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The Ongoing Impact of the Misuse of Drugs Act on the Racialised Policing of Black Communities

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Introduction

In his groundbreaking book on the 'social meaning of drug use', the critical criminologist Jock Young (1971) predicted that the Misuse of Drug Act (MDA) would lead to disproportionate impacts on 'bohemians' and people who are racialised as Black. For him, the Act was an 'absolutist' attempt to control people who were seen as potentially dangerous 'outsiders'. This places the Act in a broader history of subjugation of the scapegoated 'other' in drug policy (Wincup and Stevens 2021), in British colonialism abroad (Koram, 2019), but also in the control of migrant communities within the UK (Kohn 2001; Mills 2013).

In this chapter we look at the ongoing impacts of the MDA on the policing of Black communities from two mutually reinforcing perspectives. First, we look at data generated by police forces which shows the accuracy of Young's prediction. The numbers of people stopped, searched, arrested, and sentenced clearly show that the Misuse of Drugs Act is a major driver of the overall ethnic disproportionality of policing in England and Wales, and especially in London. Then, we use qualitative data from an ethnographic study of the lived experiences of being subjected to this racialised policing in London. Going beyond the usual focus on the over-policing of young Black men, we also consider the experiences of women, and of the friends and families of people who are directly policed.

We bring these data together to consider how these experiences affect not only the relations between Black communities and the police, but also their wider relationship with the British state. In closing, we will discuss how the powers that the police have to stop, search and arrest people under the MDA could be reformed or repealed. We argue that this could both reduce the harms of criminalisation and improve the lives of people who are racialised as Black.

We start here by describing the powers that police have in enforcing the MDA. Section 5 of the MDA makes it an offence to possess the drugs listed in the Act's schedules. Section 23 authorizes stop and search where an officer has 'reasonable grounds to suspect' that an individual is in possession of controlled drugs. Stops are conducted under the Police and Criminal Evidence (PACE) Code of Practice 2005 for the exercise of these statutory powers, which enables officers to 'allay or confirm suspicions about individuals without exercising their power of arrest'. Officers are required to inform the individual of the reason for the stop and search, but many are conducted without explanation. As shown below, the majority of stops and searches are for suspected drug offences. 'The smell of cannabis' is

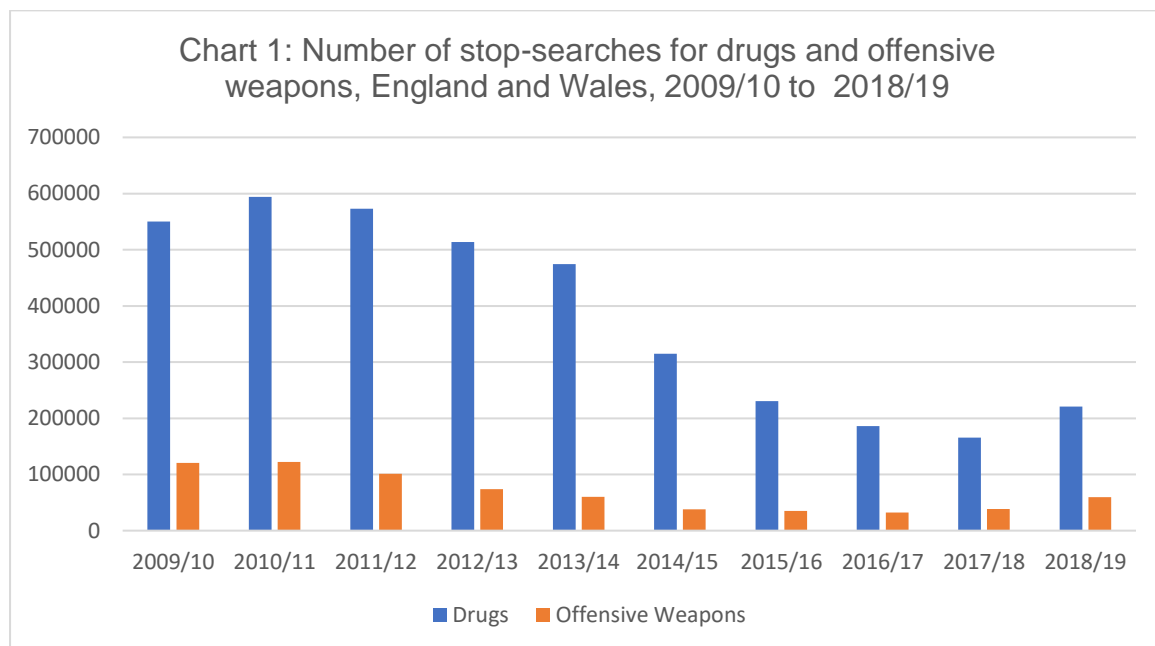
frequently the pretext for unjustified and racially discriminatory stop and searches. Many stops and searches fail to meet the threshold for reasonable suspicion (HMICFRS n.d.)

