

Caught in a Vicious Cycle: Where are we with Stop and Search?

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Abstract

Police in England and Wales are invested with specific legal powers to detain a person—who is not under arrest—and search them or their vehicle for unlawful items. The exercise of this coercive power has long been a source of tension and mistrust, particularly among minoritised and other marginalised communities, and has been repeatedly implicated among the causes of serious public disorder. Although concerns about the misuse of stop and search have created a recurring cycle of crisis and reform—stretching back over more than four decades—the fundamental problem remains unchanged. How did this happen and what should now be done about it? These questions will be addressed by considering how the policy problem has been framed over time, reviewing evidence on the impact of stop and search and identifying policy challenges associated with regulating the powers, including lessons that can be learnt from previous attempts at reform.

Keywords: police stop and search, regulation, institutional racism

Introduction

STOP AND SEARCH is one of the most intrusive and controversial powers available to police in England and Wales. There are currently more than twenty different pieces of legislation enabling officers to detain a person—who is, importantly, not under arrest—in order to search them or their vehicle for an unlawful item. This may involve an officer placing his or her hands inside the pockets of outer clothing, feeling around the inside of collars, socks and shoes and/or searching a person's hair—all in public view. As a widely used coercive power, stop and search raises fundamental questions about how state-sanctioned force can be reconciled with democratic principles. The British model seeks to resolve this tension through the doctrine of policing by consent, but rests on a fragile accommodation. Policing—including the use of stop and search—has fuelled some of the most serious outbreaks of public disorder in England and Wales over the last fifty years, signalling a dramatic breakdown of consent. It is no coincidence that riots in 1981 and 2011 were followed by concerted efforts to reform and regulate these powers. Away from the

official inquiries and inspections, the corrosive effects of stop and search continue to be felt most sharply by already marginalised and disadvantaged communities. Her Majesty's Inspectorate of Constabulary and Fire and Rescue Service (HMICFRS) recently acknowledged that the disproportionate use of stop and search on black and other minoritised groups 'has been a problem for many years'.¹ Baroness Casey also highlighted the role this problem has played in 'a very long history linking British policing with mistreatment of, and prejudice against, Black and ethnic minority communities'.² So, how did this happen and what should now be done about it?

Framing the policy problem

Stop and search has been a source of concern for decades. Lord Scarman's inquiry into the 1981 Brixton riots identified the mass use of

¹HMICFRS, *Disproportionate Use of Police Powers: A Spotlight on Stop and Search and the Use of Force*, London, HMICFRS, 2021, p. 9.

²L. Casey, *Baroness Casey Review Final Report: An Independent Review into the Standards of Behaviour and Internal Culture of the Metropolitan Police Service*, London, Metropolitan Police Service, 2023, p. 286.

stop and search as the immediate trigger of what was ‘essentially an outburst of anger and resentment by young black people against the police’.³ Although Scarman refused to attribute the problem to institutional racism, he did draw attention to the racially prejudiced actions of some officers and highlighted broader concerns about the unintended consequence of organisational policies. To uphold ‘consent’—which he considered essential to securing legitimacy for policing in a democratic society—Scarman called for safeguards to ensure stop and search was exercised with reasonable grounds for suspicion.

The requirement for reasonable suspicion was enshrined in the Police and Criminal Evidence Act 1984 (PACE) which continues to provide the main legislative framework governing the use of stop and search. According to this framework, the primary purpose of stop and search is to enable officers to allay or confirm suspicions about individuals without exercising their power of arrest. The relevant code of practice (Code A) requires that the powers must be used fairly, responsibly, with respect for people being searched and without unlawful discrimination. To this end, officers must satisfy the ‘legal test’ of reasonable grounds for suspicion before they may use their powers, meaning, among other things, that there must be ‘an objective basis’ for suspicion ‘so that a reasonable person would be entitled to reach the same conclusion based on the same facts and information and/or intelligence’.⁴ There are a small number of stop and search powers that are not subject to the requirement for reasonable grounds, most notably those granted by section 60 of the Criminal Justice and Public Order Act 1994 and section 47A of the Terrorism Act 2000. Code A also places a general duty on frontline officers to make a record of the search and provide a copy (or receipt) to the person searched, whilst also requiring supervising and senior officers to monitor use of the powers and take action to ensure compliance with the regulations.

