

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

**Liberty's written evidence to the Home
Affairs Committee's inquiry: *Policing for
the Future***

April 2018

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
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1. This submission is provided to assist the Home Affairs Committee with its ongoing inquiry, *Policing for the Future*. The 25th anniversary of the murder of Stephen Lawrence represents an important moment to consider the role of law and Home Office policy in addressing discriminatory policing. The Macpherson Inquiry, secured after five years of campaigning by Stephen's family, exposed a police investigation marred by institutional racism. The response to a catalogue of failures of law, policy and policing practice included significant legislative and policy change. The Independent Police Complaints Commission was established, policies were introduced to ensure hate crimes are always investigated and new laws created to oblige the public sector to protect victims of discrimination and promote equality. But progress has stalled. Government schemes on stop and search have failed to deliver promised improvements in disproportionality. The drive to create a hostile environment for undocumented migrants has led to policies which threaten to set police community relations back decades. The Government is not sufficiently alert to the discriminatory dangers of unwieldy databases and new forms of biometric surveillance, including facial recognition technology.

2. This submission considers a number of areas of law and policy where action from the Government is needed to reduce discriminatory policing. Liberty recommends that the Government:

- Create a mandatory, statutory scheme to regulate the use of stop and search. This scheme should include sanctions for individual officers and require failing police forces to meet standards set to eradicate discriminatory stops.
- Restrict to traffic control purposes the ill-defined and misused power to conduct a traffic stop and include vehicle stops targeting an individual in a new mandatory stop and search scheme.
- Introduce legislation to repeal section 60 of the Criminal Justice and Public Order Act 1994, which provides the power to stop and search without suspicion.
- Reinstate the national requirement to record 'stop and accounts' and stops that don't lead to searches.
- Abandon a stop and scan scheme for mobile fingerprinting, which embeds biometric surveillance and undefined immigration control considerations into already intrusive street stops.
- Introduce legislation to repeal the offence of 'driving while illegal' and the intrusive search powers that accompany it.
- Introduce legislation to repeal requirements for people to state or prove their nationality on arrest.

- Drop provisions from the Data Protection Bill that (i) erode protections around the automated processing of data for law enforcement purposes, and (ii) remove people’s right to restrict or object to their personal information being processed to prevent or detect crime.
- Issue guidance clarifying that information about the immigration status of victims and witnesses of crime must never be passed by police to the Home Office. Guidance must also provide broader protections against information sharing which will further embroil police in immigration enforcement.
- Introduce guidance requiring that police databases such as the Gangs Matrix set out targeted criteria for inclusion and removal, outline a process for challenging a person’s inclusion, explain the sources used to populate the database and establish safeguards to prevent discriminatory use of data.
- Introduce strict regulation, including a legislative framework, governing the use of facial recognition technology. New regulation must require transparency around its use, provide for independent oversight and require independent testing of all facial recognition algorithms used by law enforcement for racial and other biases.
- Introduce statutory regulation of police image databases and put processes in place to ensure images are automatically deleted as appropriate.

Stop and search

3. Macpherson found that institutional racism was apparent in the country-wide disparity in stop and search figures and reached a core conclusion of racist stereotyping.¹ While stop and search numbers have dropped significantly since that time, government reforms have failed to tackle disproportionality in stop and search. You are now eight times more likely to be stopped and searched by police if you are black than if you are white.² This rises to 14 times in the case of suspicionless stops under section 60 of the Criminal Justice and Public Order Act 1994.³

4. The impact of discriminatory stop and search on communities is deep and enduring. For a report published last year, the Criminal Justice Alliance spoke to young BAME people

¹ The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William Macpherson of Cluny, February 1999, paragraph 6.45. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/277111/4262.pdf.

² Home Office Statistical Bulletin 20/17, *Police powers and procedures, England and Wales, year ending 31 March 2017*, 26th October 2017.

³ Home Office Statistical Bulletin 20/17, *Police powers and procedures, England and Wales, year ending 31 March 2017*, 26th October 2017.

with first-hand experience of stop and search. They described feeling harassed, targeted and provoked, even violated by these coercive encounters.⁴ What also emerges from these interviews is a long-term sense of anger and hostility towards the police. The results of a poll released last year show that 74 per cent of young BAME people believe that those from ethnic minorities are unfairly targeted by stop and search.⁵ They are not alone. The Independent Police Complaints Commission identified stop and search as the leading cause of tension between young people and the police.⁶ As David Lammy pointed out in his recent report on the treatment and outcomes for BAME people in the criminal justice system, this drains trust in the whole system.⁷ It also undermines public safety by making it harder for the police to work effectively in the communities they serve.