Quantifying disparities

In this section, we focus on the statistics which demonstrate how the MDA drives ethnic disproportionality in the criminal justice system. We draw on official records from the annual Home Office collection on police powers and procedures in England and Wales statistics, in addition to the Ministry of Justice publication on statistics on the criminal justice system. We look specifically at data from and prior to 2019 in recognition that 2020 was an exceptional year due to the COVID-19 pandemic.

Stop and search

While the use of stop and search powers is often presented as being tackle knife-crime, drugs dominate stop and search policing. In the year ending March 2019, 61% of all stop and searches in England and Wales were for drugs. This is compared to only 16% of searches being undertaken for offensive weapons (see chart 1). There is however significant variation in the use of stop and search between different police force areas. For example, 62% of stop-searches in Avon and Somerset were for drugs, compared to 45% in the West Midlands. The data suggests that, contrary to political rhetoric, stop and search powers are not always used to target the most serious offences.

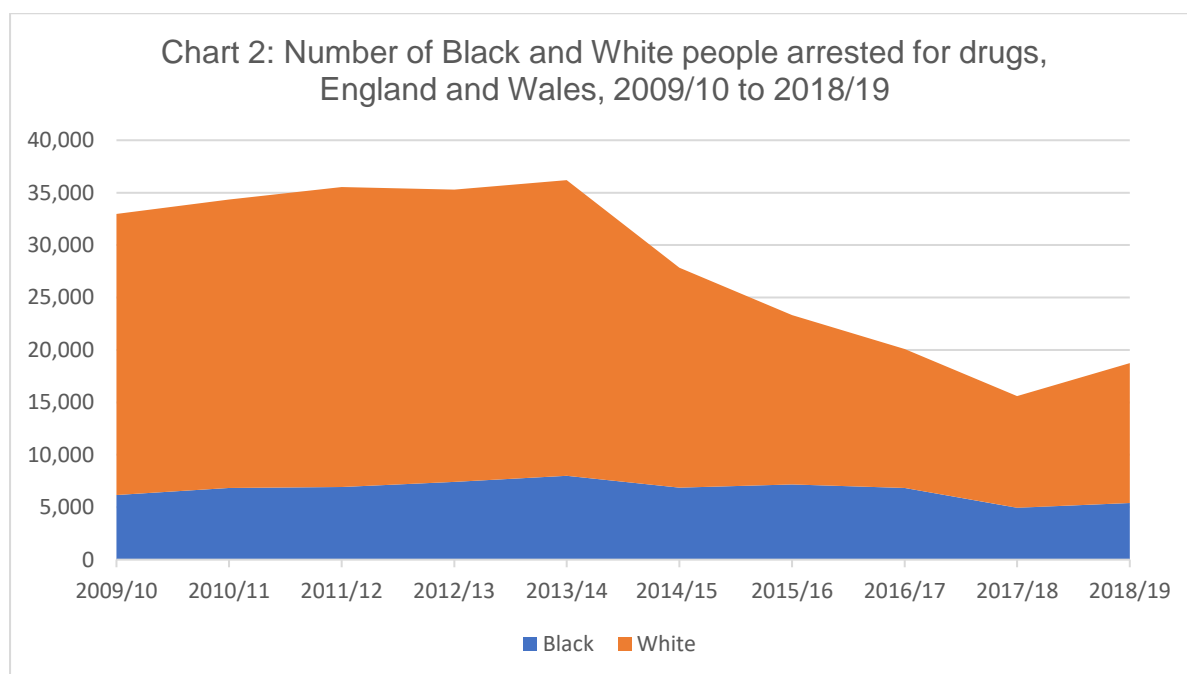


The number of stops and searches fell after 2010, as police numbers were cut and use of the stop and search was restricted by the 'Best Use of Stop and Search Scheme' (BUSSS). As the numbers fell, stop and search powers were increasingly concentrated on drug offences. The proportion of searches for drugs has increased over the last decade, accounting for 48% in 2009/10 and 61% in 2018/18.

