

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

Liberty's response to MOPAC's Draft Police and Crime Plan for London 2017- 2021

March 2017

About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

Liberty Policy

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at

<http://www.liberty-human-rights.org.uk/policy/>

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EXECUTIVE SUMMARY

Liberty welcomes the opportunity to respond to the Mayor's Office for Policing and Crime's (MOPAC) consultation, and draws on its policy and legal expertise in doing so.

- We welcome MOPAC's commitment to reviewing the Metropolitan Police Service's approach to crime committed by gangs, provided it amounts to a full review of the use of the Gang Matrix. However, Liberty urges that, in doing so, MOPAC seriously rethinks the MPS's use of this database. There is real evidence to suggest that the Gang Matrix has serious flaws, risking discrimination and division whilst targeting individuals who may have little to do with violent crime.
- We also urge MOPAC to end its adoption of the arbitrary and unfair practice of collective punishment, currently being trialled among certain London boroughs as part of Operation Shield.
- We welcome MOPAC's commitment to eliminating violence against women and girls. However, we lament the Metropolitan Police Service's decision to appeal the findings of both the High Court and Court of Appeal in the cases of *DSD* and *NBV*. We urge MOPAC to challenge the MPS's decision to appeal this important judgment and question how it fits with MOPAC's stated intention to eliminate violence against women and girls. We further urge MOPAC to lay out its plan for strategic engagement with MPS, and to include commitment to protecting the rights of women and girls against sexual violence, including the right to effective investigations of allegations of sexual assault and rape
- We also urge MOPAC to ensure that its strategy to combat hate crime – and its engagement with the MPS on this issue – includes hate crime against migrants and refugees. They form a particularly vulnerable group after the recognised spike in hate crime after the referendum on the UK's membership of the European Union, must be expressly included in any comprehensive and inclusive strategy to combat hate crime.
- We also warn MOPAC against the current Prevent strategy, a discredited and discriminatory approach based on a flawed model of extremism prevention. It accepts that the strategy has been “inconsistent and controversial” and “generated significant concerns”. We urge MOPAC to hold the MPS to account in its use of it, and take measures to review the MPS's use of Prevent in London and mitigate its discriminatory effects.

The Gang Matrix

1. As part of its consultation, MOPAC commits to “[r]eview[ing] the [Metropolitan Police Service, or MPS] approach to gang crime, including the Gangs Matrix, and support the MPS to tackle gang crime, gun crime and knife crime more effectively in London.”
2. We welcome this commitment, provided it amounts to a full review of the use of the Gang Matrix. There is serious cause for concern as to its use by the MPS, which warrant urgent and comprehensive review. We urge that, in doing so, MOPAC seriously rethink the MPS’s use of this database and, at the very least, introduce safeguards on its use, introduce greater transparency, and significantly tighten its criteria.
3. More generally, Liberty is concerned that the current Gang Matrix (i) disproportionately affects young people from black and other minority ethnic groups, (ii) feeds a popular narrative of gang violence which is inaccurate and discriminatory, and (iii) fails to properly address youth violence in the UK by which black and other minority ethnic individuals are disproportionately affected. Liberty agrees that more must be done to tackle serious violent crime in London, particularly among children and young people. However, the Gang Matrix, as it stands, is so broad a tool as to call into question its effectiveness in reducing serious violent crime, and instead risks increasing discrimination and division among London’s diverse communities.

A lack of evidence, transparency, and accountability

4. A person’s inclusion on the Gang Matrix has serious repercussions. It may be used to inform decisions on stop-and-search, and it is used in prosecutions of individuals to prove joint enterprise, increase sentencing, or as an attempt to suggest that a person is more likely to have committed the crime charged. It is also used to inform the MPS’s recent initiative, Operation Shield, which seeks to enforce collective punishment for individuals who are thought be members of or associated with gangs, with punishments reportedly including injunctions prohibiting them from certain areas and even eviction from their home.
5. And yet public remains in the dark as to crucial aspects of the Gang Matrix. A Freedom of Information Act request of 2015 provided some information, but much remains unclear.¹ For example, it is reportedly run by “[d]edicated analytical staff within [the] Met Intelligence department”. Little is known as to the procedure by which