This regulatory framework has been retained despite ongoing evidence of the problems it was designed to address. Stop and search was not the focus of the inquiry led by Sir William Macpherson into the then-unsolved murder of Stephen Lawrence, but came to feature prominently in its deliberations. The inquiry held a series of public meetings and was struck by ‘inescapable evidence’ of a lack of trust between the police and minority ethnic communities who ‘clearly felt themselves to be discriminated against by the police and others’.⁵ If there was one area of complaint that was universal, it was said to be stop and search. The inquiry identified ethnic disparities in the use of the powers as one of four areas where institutional racism was primarily apparent, noting there remains a clear core conclusion of racist stereotyping. While making clear it was not suggesting all officers are racist, the inquiry warned police against trying to justify ethnic disparities without being seen to address vigorously the discrimination that was evident, insisting this would simply exacerbate the climate of distrust.

The number of stop-searches conducted by police increased to well over a million per year during the decade after the Stephen Lawrence inquiry, and became more disproportionate.⁶ Some of the associated costs were highlighted by widespread rioting in 2011. After visiting the affected areas, the Riots, Communities and Victims Panel pointed to a disturbing breakdown in trust between some communities and the police, recommending that stop and search needs immediate attention to ensure community support and confidence is not undermined. The panel also noted that the underlying challenges remained strikingly similar to those identified by the Scarman Report thirty years earlier. Theresa May—then Home Secretary—responded by commissioning HMICFRS to conduct a thematic inspection of stop and search. This identified ‘alarming’ evidence of non-compliance with PACE: more than a quarter of the stop and

³L. G. Scarman, *Scarman Report: The Brixton Disorders, 10–12 April 1981*, London, Her Majesty’s Stationery Office, 1981, s.8.12.

⁴Home Office, *Police and Criminal Evidence Act 1984 (PACE)—Code A*, London, Home Office, 2023, s.2.2.

⁵W. Macpherson, *Inquiry into the Matters Arising from the Death of Stephen Lawrence*, London, The Stationery Office, 1999, s45.6.

⁶R. Delsol and M. Shiner, eds., *Stop and Search: The Anatomy of a Police Power*, Basingstoke, Palgrave Macmillan, 2015.

search records examined ‘did not include sufficient grounds to justify the lawful use of the power’, while fewer than half of forces complied with the requirement to make arrangements for the public to scrutinise the use of the powers.⁷ Informing Parliament of these ‘deeply concerning’ findings, May declared ‘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’.⁸ Similar sentiments were voiced from the backbenches with claims that the ‘misuse of stop and search’ is ‘probably the worst form of legal racial abuse in our country’ (Richard Fuller) and ‘a stain on British policing’ (Michael Ellis).⁹ The Home Secretary concurred and announced a ‘comprehensive package of reform’ that included revising the code of practice to clarify what constitutes reasonable grounds for suspicion, launching a new ‘Best Use of Stop and Search’ scheme and including stop and search in HMICFRS’s police efficiency, effectiveness and legitimacy (PEEL) inspections. If these measures failed to deliver reductions in stop and search, a more targeted approach and improvements in the arrest rate, she vowed to return with primary legislation.

Almost a decade later, the Casey review identified generational mistrust of the police among black Londoners, noting that stop and search is being deployed at the cost of legitimacy, trust and consent. The review made a finding of institutional racism, sexism and homophobia within the Metropolitan Police Service, concluding that ‘[e]nough evidence and analysis exists to confidently label stop and search as a racialised tool’.¹⁰ Although forces outside London typically use stop and search at a lower rate, they tend to be more disproportionate, raising broader concerns about institutional racism.¹¹