Stop and search powers are disproportionately applied to ethnic minority groups, particularly young people and those identifying as Black (Shiner et al, 2018). In 2019, Black people were stopped at a rate nine times higher than their white counterparts. Similarly, Asian and people of Mixed-Heritage were stopped for drugs at a rate three times higher than white people.

Arrests, sentencing and imprisonment

Drug law enforcement is a key gateway into the criminal justice system. Offences under MDA accounted for 46% of all arrests in 2019. Black people are arrested for drugs offences at 11 times the rate of white people. There have been reductions in the overall number of arrests for drug offences, following a reduction in the overall use of stop and search. However, these have not been evenly distributed across different ethnic groups, leading to increased racial disproportionalities. Arrests from drug searches halved for white people between 2009/10 and 2018/19. They fell by only 13% for Black people (see chart two). This deepening inequality in the application of the Act drives ethnic disparities in later stages of the justice system.



More than 40,000 people were prosecuted for drug offences in 2019. Similarly to previous stages, Black people were more likely to be proceeded against for drug offences; at 8.7 times the rate of white people (see table 1), increasing to 9 times for possession offences. Black people are more likely to be sent to prison for drug offences than other defendants. Black people are sentenced to immediate custody for drug offences at 8.2 times the rate of White people but given suspended sentences at 4.9 times the rate of White people. This reinforces findings by the Sentencing Council on the association between an offender’s sex and ethnicity and the sentence imposed at the Crown Court for drug offences (Sentencing Council, 2020).

Table 1: Disproportionality in defendants proceeded against, convicted and sentenced for drug offences in 2019, England and Wales

	Black	Asian	Mixed	Other
Proceeded Against (charged)	8.7	2.0	3.6	2.8

All drug offences	Found guilty	8.3	1.8	3.3	2.7
	Total Sentenced	8.2	1.8	1.9	2.7
	Immediate custody	8.2	2.1	3.4	4.0
	Suspended sentence	4.9	1.3	2.3	1.6
	Community sentence	9.1	1.8	3.8	2.7
	Fine	8.8	2.0	3.1	2.6
	Absolute discharge	5.8	1.0	3.4	4.6
	Conditional discharge	7.6	1.5	3.4	1.9
	Otherwise dealt with	7.9	1.1	2.8	2.7

The data shown above have not been adjusted for any of the many factors that may influence these disparities, in addition to direct and indirect discrimination against Black people. Other explanations that have been put forward include the younger average age of Black people, their geographical concentration in higher crime and more highly policed areas, the idea that more Black people are visibly ‘available’ to be stopped on the street, and the notion that Black people use drugs or offend at different rates to white people (CRED, 2021; Waddington et al., 2004).

However, the most regular and large-scale survey of drug use consistently reports lower, rather than higher, rates of drug use among people categorised as Black compared to white. Attempts to explain away racialised disparities in drug policing fail to acknowledge that young Black people are more likely to be targeted by the police, even accounting for their rates of drug use or offending (Stevens, 2008; Vomfell & Stewart, 2021). And these statistical disputes have little relevance to the actual experiences of Black communities, or for how these disparities affect the relationship between these communities, the police, and the state.

The intersectional experience of being policed for drugs

The records show that people who are racialised as Black are targets of drug law enforcement, but these statistics cannot tell us how this disproportionality is experienced. Here, we draw on ethnographic data focusing on the intersectional experience of policing in Black communities. The research took place in London in 2020 and 2021, involving field observations and interviews with 50 young people, their families, and community workers. Participants have been anonymised in this chapter.