¹ *WhatDoTheyKnow*, Patrick Kenner, ‘Gang Matrix’, 2015, available here: https://www.whatdotheyknow.com/request/gang_matrix.

individuals are added to the Matrix except through meetings at which a variety of the MPS's "partners" are said to "highlight any individuals they think should be added to the matrix or has [sic] recently come to notice". In addition:

"Gang members are usually identified by the relevant Borough Gangs teams as they have the best local knowledge of their gangs and liaise most closely with our multi-agency partners. Other units such as Met Intelligence and the Trident and Area Crime Command may also propose individuals for consideration for inclusion on the matrix based on current intelligence and/or information from ongoing investigations."

6. A 2017 report by Her Majesty's Inspectorate of Constabulary states as follows, without providing any material to indicate the source of the information or the methodology by which the matters are decided:

"For an entry on the local gangs matrix, two corroborated pieces of intelligence that the individual is in a gang are required; the level of propensity to violence is also taken into account. The matrix is used to inform the force's local and pan-London activities."²

7. Nothing is said as to the criteria by which a person's 'gang membership' is determined – or even what are the "two corroborated pieces of intelligence" – nor is there any information as to how their 'propensity to violence' is assessed
8. There is also nothing to indicate that there are any checks or safeguards on the inclusion of individuals on the Matrix to ensure that even relevant individuals are included, rather than individuals whose inclusion is inappropriate.
9. Even worse, nothing is said as to how individuals may be taken off the database, or even apply to have their names removed. As David Lammy MP has stated, as part of his review of the criminal justice system and race, "

"Prisoners I have spoken to in both adult prisons and youth offending institutions have often been frank about their involvement in criminality. But the same people have often also been insistent that they were mislabelled as gang members by the police and then subsequently by the rest of the justice system."

² Her Majesty's Inspectorate of Constabulary, 'PEEL: Police effectiveness 2016', March 2017, p. 54, available here: <https://www.justiceinspectrates.gov.uk/hmic/wp-content/uploads/peel-police-effectiveness-2016-metropolitan.pdf>.

“One member of a youth offending team told me that her team would routinely make decisions based on the information they were given about gang membership...Decisions, she said, were being made without challenging where the information came from, or whether it was reliable and up to date.”³

10. In addition, as *The Guardian* reported:

“Lammy gave the example of a parent who adopted one black and one white child. Both got into trouble and enmeshed into the criminal justice system. “But it was the black child who had wrongly been tagged with the label of ‘gang member’ and the label had stuck,” the MP said. “The parent and his adopted son had no idea how to remove the label – and his name from the gangs matrix.””

11. The FOI request also revealed that information from the Matrix is “shared with the National Probation Service (NPS) and Community Rehabilitation Companies (CRC)”. There is nothing to suggest that there are any safeguards on the use of this data, both as a matter of existing legal requirements – such as the Data Protection Act 1998 and Article 8 of the Human Rights Act, the right to private life – but also to ensure that it is appropriate for a person’s alleged gang membership to follow them through their interactions with Probation and other services. In many cases, in view of the stigma which may attach to the designation, and the escalated responses which may be deemed to be justified as a result of it, it may not be appropriate.

An irrational and unfair approach

12. As academics have commented, there is real lack of solid research evidence as to the existence and nature of gangs in the UK to buttress policy approaches by decision-makers.⁴ Indeed, there is evidence to suggest that a singular focus on gangs is misplaced. In one 2008 study in Hackney, for example, academics found that “[m]ost ‘street-level’ violence was low level and appeared to be connected with what we came to identify as volatile peer groups. These we defined as groups that engaged in an array of delinquent behaviours, including violence, but for whom crime

³ *The Guardian*, ‘Met ‘may be overly targeting BAME youths as gang members’’, 19 July 2016, available here: <https://www.theguardian.com/uk-news/2016/jul/19/metropolitan-police-may-be-overly-targeting-bame-youths-as-gang-members>.