The Best Use of Stop and Search Scheme (BUSSS)

5. The Best Use of Stop and Search scheme (BUSSS) was announced by then Home Secretary Theresa May in April 2014.⁸ BUSSS promised greater transparency, community involvement and improved stop and search outcomes. Among the scheme's provisions are requirements to collect more data about stop and search, to monitor its impact on black and minority ethnic groups and involve the community in scrutiny of this sensitive area of policing.⁹ However BUSSS has failed to provide the promised improvements in stop and search outcomes and community monitoring. In addition to a failure to reduce disproportionality, in its latest PEEL legitimacy inspection report, Her Majesty's Inspector of Constabulary expressed surprise and disappointment that *"a small number of forces have no external scrutiny arrangements at all. Only a minority of forces had very effective and independent groups."*¹⁰

⁴ Criminal Justice Alliance, *No respect: Young BAME men, the police and stop and search*. Available at: <http://criminaljusticealliance.org/wp-content/uploads/2017/06/No-Respect-290617-1.pdf>.

⁵ Criminal Justice Alliance, *No respect: Young BAME men, the police and stop and search*, pg 20.

⁶ See the London Assembly's, *Stop and search: An investigation of the Met's new approach to stop and search*, available at:

https://www.london.gov.uk/sites/default/files/14-02-06-Stop%20and%20search%20FINAL_1.pdf.

⁷ David Lammy MP, *The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System*, September 2017, pg 17.

⁸ Rt Hon Theresa May, Oral Statement to Parliament, *Comprehensive package of reform for police stop and search powers*, available at: <https://www.gov.uk/government/speeches/stop-and-search-comprehensive-package-of-reform-for-police-stop-and-search-powers>.

⁹ Home Office and College of Policing, *Best Use of Stop and Search Scheme*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/346922/Best_Use_of_Stop_and_Search_Scheme_v3.0_v2.pdf.

¹⁰ HMICFRS, *PEEL: Police legitimacy 2017 A national overview*, December 2017, p.27. Available at: <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/peel-police-legitimacy-2017-1.pdf>.

6. BUSSS is an administrative exercise without any sanction if forces do not meet standards. Additionally, forces need only demonstrate that they have the provisions of the scheme *in place* and not the quality of those provisions and their outcomes. Forces have failed to take BUSSS seriously. Beyond being publicly suspended from a voluntary scheme, there are no repercussions for forces' failure to meet the low standards of this scheme and, if they were suspended, no obvious incentive for them to then meet these standards and re-join. In April 2014, Theresa May promised that if BUSSS failed to deliver the necessary results, she would bring forward primary legislation. It is clear that membership of a voluntary scheme has not driven the desired change.

7. **Liberty recommends that the Government introduce a new mandatory scheme aimed at improving stop and search outcomes. A meaningful consultation exercise should be conducted to determine the scope of a revised scheme. As a minimum it should:**

- **include sanctions for individuals and forces failing to meet prescribed standards**
- **require recording of traffic stops which target an individual, including ethnicity data and the outcome of a stop¹¹**
- **provide for an individual to receive a record of a stop, including the name and badge number of the officer involved**
- **require forces to collate and publicly share data regarding the use of the traffic stop power, and**
- **place a responsibility on police leaders to monitor the use of the powers and involve local communities in that scrutiny.**

Traffic stops

8. Section 163 of the Road Traffic Act 1988 gives a uniformed officer a broad power to stop drivers without suspicion, or even a particular reason. Failure to stop is a criminal offence and during a stop an officer can demand to see your driving licence.¹² Macpherson

¹¹ E.g. a search, an arrest, a complaint. Stops of individuals should be covered as opposed to roadblocks which may see numerous drivers stopped, for example at the scene of an accident.

¹² Section 164 (1) allows constables the power to demand a driving licence from: people driving a car, persons reasonably suspected to have been driving a car when an accident occurred, a person believed to have committed an offence related to a motor vehicle and someone supervising a provisional licence holder. Section 164(2) introduces an ability for constables to require you to state your date of birth, only if subsection 3 is satisfied, meaning your licence must have been revoked or you should have returned it. Section 163 is drafted so broadly that the courts have held that, unless a stop is 'arbitrary and capricious', it will not be ruled unlawful - see *R (Smith) v DPP* [2002] EWHC 113 (Admin); *Miller v Bell* 2004 SCCR 534; *R (Beckett) v Aylesbury County Court* [2004] EWHC 100

pointed out that people “do not perceive any difference between a ‘stop’ under the Police and Criminal Evidence Act from one under the Road Traffic Act whilst driving a vehicle”.¹³ He recommended that all stops and stop and searches be covered by a new regulatory framework.¹⁴ However, traffic stops are not routinely recorded and have not been subject to the same scrutiny and reform as other stop and search powers.