Over-policed and under-protected

As defined in law, stop and search is primarily an investigative power that is intended to combat crime through a combination of detection and prevention. Its effectiveness in this regard has been largely assumed and has only recently come under critical scrutiny. A comprehensive review of the evidence in 2015 concluded that the role of the powers in reducing crime was ‘a marginal one at best’ and contrasted ‘the meagre returns in the form of measurable outcomes’ with ‘significant and well-documented’ costs.¹² In the absence of experimental studies, the analysis concentrated on intermediate outcomes, highlighting the focus of stop and search on relatively minor offences, particularly drug possession, the limited role of intelligence and the low arrest rate. All these points still hold. Although stop and search is often presented as a means of combatting knife crime, it is not generally used for this purpose. Of the suspicion-based stop-searches conducted in 2022–23, only 17 per cent were for weapons, compared with 61 per cent for drugs. Detailed analysis by HMICFRS in its spotlight report on disproportionality found that most drug searches are targeted at low-level possession offences—mainly involving cannabis—and that the powers are not being targeted effectively to meet force priorities. This analysis also found that ‘surprisingly few’ stop-searches (9 per cent) are intelligence-led and most are ‘self-generated’ by officers based on what they see or hear.¹³ Self-generated possession-only drug searches accounted for more than a third (38 per cent) of all suspicion-based stop-searches and typically involved weak grounds, including some that were based solely on the smell of cannabis. Given the preponderance of high-discretion searches, it is perhaps unsurprising that the resulting arrest rate is typically modest, fluctuating between 10 and 17 per cent over the last decade.¹⁴ The arrest rate tends to increase as the overall rate of stop and search declines, indicating that efficiency

⁷Her Majesty’s Inspectorate of Constabulary [HMIC], *Stop and Search Powers: Are the Police using them Effectively and Fairly?*, London, HMIC, 2013, s.6; s.8.

⁸House of Commons Debates, ‘Stop-and-Search’, vol. 579, *Hansard*, 30 April 2014, cols. 831–847.

⁹*Ibid.*

¹⁰Casey, *Baroness Casey Review*, p. 317.

¹¹Home Office, *Police Powers and Procedures: Stop and Search and Arrests, England and Wales, year ending 31 March 2023*, London, Home Office, 2023.

¹²R. Delsol, ‘Effectiveness’, in Delsol and Shiner, eds., *Stop and Search*, p. 100.

¹³HMICFRS, *Disproportionate Use of Police Powers*, p. 33.

¹⁴Home Office, *Police Powers and Procedures*.

improves with more judicious use of the powers.

Several recent studies have employed quasi-experimental methods to assess the effectiveness of stop and search, focussing on the impact of natural variations in the use of the powers on a range of offence types as well as the effects of specific initiatives or operations.¹⁵ These studies found very little evidence of a deterrent effect and concluded that increasing stop and search is likely to have—at best—a very marginal effect on emerging crime problems. Another study—based on a surge in stop and search following a high-profile murder in Northumbria—found that evidence of impact was driven by reductions in offence categories not included in earlier studies, chiefly anti-social behaviour, ‘with little to no evidence for a crime-reducing effect’ on other offence categories, including weapons offences and violent crime.¹⁶ Reductions in anti-social behaviour were attributed to the heightened police presence rather than the surge in stop and search on the basis that it is the former rather than the latter that increases the risk of detection for said offences.

A recent systematic review of the international evidence published by the Campbell Collaboration—an international social science research network—found that police stops do have a crime reduction effect in some contexts at least, but also impose significant costs.¹⁷ The review covered forty experimental and quasi-experimental studies published between 1970 and 2021 with a treatment group of people or places that experienced police-initiated pedestrian stops and a control group of people or places that did not, or experienced a lower number of stops. Analysis of the pooled data indicated that pedestrian stop interventions were associated with a 13 per cent reduction in crime for treatment areas relative to control

areas. Although larger reductions were evident in relation to violent crime, the authors urge caution in interpreting these findings owing to possible displacement effects. Few—if any—of these studies were able to isolate the effect of increased police stops over and above the effect of increased police presence and it remains possible that more visible patrols would have similar effects without additional stops. Pedestrian stops were also found to have considerable drawbacks in the form of negative individual-level effects on those stopped, including worsening mental and physical health, more negative attitudes toward the police and higher levels of self-reported crime and delinquency. Mental health impacts appear to be particularly pronounced for young people. Given these backfire effects, the authors refused to recommend the use of police stops on the grounds that it is unclear whether they yield any long-term net gains and there are alternatives—such as problem-oriented policing—that have larger crime reduction effects without the associated drawbacks.