⁴ See, for example, see Williams, P., ‘Criminalising the Other: challenging the race-gang nexus’, in *Race & Class*, Institute of Race Relations, Vol. 56(3), 2015, pp. 18-35.

and delinquency is not intrinsic to the identity and practice of the group as the gang as it is typically defined today.”⁵

13. Indeed, whilst accepting that gangs can pose a threat of serious violence, they found that “[t]he attention the gang receives may reflect more the sensational and (often) inaccurate coverage produced by the mass media than it does the objective reality of the street.” As a result, the authors conclude, “the solution to preventing urban violence will not be found by sanctioning crackdowns or gang suppression programmes.”

14. This is corroborated by statistics provided by the UK’s main efforts in tracking alleged gang activity, including the Metropolitan Police’s Gang Matrix. As the Centre for Crime and Justice Studies found in respect of the Greater Manchester Police’s Xcalibre Task Force which operates a database similar to the Gang Matrix, “The analysis had found that those identified as ‘gang’ involved were older, male and surprisingly, assessed as posing a lower risk of harm, with a reduced likelihood of reoffending. A significant proportion (21%) of people registered to the police ‘gang’ list had no risk assessment completed, indicating they had never been convicted of a criminal offence. A further 21% had no record of conviction within the previous three years.”⁶

15. As to the Metropolitan Police’s Gangs Matrix, MOPAC’s own figures demonstrated that “only 6% of individuals are assessed as within the most harmful red category, half of whom are in custody,” with ‘the majority (57%) currently assessed as within the lowest (green) status.’⁷ In 2014, only a third were subject to any judicial restrictions, including gang injunctions, anti-social behaviour orders, electronic tagging, or management under licence by the Probation Service after release from prison.⁸ The combined figure of those in custody and those subject to judicial restrictions is still only 44%.⁹

⁵ Hallsworth, S., and Young, T., ‘Gang talk and gang talkers: A critique’, in *Crime, Media, Culture: An International Journal*, Vol. 4, Issue 2, 2008, available here: <http://journals.sagepub.com/doi/pdf/10.1177/1741659008092327>.

⁶ Williams, P., and Clarke, B., ‘Dangerous associations: Joint enterprise, gangs and racism’, January 2016, available here: <https://www.crimeandjustice.org.uk/publications/dangerous-associations-joint-enterprise-gangs-and-racism>. See also Williams, 2015, p. 29.

⁷ Mayor of London, ‘Strategic ambitions for London: Gangs and Serious Youth Violence, MOPAC, 2014, available here: https://www.london.gov.uk/sites/default/files/gla_migrate_files_destination/Strategic%20Ambitions%20for%20London_%20Gangs%20and%20SYV%202014.pdf.

⁸ Mayor of London, ‘Mayor launches tough new gang intervention programme’, 22 January 2015, available here: <https://www.london.gov.uk/press-releases/mayoral/one-rule-for-all>.

⁹ HMIC, 2017, p. 58.

16. These raise real worries that the Gang Matrix's criteria for inclusion are over-broad and disproportionate. Indeed, experts on gangs and related issues – whose definition of a gang has been adopted by the MPS – have worried as to breadth of the Gang Matrix's approach. Professor Simon Hallsworth and Tara Young have set out a three-tier risk profile of individuals who may be a member of an organised crime group, a member of a gang, and merely a member of a peer group which may be affiliated with gangs or organised crime, with the latter presenting the lowest risk. They and others have expressed concern that their model might be used to justify criminalising interventions against those deemed to present the lowest risk – and yet this is just what the Gang Matrix may be doing, since a very plausible explanation for its figures is that members of peer groups which may contain individuals associated with gangs are being targeted.¹⁰

17. The MPS claimed in 2014 that there were 3,495 gang members in London, and the HMIC's PEEL review claims that the number is now at 3,563. However, in 2012 they claimed that there were 4,800 gang members – a difference of around 1,300 people over the course of only two years, with a difference of around only 100 over the next 3 years.¹¹ There is nothing to indicate any reason for this significant difference; it may be suspected that differing criteria as an individual's labelling as a 'gang member' accounts for at least part of this difference. And yet little is known as to the criteria by which individuals are so labelled. This is a serious problem.

