about the fairness and effectiveness with which Section 163 and Section 38 powers are being used, highlighting specific issues around ethnic disproportionality and traffic stops<sup>222</sup>. Its recommendation that there should be a national requirement to record each occasion when these powers are used has not been implemented. We are, as a result, unable to assess potential disparities in these areas.

Our analysis of stop and search across England and Wales has been augmented by a particular focus on London. As well as being the largest of the 43 territorial police forces, the Metropolitan Police Service (MPS) makes by far the greatest use of stop and search. Data for the 32 London boroughs covering the 12-months from October 2016 to September 2017 were downloaded from the force's online dashboard<sup>223</sup>.

Statistics about arrests resulting from stop and search were taken from the *Police Powers and Procedures* series, while information about other possible outcomes, including fines and cannabis warnings, were taken from data published as part of the BUSS Scheme<sup>224</sup>. Data about sentencing outcomes were taken from the *Criminal Justice System Statistics* series and are originally from the Courts Proceedings Database<sup>225</sup>. These data cover indictable and either way offences, but not summary offences: indictable offences are 'the most serious' and are heard at Crown Court<sup>226</sup>; summary offences are heard at Magistrates' Court; and either way offences, including most drug offences, may be heard at either court<sup>227</sup>. Some caution is required in relation to the analysis of sentencing outcomes because of the number of cases where the ethnicity of the defendant was not recorded: this information was missing for 22 per cent of individuals who were proceeded against in 2017, including 19 per cent who were proceeded against for drug offences. These cases were excluded from analysis relating to ethnicity.

Disproportionality ratios have been calculated using population estimates from the 2011 Census, which remains the 'most recent well-validated source of information about the ethnic composition of England and Wales'<sup>228</sup>. This corresponds with the approach taken by the Home Office and the Ministry of Justice. Attempts are being made to update the results of the Census and the Office for National Statistics (ONS) publishes an alternative set of population estimates by ethnic group each year based on the Annual Population Survey (APS)<sup>229</sup>. The process is at a relatively early stage of development, however, and ONS has noted that the uncertainties involved mean that estimates from the APS are less reliable than the results of the 2011 Census were when they were produced. Estimates for smaller groups are particularly subject to uncertainty. We have used estimates from the APS to check the validity of our analysis based on the 2011 Census for England and Wales as a whole, and across the 32 London boroughs. APS estimates have not been published for Police Force Areas and could not be used to corroborate this part of the analysis. Comparisons between the Census and APS suggest that the ethnic composition of the general population in England and Wales (and across London) remained stable between 2011 and 2016. Estimates from the APS indicate that 85 per cent of the population of England and Wales are 'white' (compared with 86 per cent according to the census); 3.5 per cent are 'black' (compared with 3.3 per cent); 7.9 per cent are 'Asian' (compared with 6.8 per cent); and 3.6 per cent are 'mixed', Chinese or 'other' (compared with 3.9 per cent). Given this apparent stability, disproportionality ratios based on both sets of population estimates are very similar. Unless stated otherwise, results based on the APS were consistent with results based on the Census. Results using the APS have only been described where they differ substantially from results based on the Census.

## Endnotes

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- 89 The percentage of the population from a given ethnic group based on Census estimates was related to levels of deprivation measured by IMD-2015 as follows:  $r_s = 0.52$ ,  $p < .01$  (white);  $-0.71$ ,  $p < .01$  (black);  $-0.46$ ,  $p < .01$  (other); and  $-0.04$ ,  $p > .05$  (Asian). The situation for the 'mixed' group was not considered because the stop and search data published by the Metropolitan Police Service did not distinguish this group from the others. The association with deprivation was not statistically significant for the 'other' group based on APS estimates. This may be because the APS combined the 'mixed' category with the 'other' category, while the Census classified people with a 'mixed' black heritage as 'black', people with a 'mixed' Asian heritage as 'Asian' and so on.
- 90 The figures cited here are based on the eight most and eight least deprived boroughs.
- 91 The overall rate of stop and search in the 32 boroughs tends to increase with the relative size of the black population (as measured by the percentage of the population that is black). This pattern was evident for all stop-searches ( $r_s = 0.44$ ,  $p < .05$ ) and stop-searches targeting drugs ( $r_s = 0.42$ ,  $p < .05$ ).
- 92 For all stop-searches by IMD-2015,  $r_s = -0.63$ ,  $p < 0.01$  (white) and  $-0.70$ ,  $p < 0.01$  (Asian);  $-0.27$ ,  $p > .05$  (black); and  $-0.22$ ,  $p > .05$  (other). For drug searches:  $r_s = -0.66$ ,  $p < 0.01$  (white);  $-0.71$ ,  $p < 0.01$  (Asian);  $-0.19$ ,  $p > 0.05$  (black) and  $-0.22$ ,  $p > .05$  (other).
- 93 Alexander (2010) Loc. cit. See also Loftus, B. (2009) *Police Culture in a Changing World*, Oxford: Oxford University Press.
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- 95 For Asian / white disproportionality by inner / outer London,  $p > .05$  for all stop-searches and those targeting drugs. For the relationship with deprivation,  $r_s = -0.24$ ,  $p > .05$  (Asian / white disproportionality for all stop-searches by IMD-2015); and  $-0.15$ ,  $p > .05$  (Asian / white disproportionality for drug searches by IMD-2015).
- 96 Results based on population estimates from the 2011 Census were largely consistent with results based on the 2016 APS, but with some notable differences: Ealing was not included among the boroughs with the five highest rates of Asian / white disproportionality based on the APS (it was ninth rather than fifth) and was replaced by Richmond (which was first rather than eighth).



- 97 Results based on population estimates from the 2011 Census were largely consistent with results based on the 2016 APS, but with some notable differences: Ealing was not included among the boroughs with the five highest rates of Asian / white disproportionality based on the APS (it was seventh rather than fifth) and was replaced by Havering (which was fifth rather than sixth).
- 98 Results based on population estimates from the 2011 Census were largely consistent with results based on the 2016 APS. Analysis based on APS confirmed that Hammersmith and Fulham had the highest rates of white / other disproportionality for all stop-searches and drug searches, and that Harrow had the second highest rate for drugs.
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