The headline findings from the systematic review mask important differences between jurisdictions. Of the forty eligible studies, thirty-three were conducted in the United States (US), five focussed on the United Kingdom (UK) and two covered multiple European countries including the UK. The crime reduction effect was significantly greater in the US than European studies. While US studies saw a statistically significant 14 per cent reduction in crime for treatment areas relative to control areas, European studies saw a non-significant 5 per cent reduction. As such, the trade-off between the benefits of crime reduction and costs of harm to individuals only applies to the US. The situation in Europe and the UK is different because police stops impose costs without apparent benefits. Backfire effects were evident from the European studies and—in the case of attitudes to the police—were significantly larger than the effects from US studies. Such effects have also been well documented in the UK independently of the systematic review. Studies have shown how unfair treatment by officers distances people from the police service as a whole and orients them towards alternative forms of conflict resolution, including self-help violence. Lack of trust in police has been identified as a strong predictor

¹⁵B. Bradford and M. Tiratelli, *Does Stop and Search Reduce Crime?*, London, Centre for Crime and Justice Studies, 2019.

¹⁶N. Braakmann, ‘Does stop and search reduce crime? Evidence from street-level data and a surge in operations following a high-profile crime’, *Journal of the Royal Statistical Society Series A: Statistics in Society*, vol. 185, no. 3, 2022, pp. 1370–1397.

¹⁷K. Petersen, et al., *Police Stops to Reduce Crime: A Systematic Review and Meta-Analysis*, Philadelphia PA, Wiley, 2023.

of weapon carrying among young people, highlighting the costs of over-policing:

Although young people in high-crime neighbourhoods may be “over-policed” in terms of “stop and search” or the prosecution of drug-related offences, they may be “under-policed” in terms of the protection from harm or the deterrent effect that the police offer, leading to weapon-carrying as a form of self-protection.¹⁸

Mental health impacts have received less attention but are an emerging theme. Analysis of the UK Millennium Cohort Study found that young people who had experienced police stops at the age of 14 years reported significantly higher rates of self-harm and a significantly higher probability of attempted suicide by the time they were 17 years old.¹⁹ It is not clear whether stop and search is causally implicated in these outcomes—and causality may be operating in either or both directions—but there are good reasons to suppose that such experiences are psychologically harmful. Feeling trapped and unable to move or act to protect oneself is a critical factor in determining whether a negative experience leaves lasting psychological scars. As a non-negotiable coercive power, stop and search has the capacity to engender precisely these feelings—particularly if it is conducted aggressively and/or the suspect is surrounded by multiple officers, handcuffed or otherwise restrained. The construction of the subject of a search as a ‘suspect’ and the removal of their agency can create a disparity between self-understanding and social recognition, constituting the basis of shame.²⁰ This is particularly so given that the vast majority of suspects appear not to have done anything wrong, with almost three quarters of stop-searches failing

to identify any prohibited or stolen articles and producing no further action. The psychological harms associated with such disparities are evident from descriptions of stop and search as embarrassing, degrading and humiliating.

The costs of stop and search weigh particularly heavily on black people, reinforcing a collective experience of being over-policed and under-protected. Disproportionality has been an ever-present feature of the Home Office’s annual statistical release, with black people being stop-searched at between 4.1 and 9.7 times the rate of white people over the last decade. The highest rates of disproportionality have been evident when overall rates of stop and search have been falling, pointing to an entrenched pattern of inequality. Recent studies show that disproportionality results from a combination of individual profiling by officers and organisational decisions to concentrate police activity in deprived urban areas with ethnically diverse populations.²¹ Targeting ‘high risk’ areas is commonly associated with proactive policing, where the ostensible aim is to prevent crime and disrupt drug markets through aggressive enforcement against low-level violations. But such an approach tends to generate large racial disparities because it promotes selective enforcement and means black people are particularly susceptible to self-generated searches by officers, including drug searches with weak grounds. This kind of selective enforcement has important downstream effects, creating ethnic disparities that are maintained throughout the criminal justice system. Court records covering 2017, for example, show that black people were convicted of cannabis possession at twelve times the rate of white people despite having lower rates of use.²²

¹⁸I. R. Brennan, ‘Weapon-carrying and the reduction of violent harm’, *British Journal of Criminology*, vol. 59, no. 3, 2019, p. 588.