18. There are also significant differences between the way in which an individual's alleged 'gang membership' is assessed and recorded. As the last Mayor of London stated in a review:

“...the 3,681 young people managed by Youth Offending Teams (YOTs) in London, 858 were identified by the YOT as affiliated or involved with gangs. Yet only 376 (43%) of these were on the Trident Matrix. Similarly, LPT identified 975 young adults on its case load¹³ of 6,500 offenders aged 18-25 years who were gang affiliated; yet only approximately 20% were registered on the Trident matrix.”¹²

19. Again, these figures suggest real difficulties in the authorities' means of assessing whether a person is or is not a member of a gang, and yet such a determination has

¹⁰ See the discussion in Runnymede Trust, 'Gangs Revisited: What's a Gang and What's Race Got to Do with It?', 2011, available here:

[http://www.runnymedetrust.org/uploads/publications/pdfs/GangsRevisited\(online\)-2011.pdf](http://www.runnymedetrust.org/uploads/publications/pdfs/GangsRevisited(online)-2011.pdf).

¹¹ See the review of the figures in Mayor of London, 2014, p. 11.

¹² Mayor of London, 2014, p. 11. For citations, see original.

serious repercussions for an individual's life. They belie the claim made by the HMIC PEEL review of 2017 that "[t]he gangs matrix is used to target the highest harm individuals"¹³ – an assertion starkly contradicted by the wealth of available information on the individuals targeted.

20. Indicating the inappropriate breadth of the approach is the comparison between the racial profile of serious youth violence and the racial profile of alleged gang membership. In Manchester, for example, 77% of serious youth violence is reportedly committed by white individuals, and yet BAME individuals make up 89% of the gangs found in the city.
21. In London, the share of youth violence between white and black individuals is reportedly 50-50, and yet BAME individuals are alleged to comprise 80% of gangs there. Similarly starkly, black men account for 27%% of the serious youth violence taking place in London, and yet allegedly make up 72% of reported gang membership.¹⁴
22. The Gangs Matrix's own figures for 2016 demonstrate serious cause for concern: of the 3,626 individuals included, 87% were BAME – whilst such individuals make up only 40% of London's population.¹⁵ As *The Guardian* calculated, "For the Met's figures to be correct, there would have to be 360 white gang members across all of London's 32 boroughs" – a highly implausible proposition.
23. These figures indicate that the Gangs Matrix and similar tools fail to fully reflect the real criminal threats that exist in those communities, with far more individuals being identified as 'gang-related' or 'gang nominals' than actually present any real threat of violence or other criminal offending.

The Gang Matrix and Operation Shield

24. And yet this approach has been taken to justify measures which appear to amount to collective punishment. Operation Shield, a strategy being piloted within the boroughs of Haringey, Westminster, and Lambeth, aims to target every known member of a gang when another member commits a crime. The Shield Partnership Agreement and Operating Model was released as a result of a Freedom of Information Request

¹³ HMIC, 2017, p. 54.

¹⁴ See Centre for Crime and Justice Studies, 2016, pp. 11-12.

¹⁵ See figures cited in *The Guardian*, 19 July 2016.

but provided little detail as relevant material was heavily redacted.¹⁶ Reporting suggested that the measures “will range from recall to prison, gang injunctions banning them from parts of the capital or mixing with their associates, mandatory employment training courses or ejection from social housing”.¹⁷