We find that, while Black people across the spectrum remain disproportionately subject to stops, arrests and convictions for drug offences, this is mediated by age, immigration history, gender, and class. This research reveals that the harms imposed by the MDA are experienced more sharply by some Black people than others. However, in the 50 years since the MDA was enacted, multiple generations have experienced its negative, racialising effects.

Experiences of drug policing generally peak in adolescence and early adulthood. Participants in the research held relatively positive perspectives of the police in childhood that eroded

over time due to negative direct and reported experiences. Parents and guardians who had arrived in the UK as adults had few experiences of drug policing, but many second and third-generation participants with a Caribbean background had experienced frequent drug stops and searches in their youth.

Many stops and searches for drugs were initiated by the police for the 'smell of cannabis'. Adults described a gradual reduction in the level of threat they were perceived to pose as they transitioned from youth to adulthood. However, the long-term, intergenerational experience of drug policing remains a key driver of negative perceptions of the police in Black communities. Many participants described receiving instructions from their parents to stay out of trouble and on how to interact with the police. This is sometimes referred to as 'the Talk':

"My dad had bad experiences with the police when he was young so he always told us to just stay out of their way...but if we did get stopped, we should be polite, don't be aggressive. Just try and calm the situation down, cos sometimes [officers] are on one [acting unreasonably]".

Ahmed, 15, North London

Younger participants were mindful of their rights, and many opted to record stops and searches on phones to ensure there was evidence of the incident. This provided a feeling of agency and reduced perceptions of powerlessness against drug policing. Marcus, a 38-year-old man of mixed British-Caribbean heritage, explained that in his youth he had experienced numerous stops and searches, the majority of which were for suspected drug offences. He intended to discuss his negative experiences with "viciously racist" police officers with his daughter, echoing the intention of many parents with personal experiences of racialised drug policing in their youth. This indicates that, while Black people may 'age out' of stop and search, these experiences have a lasting effect that are passed from generation to generation, creating entrenched negative perceptions of the police.

The use of 'the Talk' is influenced by immigration history. Lanre, 65, a Nigerian man who moved to the UK as an adult, had no direct experiences of drug policing. He characterized his experiences of policing in Nigeria as "so terrible" that he had a relatively positive attitude towards the police in the UK as "they are nothing compared to [the police in Nigeria]". Lanre did not consider it necessary to have 'the Talk' with any of his four children. This reinforces research finding that first generation immigrants tend to hold more positive attitudes towards the police than their children and grandchildren (Bradford et al., 2017). The relatively positive perspectives of first-generation immigrants may be due to both cultural expectations about British institutions that influence the decision to migrate in the first place, alongside a lack of direct experiences of policing and negative experiences of policing in countries of origin. By contrast, Lanre's 35-year-old son Lekan described being stopped and searched frequently by aggressive police officers as a teenager for suspected drug offences. As a result, he intended to have 'the Talk' with his children in the future, displaying a different response to racialised policing than his father, despite both being male, living in the same neighbourhood and having similar socio-economic status.

Black women and girls experience disproportionately high levels of stop and search compared to their white counterparts. Increasing focus in recent years on the role of female adolescents in gangs (Young, 2009) has led to calls for expanding stop and search. Black female participants described receiving harsh treatment from the police:

“They don’t even care that you’re a girl. They do the same to you as if you were a man. And it’s just like...would you be treating me like this if I was white?”

Portia, 23, East London.

Female participants reported aggressive treatment in police interactions, being regarded as troublemakers, heavily supervised and given severe punishments. This is exacerbated by broad police failures to understand the specific cultural realities of many Black women caught up in the drug-trade e.g., relationships of coercion, violence, abuse and exploitation, which frequently serve as the backdrop to drug couriership (Allen et al. 2003). The gendered experience of policing is also mediated by class, which consistently emerges as a key factor in managing police encounters:

“The two times I’ve [been stopped and searched], I was basically able to talk my way out of it. Once they heard the way I speak I guess they decided I wasn’t one of ‘those Black people’”.

Cece, 25, North London.

Middle-class Black women like Cece may be able to negotiate experiences of drug policing in accordance with the norms of middle-class femininity. Participants identifying as working-class were considerably more likely to have frequent experiences of drug policing than middle-class respondents. They described feeling ‘powerless’ in managing policing interactions and instead focused on avoiding the police entirely. However, visual indicators of professional respectability enable some working-class participants to reduce experiences of drug policing. Mohson, a 39-year-old youth worker, encouraged the young ex-offenders he employed to display the youth organization’s badge to pre-empt police interactions by indicating responsibility and respect for the law.