¹⁹D. B. Jackson, et al., ‘Adolescent police stops, self-harm, and attempted suicide: findings from the UK Millennium Cohort Study, 2012–2019’, *American Journal of Public Health*, vol. 111, no. 10, 2021, pp. 1885–1893.

²⁰S. Scrase, ‘Re-thinking procedural justice theory through stop and search: shame, anger, and police legitimacy’, *Policing: A Journal of Policy and Practice*, vol. 15, no. 2, 2021, pp. 1476–1490.

²¹M. Shiner, et al., *The Colour of Injustice: ‘Race’, Drugs and Law Enforcement in England and Wales*, London, StopWatch, 2018; M. Shiner and P. Thornbury, *Regulating Police Stop and Search: an Evaluation of the Northamptonshire Police Reasonable Grounds Panel*, New York, Open Society Justice Initiative, 2019; L. Vomfell and N. Stewart, ‘Officer bias, over-patrolling and ethnic disparities in stop and search’, *Nature Human Behaviour*, vol. 5, 2021, pp. 556–575.

²²Shiner, et al., *The Colour of Injustice*.

The concentration of backfire effects among black people is evident from two recent surveys of adults and children in England and Wales.²³ Black adults—particularly those of Caribbean heritage—have strikingly low rates of trust and confidence in the police: 35 per cent of black Caribbean adults trust the police compared with 62 per cent of the general adult population. Among those who had been stopped and searched, 52 per cent of black adults found the experience to be traumatising compared with 45 per cent of all adults. Black children also display ‘alarmingly low’ levels of trust in the police: only 28 per cent of black Caribbean children trust the police compared with 73 per cent of all children. Additionally, one in four black boys (24 per cent) would not tell police if they had been threatened with a weapon in their local area. Half of all children who had been stopped and searched were less trustful of police as a result, with a similar proportion finding the experience to be traumatic (45 per cent of black children and 48 per cent of all children). When asked what should be done to improve stop and search, 73 per cent of children agreed that the police should address disproportionality.

The policy challenge

The enduring costs of stop and search represent a significant policy failure and attest to the ability of the police to resist externally imposed reform agendas. That the police have been so resolute in defence of the powers cannot be explained by their contribution to crime control, despite frequent claims that they are a ‘vital tool in the fight against crime’. The evident failings of stop and search in this regard suggest that its utility lies elsewhere: in providing tangible evidence that police are doing something about crime and the extra-legal function of monitoring and controlling marginalised populations. This uncomfortable reality cannot be acknowledged openly, because it violates the legal principles that legitimate the powers and demands a degree of cognitive dissonance. By highlighting the discriminatory reality of stop and search, the

²³A. Evans, P. Olajide and J. Clements, *Crime, Policing and Stop and Search: Black Perspectives in Context*, London, Crest Advisory, 2022; A. Evans, et al., *Forgotten Voices: Policing, Stop and Search and the Perspectives of Black Children*, London, Crest Advisory, 2022.

reform agenda exposes this dissonance, giving rise to powerful forms of denial. The police organisation’s assumed sense of virtue makes it particularly difficult for officers to accept that stop and search is a source of moral harm.

The reforms proposed by Lord Scarman were undermined by a police-orchestrated counter-attack that fostered the stereotype of the ‘black mugger’ and a similarly defensive response was evident in relation to the Lawrence inquiry even though the reforms it proposed were relatively modest.²⁴ Despite linking the problem of stop and search to institutional racism, the inquiry recommended that the powers should remain unchanged and focussed on bolstering existing procedural safeguards. Following the inquiry’s recommendations, ‘voluntary’ stop-searches were abolished and officers were required to record stops that did not progress to a search (known as ‘stop and account’). These modest reforms were successfully resisted by police, who considered them part of an attack on their collective integrity, spearheaded by the ‘accusation’ of institutional racism. The requirement to record stop and account was removed in 2011, while the use of stop and search increased sharply and became more disproportionate.