25. The Centre for Crime and Justice Studies have found that “[t]he Metropolitan Police have posted letters to the homes of individuals on the basis of their perceived gang involvement, warning explicitly of the likelihood of collective punishments [including, so the authors claim, joint enterprise conviction] on the basis of ‘gang’ membership or association”. The Centre has published an example letter sent to an individual – containing significant legal inaccuracies as to the law of joint enterprise, even before the law was clarified by the Supreme Court in 2016 – which appears designed to threaten individuals with collective punishment for their failure to distance themselves from others who are “linked to crime”. Importantly, it is not made clear that the individuals are gang members or simply members of the targeted person’s peer group – once more indicating the poverty of the data comprising the Gangs Matrix.
26. It cannot be fair to target individuals for crimes which they have not committed. Of course, individuals may be convicted of crimes as either a principal or by way of the doctrine of joint enterprise – although recent Supreme Court authority has rightly narrowed the bounds of these rules.¹⁸ It cannot be right to target individuals on the basis of police presumptions or dubious suspicions of joint enterprise based on faulty information.
27. Indeed, in a response to a Freedom of Information Act request, the MPS admitted that the information contained in the Gangs Matrix is being used to make such targeting decisions.¹⁹ It is therefore likely that individuals who are simply members of an individual’s peer group, or otherwise only loosely related to any recognisable gang, will be targeted for collective punishments. This is deeply unfair. Liberty calls on MOPAC to disclaim use of such an arbitrary and unjust method of law enforcement.

¹⁶ *WhatDoTheyKnow*, Patrick Kenner, ‘Operation Shield’, 2015, available here: https://www.whatdotheyknow.com/request/operation_shield#incoming-649273.

¹⁷ See *The Evening Standard*, ‘Punishment for all gang members if one carries out a violent crime’, 22 January 2015, available here: <http://www.standard.co.uk/news/crime/punishment-for-all-gang-members-if-one-carries-out-a-violent-crime-9994860.html>.

¹⁸ See *R v Jogee* [2016] UKSC 8, which significantly clarified the law of joint enterprise, finding that previous authority on the nature of the doctrine was mistaken.

¹⁹ *WhatDoTheyKnow*, Patrick Kenner, ‘Gang Matrix’, 2015, available here: https://www.whatdotheyknow.com/request/gang_matrix.

The Gang Matrix and Joint Enterprise

28. As the House of Commons' Justice Committee identified, summarising the extant research, there remains an alarming disproportion in the convictions for joint enterprise of BAME individuals:

“It is clear that a large proportion of those convicted of joint enterprise offences are young Black and mixed race men. In the Cambridge research sample, 37.2% of those serving very long sentences for joint enterprise offences are Black/Black British, eleven times the proportion of Black/Black British people in the general population and almost three times as many as in the overall prison population. There is also a much higher proportion of mixed race prisoners convicted of joint enterprise offences than there are in the general prison population (15.5% compared to 3.9%). Janet Cunliffe of JENGBA claimed that an even higher proportion of people convicted of joint enterprise who had contacted JENGBA were from the BAME community, about 80%, and nearly all working class. She drew the conclusion that joint enterprise was being used to target the most marginalised sections of society, and was having the effect of breaking communities apart. Dr Ben Crewe from the Cambridge Institute of Criminology said that there were probably two main reasons for the disproportionate impact of joint enterprise on young Black men, the first being that “BME men may be over-represented in the kinds of communities where young men typically hang around in groups that are labelled by outsiders as gangs” and the second that “an association may exist unconsciously in the minds of the police, prosecutors and juries between being a young ethnic minority male and being in a gang, and therefore being involved in forms of urban violence”.²⁰

29. Other research has found the same, with the Centre for Crime and Justice Studies corroborating the findings cited by the Justice Committee – with twice the number of BAME prisoners than white reporting that ‘gang membership’ was placed in issue at trial to secure conviction.²¹ This is another punitive impact a person’s inclusion on the Gang Matrix, and one which has been found to be dangerously discriminatory.

The Gang Matrix and Stop and Search

²⁰ Justice Committee, House of Commons, ‘Joint enterprise: follow-up’, Fourth Report of Session 2014-15, 10 December 2014, paragraph 24, available here: <https://www.publications.parliament.uk/pa/cm201415/cmselect/cmjust/310/310.pdf>. For citations, see original. Emphasis added.

²¹ See Centre for Crime and Justice Studies, 2016, pp. 14-15.