This study confirms that drug policing represents a key driver of racially disproportionate and racially discriminatory policing of Black and minority ethnic communities. These findings convey that the same practices of drug policing are experienced differently within different sectors of Black communities.

The effect of drug policing on relationships between Black communities, police and the state

Experiences of drug policing are the norm for many Black British people and many describe feeling targeted by the police throughout their lives. The frequent and highly visible experience of stop and search not only entrenches false narratives about Black predilection to drug use, but also engenders distrust of the police in Black communities. The impact of drug policing extends beyond the stop and search itself, all too frequently resulting in long-

term harmful consequences for Black communities, hindering education, housing, and employment opportunities across generations:

“Criminalisation is the fulcrum of racialised social exclusion; it is where the metaphor of social exclusion is transformed into an explicit, formal social practice and into the personal experience of being literally excluded from society through imprisonment and all that flows from that” (Bowling & Phillips, 2002).

Many participants felt unable to move freely through their neighbourhoods due to fear of police ‘harassment’, and describe adapting their behaviour to avoid police interactions:

“Half the time when you’re out and about and they stop you, you just want to go back to your yard [home], ‘cos you know they’ll just keep stopping you so you may as well just stay at home cos then they can’t get you.”

Corinne, 15, North London.

As Corinne describes, the lasting impact of these interactions is fear and anxiety, limiting the freedom of many young Black people to move freely. Participants also described a lack of respect, hostility, and aggression in police interactions. Many young people report unjust stop and searches for drugs escalating to caution or arrest for public order offences due to their resistance being misinterpreted as aggression by police officers (Keeling, 2017). Zane, 13, was tackled, tasered and handcuffed by plainclothes police officers after being mistaken for a suspect in a drug offence. Zane described his fear at seeing adult men chasing him and running away from them, which he felt had been misinterpreted as fleeing. After being released without charge, Zane’s parents reported the incident to the Independent Office for Police Conduct. However, fear and mistrust arising from direct and reported experiences of police violence prevents many Black people from seeking police assistance. Complaints are often felt to be ‘pointless’, contributing to feelings of isolation and dehumanisation:

“You just feel like the police don’t trust you, don’t like you and of course you know why... ‘cause you’re Black or maybe because of what you’re wearing or whatever. It makes you not trust them either. Why would I trust them? I know what they’re thinking. I wouldn’t even bother making a complaint, ‘cause I know it wouldn’t do anything”

Jamal, 35, London.

Low levels of trust in the police are linked to lower conviction rates and ineffectiveness of police investigations into serious violent offences (Deuchar et al., 2019), reducing both co-operation and reporting. A result is the widespread belief that the police do not take Black victims of crime seriously. As one woman who witnessed a crime said,

“We called them and they didn’t show up.”

Viola, 27, London.

Viola drew on her previous negative victim experiences and vicarious experiences of Black people more broadly as the basis for her lack of confidence in the police. Her fear of the police stemmed from negative community narratives. This aligns with research finding that Black and Mixed-race victims of crime are less likely to report crimes than other ethnic minority groups (Yarrow, 2005), reinforcing the harmful impact of drug policing on community experiences of policing.

Experiences of drug policing are a key factor in relations between Black people and their socio-political environment. The role that the police as a core state institution plays in status-conferral is acutely felt by people in Black communities. As the police is a 'face' of the state, drug policing plays a central role in showing Black communities that their position within British society is highly conditional. The effects of disproportionate drug policing go beyond directly empowering the state to exercise social control through coercion, containment, and surveillance:

"It's their way of reminding you that you don't have anything. Like, it doesn't matter what you do, how hard you work, how much money you earn...at the end of the day, you're still just a Black man".

Lekan, 35, London.

Racialised drug policing emerges from the wider context of Britain's imperial legacy, and socio-political discourse surrounding race, drugs, and policing. The so-called 'war on drugs' forms an intersection between the racialised other and the state. Decades of racially disproportionate drug policing have resulted in an entrenched lack of trust and mutual hostility between the police and some Black communities, leaving many Black people across different gender, age, immigration and socio-economic brackets feeling over-policed and under-protected.