9. There is no available police data on how often, why, and how effectively the traffic stop power is used. Estimates from the British Crime Survey suggest that section 163 is by far the most widely used stop power and a significant use of police time.¹⁵ While the Home Office does not provide data on the circumstances of an initial stop, in 2014 HMIC commissioned a survey of 10,094 members of the public about police use of the traffic stop power.¹⁶ Seven to eight per cent of white drivers who responded were stopped in their vehicles in the last two years, compared with 10-14 per cent of black and minority ethnic drivers. Of those individuals who had been subject to a traffic stop, seven per cent reported that no reason had been given and 21 per cent said they had been given a reason other than criminal suspicion, vehicle defect or ownership check.¹⁷ The survey also suggested that black and minority ethnic drivers are less likely to be provided with a reason for a stop and more likely to have their vehicles searched than white drivers.

10. This confirms the findings from other public surveys. A 2012 study based on an analysis of the British Crime Survey found that that people from mixed black and white

(Admin); and *R (Rutherford) v Independent Police Complaints Commission* [2010] EWHC 2881 (Admin).

¹³ The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William Macpherson of Cluny, February 1999, paragraph 46.31. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/277111/4262.pdf.

¹⁴ *Macpherson report*, recommendation 61: “That the Home Secretary, in consultation with Police Services, should ensure that a record is made by police officers of all “stops” and “stops and searches” made under any legislative provision (not just the Police and Criminal Evidence Act). Non-statutory or so called “voluntary” stops must also be recorded. The record to include the reason for the stop, the outcome, and the self-defined ethnic identity of the person stopped. A copy of the record shall be given to the person stopped”.

¹⁵ Moon D., Flatley J., Parfremment-Hopkins J., Hall P., Hoare J., Lau I., and Innes J. (2011) *Perceptions of Crime, Engagement with the Police, Authorities Dealing with Antisocial Behaviour and Community Payback: Findings from the 2010/11 British Crime Survey*, London: Home Office. The Crime Survey of England and Wales (previously the British Crime Survey) no longer fields questions about vehicle stops. These estimates were calculated by applying the figures reported by Moon et al (2011) to the number of adults aged 16 years and above, in England and Wales as recorded by the 2011 census. Allowance has also been made for multiple stops – of the British Crime Survey respondents who had been stopped in a vehicle, 74 per cent had been stopped once, 16 per cent had been stopped twice and nine per cent had been stopped three times or more (for the purposes of the calculation it was assumed that those in this group had been stopped three times).

¹⁶ HMIC, *Stop and search powers 2: are the police using them effectively and fairly?*, p61. Available at: <https://www.justiceinspectrates.gov.uk/hmic/wp-content/uploads/stop-and-search-powers-2.pdf>.

¹⁷ *Ibid.*

ethnicities, Asian Muslim and black Caribbean ethnicities were more likely to report being stopped than those with white ethnicities.¹⁸ The survey also shows that those from mixed black and white, Asian Muslim and black Caribbean communities are significantly less satisfied than white people with how the police dealt with them during traffic stops. These findings are similar to an analysis of the British Crime Survey data from 2000 which found that: “black, Pakistani and Bangladeshi people are more at risk of being stopped in their cars, even after many other relevant factors have been taken into account”.¹⁹

11. In March 2016, in response to concerns about the discriminatory use of section 163, Theresa May committed to address the use of traffic stops in a revised scheme known as BUSSS 2.0.²⁰ However, traffic stops were not included in a draft of BUSSS 2.0 circulated in 2017.²¹ Liberty understands that provisions urging forces to monitor the use of traffic stop powers will be set out in a voluntary adjunct to the already non-binding BUSSS 2.0 scheme.

12. Liberty recommends that the Government restrict section 163 to road safety and traffic control purposes, such as halting traffic after an accident or highlighting a vehicle defect.²² This limitation should be set out in the Code of Practice governing stop and search: Police and Criminal Evidence Act 1984 (PACE) Code A.²³ Officers should be trained on the appropriate use of this limited power. As discussed above, requirements to record traffic stops should be included in a mandatory scheme.

Suspicionless stop and search

13. In 2010, in a welcome move, the Coalition Government brought forward legislation to repeal section 44 of the Terrorism Act 2000 which allowed police to stop and search anyone within a specific area for any item without suspicion. Section 44 was replaced by section 47A. The new power allows a senior police officer to authorise an area for stop and search

¹⁸ Bradford B., Delsol R. and Shiner M. (2012) *More than a simple inconvenience: a paper examining the effects from stop and search on individuals, on communities, and on policing and public security in the United Kingdom*, draft paper.

