



Stop and think

The recently published report by Release/London School of Economics on the ethnic disparities in drug law policing has brought the controversy back into the limelight. But, argues **Geoff Monaghan**, the issue of stop and search is not black and white – but fifty shades of grey...

Let me make it clear from the outset that I acknowledge the legitimacy of the authors' concerns and have no hesitation in accepting the fact that members of black, Asian and minority ethnic (BAME) groups – black suspects in particular – appear to be treated differently from white suspects at a number of points

between arrest and conviction. They are also over-represented in stop and search data. As a former detective, I know full well that some (perhaps many) police officers don't always conduct their search, arrest and other investigatory powers in strict accordance with the law and codes of practice. In fact this point

is supported by this year's report by Her Majesty's Inspectorate of Constabulary (HMIC) on stop and search powers. Furthermore, I accept that there are documented cases that confirm ethnic bias in officer decision-making about who to stop and search and/or arrest.

However, I believe that the report's

overall conclusion, that the enforcement of the Misuse of Drugs Act (MDA) 1971 unfairly focuses on black and Asian communities, is flawed, and so the recommendations are less than sound. The report also contains some factual errors and misleading statements that need to be discussed.

Police services in Britain use a number of tactics to detect drug offences. The most high profile and controversial of these is the stop and search power provided by section 23 (2) of the MDA and regulated by sections 1- 6 of the Police Criminal Evidence Act (PACE) 1984 and Code A of the PACE Codes of Practice. There is no escaping the fact that the power to stop and search a person for controlled drugs is intrusive and can undermine police-community relations. Widespread concerns over the legality and effectiveness of this power date back to the 1960s. Against this backdrop, numerous studies have been undertaken, many of which show BAME and especially black people, are stopped and searched at higher rates than white people. However, as a number of researchers have noted, the higher rates could be due to a variety of factors, ranging from bias on the part of individual police officers; the targeting of areas that have high concentrations of people from BAME communities; the population 'available for stop and search' (meaning 'being out and about on the streets') including larger proportions of people from BAME groups than resident populations; or to more crimes of a certain kind being committed by people from BAME communities.

For example, the Release/LSE findings appear not to take into account the research conducted by MVA Consultancy and Miller for the Home Office in 2000. This showed that resident population measures give a poor indication of the populations actually available to be stopped and searched. Their research concluded that overall, across the five study sites, the findings did not suggest any general pattern of police bias against those from BAME groups. Importantly, their findings also suggest that disproportionality is, to some extent, a "product of structural factors beyond the control of the police". They go on to say: "... they [the police] may lack the power to eliminate disproportionality, based upon residential population measures,

by changing their practices. So, despite the best efforts of police forces, those from minority ethnic backgrounds may continue to be stopped and searched more often than white people."

In his seminal work on PACE, Michael Zander, Professor Emeritus of Law at LSE, summarises the position: "In regard to the sensitive question of discrimination in the use of the power of stop and search, it seems to be increasingly clear that for a variety of reasons, it is not statistically valid to compare the ethnic data in the search figures with local population statistics. But no alternative basis from which to draw valid inferences regarding discrimination has yet been devised."

THERE IS NO ESCAPING THE FACT THAT THE POWER TO STOP AND SEARCH A PERSON FOR CONTROLLED DRUGS IS INTRUSIVE AND CAN UNDERMINE POLICE-COMMUNITY RELATIONS

Taking the above points into account, the research methodology from which the authors of the Release/LSE report draw their findings regarding "racial disparities in stop and search" must surely be called into question. Indeed, I find it surprising that the authors chose not to frame their findings against the backdrop of previous research, which identifies and discusses these and other important variables.

The section of the report dealing with arrest rates arising from stop and searches also warrants careful attention. First, the authors make the point that the arrest rate for stop and searches for drugs in 2009/10 was only 7% (the same is true for 2010/11 and 2011/12). They then go on to say: "However, the police are now measuring success based on 'hit rates' rather than 'arrest rate'. Hit rates also include instances where people who are caught in possession of small amounts of cannabis are issued with a cannabis warning or a Penalty Notice for Disorder (PND) [or reported

for summons] instead of being arrested." They point out that the Metropolitan Police Service (MPS) has adopted this approach and has a hit rate of 18.3%. I see nothing wrong in using this approach, since to do otherwise would result in a distorted picture regarding the effectiveness of stop and searches for drugs. For example, if a constable carries out 50 stop and searches for drugs in a year but arrests only 2 people, the arrest rate (4%) isn't impressive. Understandably, on seeing this information, many people infer that 48 (96%) of the other searches were negative and by extension, possibly unlawful ("How come, if you had reasonable grounds to search the person for drugs, you didn't find any?").

But if, in addition to the arrest, the constable reports 3 of those stopped for summons, issues a cannabis warning to a further 3 and a PND to another 2 people, then the 'hit rate' of both seizures and disposals totals 10 (20%), which is impressive. So, arrest rates alone are a poor indicator of measuring the effectiveness of stop and searches for drugs.