Reducing disparities, increasing trust

From both quantitative and qualitative analysis, the policing of drug offences emerges as a crucial mechanism of racialised policing. The disproportionate impact of policing on Black communities reveals that the kind of social control Jock Young warned about still underpins drug policy. The systemic failure to address ethnic disparities in the application of the MDA perpetuates a lack of legitimacy and breeds further distrust in the police. The claim – recently repeated in the government's 2021 *Beating Crime Plan* – that increased policing is the best way to protect communities is undermined by community members consistently describe feeling unprotected by the police.

Elsewhere in this book, Stevens, Eastwood and Douse propose that drug possession should be decriminalised in order to reduce harms and save money. The form of decriminalisation proposed is to repeal section 5(1) and (2) of the Misuse of Drugs Act. This would remove the criminal offence of simple possession (without intent to supply). It would also remove the power of the police to stop and search people on suspicion of possessing controlled drugs, unless there were grounds to suspect intent to supply. Such legislative reforms would reduce opportunities for the discriminatory use of discretionary police powers.

In the absence of decriminalisation, the government should introduce robust safeguards to mitigate the harms caused by MDA 1971 and drug law enforcement. Past efforts to lower the overuse of stop and search for drugs have failed to address operational failings. In 2014, the former Home Secretary Theresa May introduced the voluntary Best Use of Stop and Search Scheme and promised that stop and search would focus on violent and serious crime. In the announcement, she stated *“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.”* (Home Office, 2014). Seven years on, stop and search continues to be overwhelming used to detect drugs, disproportionately targeting Black and ethnic minority communities, leading to the deterioration of community and police relations. The government vowed to bring forward legislation to make BUSSS a statutory requirement if forces did not comply. The government should now fulfil its promise by mandating BUSSS and introducing sanctions for non-compliance.

Stop and search should be based on intelligence and not based on nebulous, unprovable grounds such as the smell of cannabis. The College of Policing’s (2021) Authorised Professional Practice (APP) has advised that it is not good practice for an officer to base grounds for search on a single factor, such as the smell of cannabis alone, or an indication from a drugs dog. However, Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS, 2021) found that police are still basing stops and searches on these grounds, The government should mandate the current College of Policing guidance on the smell of cannabis across all police forces.

Beyond legal and policy considerations, it is essential that the police make sustained efforts to improve the quality of engagement with Black communities, who feel targeted and victimized by the police based on their ethnicity. In the long term, it eradicates trust and confidence in the police and alienates entire communities. Scrutiny and accountability are key to ensuring public confidence however community scrutiny mechanisms have been described as having insufficient representation from Black and ethnic minority communities (Kalyan & Keeling, 2019). The government should mandate the current College of Policing (2020) guidance on community scrutiny, which includes a requirement for forces to consider the extent to which the composition of scrutiny panels reflect the diversity of their local areas.

In order to effectively monitor the use of police powers on people of different ethnicities, ethnicity data should be recorded accurately and consistently. The lack of data acts as a barrier to accurately identifying levels of racial disproportionality in drug stop and searches. There are a proportion of searches in which ethnicity is recorded as ‘unknown’. In the year ending March 2019, ethnic background was either not stated or not recorded in 13% of searches under MDA in England and Wales. We echo HMICFRS’s recommendation for forces to record and monitor both self-defined ethnicity and officer-defined ethnicity.

These reforms are necessary steps towards effective, targeted, evidence-informed, intelligence-based policing that does not alienate large sections of British society. Implemented correctly, reforms to drug law and policing could both reduce the harms of criminalisation and improve the lives of people who are racialised as Black.

Conclusion

We have shown that the Misuse of Drugs Act drives disparities in policing. We have also explored how these disparities affect communities who experience them. Some of these harms may be reduced by changing how the police use the powers that the Misuse of Drugs Act gives them. But we have seen police practices ebb and flow over recent years, changing with the political tide, but never substantially reducing the over-policing of Black people that is driven by the Act. More fundamental reform will require changes to the legislation, not just to the way it is enforced.

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