The post-riots reforms introduced by Theresa May proved more successful, but failed to tackle ethnic disproportionality and were ultimately undermined by police resistance and a lack of consistent political leadership. Use of suspicion-based powers fell to a quarter of their pre-riots peak by 2017–18, while the resulting arrest rate doubled amidst marked improvements in the quality of the underlying grounds.²⁵ Despite these improvements, stop and search continued to focus on low-level drug offences rather than priority crimes and became more disproportionate as black people were stop-searched at almost ten times the rate of white people. With subsequent increases in the use of the powers, disproportionality has returned to pre-riots levels. Faced with entrenched ethnic disparities, HMICFRS adopted the principle of ‘explain or reform’—noting that no force could satisfactorily explain why disproportionality persists—and recommended that all forces should regularly

²⁴Delsol and Shiner, eds., *Stop and Search*.

²⁵HMICFRS, *Disproportionate Use of Police Powers*; Home Office, *Police Powers and Procedures*.

monitor a comprehensive set of data to understand the reasons for disproportionality as well as the prevalence of possession-only drug searches.²⁶ Where disparities are identified, the inspectorate advised that forces should demonstrate to the public that it has taken action to understand the reasons for the disparities and reduce them where necessary.

Resistance to the post-riots reform agenda was made explicit following Theresa May's failure to defend the government's parliamentary majority at the 2017 general election and subsequent isolation over Brexit. When Boris Johnson took over as prime minister, he made much of wanting to extend stop and search powers and quickly set about dismantling the additional safeguards introduced by his predecessor. As political support for reform fragmented, senior police leaders seized the opportunity to proclaim that criticism of stop and search had gone too far, complaining that officers were afraid of using their powers for fear of being accused of racism. They vowed to continue 'disproportionate' stop-searches of young black men, even claiming they were 'trying to decriminalise the word disproportionate'.²⁷ These developments were accompanied by marked increases in the number of stop-searches, reductions in the arrest rate and slippage in the quality of the recorded grounds, all of which point to a less considered use of the powers.

The backlash against reform has seen concerted efforts to explain disproportionality in ways that do not implicate police decision making and reposition stop and search as an efficient means of tackling knife crime. Such efforts echo earlier 'explanations' based on the available population and intelligence-led policing (see Quinton in this volume). The Metropolitan Police's chief scientific officer has developed a 'risk-adjusted disparity' index that substantially reduces the disproportionality ratio by calculating rates of stop and search for different ethnic groups based on homicides rather than the residential population,

even though homicides account for a very small proportion of crime and relatively few stop-searches are focussed on weapons.²⁸ In a highly selective misreading of the evidence, the Metropolitan Police Service has somehow used the recent Campbell Collaboration review to justify 'precision stop and search' which concentrates such activity in small areas and risks accentuating the geographic drivers of disproportionality described above. Supported by his scientific advisor, the chief constable has claimed stop and search can reduce serious violence—including attempted murder—by '50 per cent or more' in the worst crime hotspots.²⁹ Several US studies covered by the Campbell Collaboration review did identify substantial reductions in violent crime—particularly gun crime—but these effects should not be generalised to other jurisdictions where gun crime accounts for a much smaller proportion of serious violence and stop and search is much less focussed on weapons. In contrast to the US, for example, suspects in England and Wales are not routinely searched for weapons to ensure officer safety. Attempts to generalise findings from the US also ignore evidence on the ineffectiveness of police stops in Europe and the UK, as well as concerns about potential displacement effects, which prompted the authors of the review to 'urge caution in the interpretation of these findings'.³⁰

Despite concerted efforts to rehabilitate stop and search, the problem remains acute and the need for reform widely recognised. Reporting in 2021, the House of Commons Home Affairs Committee concluded—twenty-two years on from the Lawrence inquiry—that there remains a serious problem with unexplained and unjustified racial disparities in the use of the powers. The committee noted that none of the evidence

²⁶HMICFRS, *Disproportionate Use of Police Powers*.

²⁷M. Bentham, 'Met chief: we will continue "disproportionate" stop and search,' *Evening Standard*, 1 February 2021; <https://www.standard.co.uk/news/uk/met-police-london-stop-and-search-racism-b918169.html>

²⁸L.W. Sherman and S. Kumar, 'Equal protection by race with stop and frisk: a risk-adjusted disparity (RAD) index for balanced policing,' *Cambridge Journal of Evidence-Based Policing*, vol. 5, 2021, pp. 1–19.