30. Indeed, existing concerns as to the criteria used to deploy discriminatory stop-and-search powers arise in respect of the Gangs Matrix. For example, Police and Criminal Evidence Act 1984 (PACE) Code A provides:

“Where there is reliable information or intelligence that members of a group or gang habitually carry knives unlawfully or weapons or controlled drugs, and wear a distinctive item of clothing or other means of identification in order to identify themselves as members of that group or gang, that distinctive item of clothing or other means of identification may provide reasonable grounds to stop and search any person believed to be a member of that group or gang.”²²

31. If the mere wearing of items of clothing similar to those worn by gangs is deemed to be sufficient for the use of highly invasive stop-and-search powers, are they deemed to be sufficient for a person’s inclusion on the Matrix? And once someone is included on the Matrix, does that then justify the routine use of stop and search in respect of them? These concerns are intensified by the lack of transparency as to the basis on which individuals are included on the Gangs Matrix and removed from it by the MPS, and the lack of any apparent means for individuals to apply to be removed from it themselves, as discussed above.

32. Liberty has longstanding and serious concerns as to the use of stop and search powers. For example, the evidence still demonstrates that sections of the Police and Criminal Evidence Act 1984 and section 60 of the Criminal Justice and Public Order Act 1994 – along with other similar powers, such as section 23 of the Misuse of Drugs Act 1971 and section 163 of the Road Traffic Act 1988 – are disproportionately used against BAME individuals and overwhelmingly fail to result in any substantive criminal justice outcomes.²³ The discriminatory use of these powers is corrosive of police trust and divides London’s communities. We have real worries that the use of the Gang Matrix – a tool which already appears to have disproportionately affect BAME individuals – will only worsen this destructive dynamic.

Discriminatory and disproportionate powers

²² See PACE Code A, paragraph 2.6, available here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/384122/PaceCodeAWeb.pdf.

²³ See, for example, the evidence cited in Liberty, ‘Section 60 stop and search is discriminatory, destructive and doesn’t work’, 22 April 2015, available here: <https://www.liberty-human-rights.org.uk/news/blog/section-60-stop-and-search-discriminatory-destructive-and-doesnt-work>.

33. As the Centre for Crime and Justice Studies found in 2016, “The net effect of criminal justice policies which are designed to ‘disrupt’ and ‘end’ the gang, is the disproportionate punishment of young people from minority ethnic (particular black) groups while failing to adequately curtail levels of serious youth violence across England and Wales.” Further, they warn of “racialized stereotypes” tied to policies seeking to address gang-related violence.
34. As the Centre identified of Greater Manchester Police’s approach, “The communities with higher concentrations of BAME people were more likely to be the areas identified by the police and criminal justice partners as having a ‘gang problem’.”
35. The Lammy Review has also expressed serious concern as to the apparent racial disproportionality in the Gang Matrix, “When four in five people on the gangs matrix are black – and that database currently informs decisions throughout the criminal justice system – it is something that someone in my position has a duty to scrutinise closely.”²⁴
36. Professor Emeritus Lee Bridges – writing at the Institute for Race Relations – also has serious concerns that the use of the Gangs Matrix will deepen risks of division and discrimination, especially in view of the already serious problems of discriminatory stop-and-search powers.²⁵ He also identifies several crucial questions which have yet to be satisfactorily answered:
- “We need to know exactly what definition of a ‘gang’ and criteria of membership or association with it are being used in compiling such databases, as well as whether these are being applied consistently by the various ‘partner agencies’ involved in the process. Equally, is the policy of having gang databases being applied consistently, if at all, over the whole of the policing areas involved, or only to those areas with high concentrations of BAME populations? For example, what is the distribution of gang members, as currently identified through the Metropolitan Police’s Gangs Matrix, across the different London boroughs? And what proportion of those on this database have records of serious and recent criminal convictions?”
37. The fact that the labelling as ‘gang members’ appears to play such a significant role in those targeted by police and convicted within the criminal justice system raises

²⁴ *The Guardian*, 19 July 2016.