A further point is that arrest rates arising from stop and searches are relatively low given the legal constraints on strip searches and intimate searches. All savvy drug users/traffickers need to do is hide their drugs in their underwear, or body orifices, including mouths, ears and noses in order to avoid detection. And every user/trafficker knows that drugs concealed in the mouth are easily swallowed, or easily retrieved from pockets and discarded. It's interesting to note that in keeping with many other studies on stop and search, the authors don't appear to have found any young people, either through direct questioning or by speaking to parents or youth workers, who admitted to having been stopped and searched whilst in possession of drugs but managed to evade detection. Perhaps a survey along these lines would prove interesting and shed some additional light on 'hit/arrest' rates?

The Release/LSE report makes the additional point that measuring success based on 'hit rates' rather than 'arrest rates' will "arguably result in the police prioritising the detection of low level cannabis offences at the expense of policing more serious crime." Even the

most cursory trawl of police and Police and Crime Commissioner websites, regarding drug enforcement activity, puts paid to this notion. I know from my time with the police service that 'low level' cannabis offences haven't been a focus of enforcement activity since the early 1980s and that it's long been the case that a significant proportion, if not the majority, of arrests for simple possession of cannabis are incidental to other policing activity.

A further area of concern stems from the fact that the Release/LSE report fails to take account of at least two important variables, when discussing the "racial disparity" in the context of cannabis warnings and simple cautions. The first variable is that before either can be issued, the offender must make a clear admission of guilt. We know from research conducted by Phillips and colleagues in 1998, that black and Asian people are less likely than white suspects to provide confessions.

Unsurprisingly, they go on to say that the lower cautioning rate for black and Asian people was strongly linked with the lower admission rate among these two groups (they do point out that this in itself begs the question of why the admission rate was lower among ethnic minority suspects).

The second important variable relates to the fact that those with previous convictions are less likely to be cautioned. This factor was highlighted in the Philips study. In accordance with the Association of Chief Police Officer (ACPO) guidance, offenders caught in possession of cannabis are not eligible for a cannabis warning in cases where there is a previous cannabis warning, a PND or conviction recorded against them. (At this point, it's worth noting that the Release/LSE report suggests that offenders are eligible for repeat cannabis warnings, but this isn't correct.)

I'm also struck by the authors' tendency to make assertions, which simply don't stand up to scrutiny. For example, the authors state: "...the tactics used by the police to detect drugs are becoming ever more intrusive." However, all the major tactics employed by police services today have been around for many years. Test purchasing dates back to at least 1869, undercover drug buys to the Great War, search warrants for drugs to 1923, controlled deliveries to at least

the early 1960s and powers of stop and search (at a local level) to Victorian times. To accentuate their point, the authors go on to say: "People can be detained and strip searched before arrest if the police have 'reasonable suspicion' that they are in possession of drugs." But the tactic of strip-searching suspects for drugs prior to arrest was well established by the 1960s. What is true, is that since the late 1980s the application of these tactics has become more intrusive since they are all now heavily regulated and most require the prior authorisation of senior ranks (e.g. inspector, superintendent, Assistant Commissioner).

THE PURPOSE OF CANNABIS WARNINGS, PNDs AND FOR THAT MATTER, SIMPLE CAUTIONS, IS TO DIVERT OFFENDERS AWAY FROM THE CRIMINAL COURTS – NOT THE CRIMINAL JUSTICE SYSTEM. TO THIS END, THEY ARE, GENERALLY SPEAKING, SUCCESSFUL

The authors have this to say about net widening: "In terms of cannabis warnings, and the subsequent introduction of PNDs, the impact has been one of net widening. Rather than diverting people away from the criminal justice system, more people are being caught up in it." But the purpose of cannabis warnings, PNDs and for that matter, simple cautions, is to divert offenders away from the criminal courts – not the criminal justice system. To this end, they are, generally speaking, successful. Also, where is the evidence to show that offenders lucky enough to avoid arrest and prosecution because they were issued with a cannabis warning or a PND, would not have been arrested and cautioned or prosecuted prior to the introduction of these out-of-court disposals?

Finally, I was intrigued to read that the authors recommend that "those caught in possession of cannabis should be dealt with in accordance with the 2009 ACPO guidance on cannabis for personal use." Dr David Bewley-Taylor and I recently recommended that ACPO urgently revise its guidance. In its current form, the guidance regarding the powers of arrest under section 24 PACE Act 1984 is misleading and as a result, the ACPO 'policy of escalation' creates unnecessary legal risks for both police officers and suspects.

The Release/LSE report provides much-needed data about the processing of BAME groups compared with their white counterparts for drug offences from stop and search up to conviction. In line with other similar studies, the research clearly shows ethnic disparities, particularly between black and white suspects. However, as noted by a number of researchers, it is no easy matter to interpret the meaning and significance of these differences. The report places far too much reliance on what, at least to my mind, are flawed research techniques. Consequently, the authors provide few insights as to what lies behind the ethnic disparities they identify. More to the point, their conclusions and recommendations, based on rather flimsy assumptions, are unconvincing.

Clearly, something urgently needs to be done to help us increase our understanding of why, despite the welcome changes in legislation, procedures, training, supervision and monitoring, ethnic disparities at all points of the criminal justice system continue. We also desperately need some research, which specifically looks at the effectiveness of drug enforcement tactics. I have some ideas...

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