²⁹M. Bentham, 'Met chief says stop and search can halve murder rate in London hotspots,' *Evening Standard*, 11 January 2023; <https://www.standard.co.uk/news/london/stop-and-search-met-police-london-crime-sir-mark-rowley-b1052213.html>; L. W. Sherman, 'Precision yes, pessimism no: a commentary on the Weisburd, Petersen & Fay (2023) Campbell systematic review,' *Policing: A Journal of Policy and Practice*, vol. 17, 2023, paad001.

³⁰Petersen, et al., *Police Stops to Reduce Crime*, p. 24.

adequately explained or justified the nature and scale of the disproportionality, especially in relation to searches for the possession of drugs. It also dismissed recent attempts to explain disparities as a function of violent crime—including homicide—noting that disproportionality in searches for drug possession cannot be explained in this way and that some of the highest levels of disproportionality are evident in forces with very low levels of knife crime. While highlighting the lack of progress that has been made in addressing ethnic disparities, despite various attempts at reform, the committee expressed surprise and disappointment that recommendations made by HMICFRS had still not been adopted by all forces, insisting this needs to change urgently. The Police Foundation's strategic review of policing published a year later echoed these findings, concluding that the current pattern of stop and search is not justified and that use of the powers should be reduced to promote public trust and confidence in police, particularly among black people. The Casey review expressed a similar sense of urgency, insisting that the use of stop and search 'needs a fundamental reset'.³¹

Such a reset depends on addressing systemic failings that have compromised the regulation of stop and search under PACE. Above all, perhaps, this means accepting two key lessons from recent reform efforts. First, the focus on individual officer decision making is a necessary, but insufficient condition for effective regulation. Second, the regulation and reform of stop and search should not be left to the police. Robust scrutiny and oversight of officer decision making provides an important safeguard against the misuse of the powers and the Independent Office for Police Conduct's *National Stop and Search Learning Report* contains detailed recommendations in this regard with a particular focus on disproportionality. But existing regulations have proved ineffective in tackling ethnic disparities. It is particularly telling that disproportionality increased sharply in the wake of the post-riots reforms, even though these reforms ensured greater compliance with statutory regulations, including striking improvements in officers' grounds for suspicion. This suggests that disproportionality will only be

tackled effectively by identifying key drivers and putting specific measures in place to combat them. The Police Race Action Plan developed by the National Police Chiefs' Council (NPCC) and College of Policing provides a framework for addressing such drivers through its commitment to eliminating any racial bias or discrimination, treating racial disparities as problems in themselves, regardless of their causes, minimising unintended harms caused by actions owing to their differential impact on black people and reducing the risk of criminalising black people.

Delivering on these commitments means addressing the selective enforcement of drug laws, deprioritising drug possession offences in favour of more serious crime and combating the concentration of aggressive proactive policing in areas where black and other minoritised populations tend to live. HMICFRS has recognised the need for a national debate on the policing of controlled drugs through stop and search in its spotlight report on disproportionality, while the IOPC's national learning report recommends that the Home Office should consider whether the smell of cannabis alone provides reasonable grounds for a stop and search and whether any changes are required to PACE Code A. The commitment to reducing the risk of criminalising black people by ensuring they benefit from early action, prevention and diversion also lends itself to a general policy of dealing with drug possession offences via out-of-court disposals. To offset the harms associated with proactive policing, such approaches should be decoupled from aggressive enforcement and aligned with preventative interventions—including problem-oriented policing and situational crime prevention—that bring greater crime reduction benefits without the backfire effects associated with stop and search. The policing of serious violence should, in addition, be subordinate to and managed within an evidence-based public health approach. Other measures that would help mitigate the harms of over-policing include repealing suspicionless powers on the grounds that they are highly disproportionate and ineffective and adding specific safeguards to PACE Code A that recognise the particular vulnerability of children.