²⁵ Bridges, L., ‘The Met Gangs Matrix – Institutional racism in action’, 9 April 2015, available here: <http://www.irr.org.uk/news/the-met-gangs-matrix-institutional-racism-in-action/>.

doubts as to the fairness of the process. Discriminatory stereotyping is not only an attack on individuals' dignity and equality but is also dangerous, criminalising individuals on the basis of their race and failing to tackle the real causes of violent crime.

38. In addition, there are real concerns as to the compatibility of the Gang Matrix, as it is currently operated and Article 8 of the European Convention on Human Rights, the right to private life, enshrined in UK law by the Human Rights Act 1998. Liberty has represented individuals and intervened in cases to challenge the arbitrary and indiscriminate retention and use of data by police and other public bodies, including representing Andrew Wood in his successful challenge to the MPS's maintenance of a database of police photographs – with the Court of Appeal finding a breach of Article 8, since the police had retained photographs of the claimant even after it had become he had not been involved in any criminal activity.²⁶ The Supreme Court has further found that the retention of information on individuals amounts to an interference with Article 8 which must be properly justified.²⁷ We have serious concerns that the labelling of an individual as a 'gang member', and the sharing of his label with other authorities, may infringe Article 8. In view of the serious consequences individuals face as a result of their inclusion on the Gang Matrix, the apparent width of persons targeted, and the inability of those targeted to remove themselves from the Matrix, their inclusion may be disproportionate.

39. Liberty urges MOPAC to reconsider the MPS's use of the Gang Matrix and improve transparency and accountability and introduce safeguards against discrimination and disproportionality.

Violence against women and girls

40. We welcome MOPAC's commitment to eliminating violence against women and girls, and in particular to launch a public campaign to fight it. However, we lament the Metropolitan Police Service's decision to appeal the findings of both the High Court

²⁶ *Wood v Commissioner of Police for the Metropolis* [2009] EWCA Civ 414. Eight years later, Government has introduced a scheme for individuals to have their photographs deleted, but this scheme fails to properly implement the judgement and leaves the MPS still in breach of Article 8: see *The Guardian*, 'Police told to delete on request millions of images of innocent people', 24 February 2017, available here: <https://www.theguardian.com/uk-news/2017/feb/24/police-told-to-delete-on-request-images-of-innocent-people>.

²⁷ *R (on the application of Catt) v Commissioner of Police of the Metropolis and another* [2015] UKSC 9.

and Court of Appeal in the cases of *DSD* and *NBV* – cases in which the courts reached historic decisions to protect the human rights of women and girls.²⁸

41. In 2012, the High Court and Court of Appeal found that the Metropolitan Police had breached their duties under Article 3 of the Human Rights Act through their failure to act properly to investigate the appalling crimes of the ‘Black Cab Rapist’, John Worboys. He is thought to have sexual assaulted or raped over one hundred woman between 2002 and 2008 by drugging those who used his services as a cab driver late at night. The police had consistently failed to properly investigate reports of his crimes, allowing him to continue his attacks on women during the years he was free. Where victims still face great difficulty reporting sexual violence – let alone receiving justice in court – this was a crucial victory in combating violence against women.

42. However, the MPS has sought to appeal this decision at every stage. This is particularly disappointing in view of the fact that the MPS is known to have settled other cases brought against it for similar breaches of Article 3, suggesting that there is at least some recognition that the duty exists.²⁹ Whilst it is always important to test the bounds of the law through legal challenge, the MPS is continuing to argue that women and girls should not have effective rights against sexual violence – claiming that police should not be required, as a matter of human rights, to conduct effective investigations into allegations of rape. After years of serious failures towards victims of sexual violence, Liberty is disappointed to see the MPS seeking to limit the ability of those women to seek justice in the courts. Legal accountability will lead to better investigations and will protect future victims.

43. We urge MOPAC to challenge the MPS’s decision to appeal this important judgment and question how it fits with MOPAC’s stated intention to eliminate violence against women and girls. We further urge MOPAC to lay out its plan for strategic engagement with MPS, and to include commitment to protecting the rights of women and girls against sexual violence, including the right to effective investigations of allegations of sexual assault and rape.