One of the biggest failings of PACE is its reliance on police to self-regulate and abide by the legal provisions governing the use of stop and

³¹Casey, *Baroness Casey Review*, p. 322.

search. Complaints about misuse of the powers are mostly dealt with by the police themselves and rarely—if ever—get to court, while the influence of central government is largely mediated through arm's length institutions that may make recommendations, but have no powers to give orders for change. The absence of a robust enforcement mechanism means a key part of the regulatory machinery is missing and recommendations may simply be disregarded. Despite clear warnings from the Lawrence inquiry, for example, police have continued to try to justify disproportionality without being seen to address vigorously the discrimination that is evident. The refusal by the Commissioner of the Metropolitan Police to accept the force is institutionally racist following the Casey review demonstrates a residual resistance that continues to undermine reform and the efficacy of self-regulation. This kind of ongoing resistance led the National Black Police Association to withdraw support from the Police Race Action Plan amid claims of broken promises, and to call for the work to be taken away from police chiefs and replaced with a plan that has 'real power to force through improvements in all police services'.³² The Independent Scrutiny and Oversight Board expressed a similar sense of frustration when it called for greater dedication to the Race Action Plan from central government to ensure 'the police do not mark their own homework', insisting that scrutiny and accountability 'should be in the hands of our elected officials, who can provide resourcing and make legislative, policy and other permanent changes to ensure that society has a standing chance at seeing an anti racist police service'.³³ To overcome reform resistance, the government should honour Theresa May's

pledge to introduce primary legislation to ensure stop and search is used fairly, effectively and proportionately. Such legislation should enable key statutory oversight bodies—such as HMICFRS, the IOPC and College of Policing—to do more than just make recommendations and empower them to set mandatory professional standards, with the ability to suspend poorly performing forces from using stop and search powers until such standards are met.

The reforms introduced by Theresa May demonstrate that the regulation of stop and search is ultimately a political matter, but her leadership on the issue was the exception rather than the rule. Senior Conservative politicians have—for the most part—been myopically supportive of police and unsympathetic to the reform agenda, while their Labour counterparts have been hamstrung by the fear of appearing 'soft on crime'. The resulting lack of political leadership has created a sense of inertia, allowing police to resist change successfully and making it all but impossible for political parties to talk seriously about reform. Only a royal commission, perhaps, can break through the inertia by allowing for a non-partisan consideration of the issues. The Royal Commission on Criminal Procedure (1978–1981) provides a notable precedent that was successful in bringing about reform, including the introduction of PACE.³⁴ Although it can be lengthy and time consuming, the commission process provides the most likely means of ensuring that lessons are learnt from all that has followed since then.

Conclusion

The policy response to stop and search has been undermined by a stubborn gap between knowledge and action. That stop and search is 'a vital tool in the fight against crime' remains an article of faith for many, despite consistent evidence to the contrary. The refusal to act on what we know comes at considerable cost to marginalised communities, leaving them exposed to the double burden of being over-policed and under-protected.

³²V. Dodd, 'Police in race crisis as minority ethnic officers end support for action plan', *The Guardian*, 20 June 2024; <https://www.theguardian.com/uk-news/article/2024/jun/20/police-in-race-crisis-as-minority-ethnic-officers-end-support-for-action-plan>

³³Independent Scrutiny and Oversight Board, *Police Race Action Plan: Annual Feedback Report May 2023—May 2024*, London, National Police Chiefs' Council and the College of Policing, 2024, p. 3. H. Siddique, 'Plan to combat police racism needs full support of home secretary, report says', *The Guardian*, 15 July 2024; <https://www.theguardian.com/uk-news/article/2024/jul/15/plan-to-combat-police-racism-needs-full-support-of-home-secretary-report-says>

³⁴N. Newson, *Royal commissions: Making a Comeback?*, UK Parliament, London, 2020; <https://lordslibrary.parliament.uk/research-briefings/lln-2020-0094/>

Although the problem of racism and other forms of discrimination has been officially recognised for decades, the failure to act adequately on this knowledge has been highlighted repeatedly by a series of inquiries, investigations and inspections. Existing regulations continue to focus on individual officer decision making, despite the Lawrence inquiry's emphasis on the institutional nature of the problem, and are ill-suited to addressing broader organisational drivers. This anomaly has been magnified by further regulatory deficits, including the absence of sanctions that are likely to promote voluntary compliance with PACE, the lack of enforcement power available to key statutory oversight bodies and a failure of political

leadership. Increases in disproportionality following reform efforts attest to the inadequacy of existing arrangements and point to a viscous cycle of reform failure and motivated resistance. Without decisive action to break this cycle, history is set to repeat itself.

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