Hate Crime

44. MOPAC’s consultation covers in some detail the spike in hate crime felt after the referendum on the UK’s membership of the European Union, but fails to recognise

²⁸ *Commissioner of the Police for the Metropolis v. DSD and NBV* [2015] EWCA Civ 646.

²⁹ See, for example, *The Guardian*, ‘Metropolitan police pays out over flawed rape investigation’, 13 December 2012, available here: <https://www.theguardian.com/uk/2012/dec/13/metropolitan-police-rape-investigation>.

that the migrants and refugees form a group particularly vulnerable to this type of crime – with much of it motivated by their immigration status.

45. The Hate Crime Strategy published by the Home Office in August 2016 omitted to mention hate crime of this kind, ignoring crimes motivated by a person's perceived immigration status. Liberty urges MOPAC not to make this same error, and to ensure that hate crime against migrants and refugees forms a central part of its strategy to combat hate crime.

Prevent

46. We also warn MOPAC against the current Prevent strategy, a discredited and discriminatory approach based on a flawed model of extremism prevention. It accepts that the strategy has been "inconsistent and controversial" and "generated significant concerns". We urge MOPAC to hold the MPS to account in its use of it, and take measures to review the MPS's use of Prevent in London and mitigate its discriminatory effects.

47. As Liberty and the Open Society Justice Initiative stated in a recent joint briefing, Prevent is:

"Counterproductive: it alienates the communities we need to work with to defeat terrorism, it has driven debate on extreme ideas into underground spaces where they cannot be challenged, and wrongful referrals under Prevent fuels resentment against the government.

"Vague and prone to misapplication: Prevent's definition of extremism is too broad, and includes "opposition to fundamental British values". The definition has been judged "hopeless" by former Director of Public Prosecutions, Lord Macdonald QC. Numerous examples exist of people being reported under Prevent for spurious, trivial or entirely innocent activity or comments. Very often these referrals have involved children, some as young as 4 years old.

"Harmful, particularly for children: People wrongly referred through the Prevent programme are stigmatised and have suffered serious harmful effects on their health, education, employment and position in the community. The impacts are particularly acute for children. Recent estimates indicate that since the statutory duty took effect in 2015, referrals under Prevent have soared, and an average of one child under the age of 10 is referred every

day. Of 7500 referrals in 2015-16, only 10% were subsequently judged to require counter-terrorism intervention through the Channel programme.”³⁰

Liberty recently represented a family whose five and seven year old boys were given plastic toy guns as presents. Telling their class of the new toys, the school's headteacher contacted Bedfordshire Police – claiming a risk of radicalisation. In fact, the school claimed the decision was based not just on the toy guns, but on the older brother's “changing behaviour”. They claimed that he had been speaking Arabic and said his father had taken him to a mosque.

Neither of these claims would have justified a referral to the Prevent program and police involvement – themselves amounting to discrimination. But they were not even true. Neither boy speaks Arabic and they have never been to a mosque. The boys' father is a non-practising Muslim and their mother is a non-practising Hindu. Both parents are British. The school had never been asked to make any arrangements for the children due to any faith.

But the young brothers were isolated from other pupils in the school library and detained for 90 minutes until police arrived. When their mother came to pick them up, she was told there had been an incident, police had been called, and she wasn't allowed to see her children until they arrived.

Since the incident, the two brothers have become more clingy, guarded and reserved. The older brother has been overheard saying he could not be sure who he was able to trust, in case they call the police. Both have suffered nightmares. Central Bedfordshire Council Local Education Authority (LEA) has admitted the school – whose teachers were attempting to act in accordance with the Government's Prevent guidance – would not have called police if a white child had received a toy gun. Their case is deeply disturbing, but keenly instructive as to the dangers the Prevent program can present.

Sam Hawke

³⁰ Liberty and Open Society Justice Initiative, 'Westminster Hall Briefing: Implementation of the Prevent Strategy', February 2017, available here: <https://www.liberty-human-rights.org.uk/sites/default/files/Westminster%20Hall%20Briefing-Implementation%20of%20Prevent.pdf>.