¹⁹ Clancy A., Hough M., Aust R. and Kershaw C. (2001) *Policing, Crime and Justice: the experiences of ethnic minorities*, Findings from the 2000 British Crime Survey (Home Office: London).

²⁰ The Times, Driving while black is not a crime May warns police, 26 March 2016.

²¹ StopWatch and Release's response to the Home Office's proposed revised 'Best Use of Stop and Search Scheme' ('BUSSS 2.0'), available at: http://www.stop-watch.org/uploads/documents/StopWatch_Release_response_to_HO_consultation_on_stop_and_search.pdf.

²² The appropriate Code of Practice is Police and Criminal Evidence Act (PACE) Code A which governs stop and search.

²³ The only exception to this rule should be in the specific circumstances set out at section 4 of PACE. Please see Liberty and StopWatch, *Driving While Black*, available at: <https://www.libertyhumanrights.org.uk/sites/default/files/Liberty%20Driving%20While%20Black.pdf>.

without suspicion where she or he reasonably suspects an act of terrorism is about to occur. The power has tougher time limits and other safeguards aiming to ensure it is used in genuine emergencies. Liberty welcomed these reforms, but we remain concerned about the operation of section 60 of the Criminal Justice and Public Order Act 1994. Section 60 is a broad power to stop and search any person or vehicle for weapons in an area where serious violence is reasonably anticipated, without individualised suspicion.²⁴

14. The power is subject to detailed guidance, including the requirement that “*officers must take care not to discriminate unlawfully against anyone on the grounds of any of the protected characteristics set out in the Equality Act 2010.*”²⁵ Yet while the number of section 60 stops has dropped dramatically since its height in 2008-2010, the latest figures show you are almost 14 times more likely to be stopped and searched under section 60 if you are black than if you are white.²⁶ Further the arrest rate is lower even than the notoriously poor figures for suspicion based stops. Only 11.5% of stops lead to arrest and less than 3% of searches result in an arrest for carrying an offensive weapon.²⁷ Liberty is further concerned that, in a revised version of BUSSS, the Home Office suggests weakening safeguards on the use of the power by reducing the level of authorisation required to designate an area for suspicionless stops.²⁸

15. The suspicion-based stop and search power under section 1 of the Police and Criminal Evidence Act 1984 is broadly framed to allow police to conduct stop and search where a police action short of arrest is reasonably believed necessary and the courts have held that the threshold for the existence of reasonable grounds for suspicion is low.²⁹ As a result, there is no persuasive operational case for such broad suspicionless search powers, especially given their established propensity to be used disproportionately against black

²⁴ Authorisations last 24 hours and can be extended by another 24 hours. Although the legislation limits stop and search to a specific time and place, it does not require police to have any individualized basis of reasonable suspicion for conducting searches.

²⁵ Home Office, *Police and Criminal Evidence Act: Code A*.

²⁶ Home Office Statistical Bulletin 20/17, *Police powers and procedures, England and Wales, year ending 31 March 2017*, 26th October 2017

²⁷ Home Office Statistical Bulletin 20/17, *Police powers and procedures, England and Wales, year ending 31 March 2017*, 26th October 2017.

²⁸ Home Office, BUSSS 2.0, consulted on in 2017.

²⁹ Indeed, it has even been found that section 1 stops and searches of protestors on the way to a demonstration were lawful where the police had intelligence that led them to suspect that some of the group were carrying articles to commit criminal damage. *Howarth v Commissioner of Police of the Metropolis* [2011] EWHC 2818 (QB). It was found that “*it is not necessarily essential in all cases for the searching officer reasonably to suspect each and every individual member of a suspected group to be carrying the offending items before the search of members of the group is lawful.*”

people. **Liberty recommends that the Government introduce legislation to repeal the section 60 power to stop and search without suspicion.**

Stop and account

16. Liberty was relieved when, in 2010, a requirement to record ethnicity of a person subject to a stop and search was retained. This was in the face of Home Office proposals to remove this requirement. However, we were concerned to see the repeal of other monitoring requirements. Police officers no longer have to record when they stop someone under statutory authority with a view to searching them but then decide a search is unnecessary, nor when they stop a person and ask them to account for themselves. This is a direct reversal of a recommendation of the Macpherson Inquiry which called for police to record all stops, including the self-defined ethnicity of persons stopped, and for these records be monitored and analysed.³⁰ This retrograde step also ignored recommendations of later inquiries, including Sir Ronnie Flanagan's independent review of policing in 2008.³¹

17. For the Metropolitan Police Service, one of a small number of forces that choose to record stop and account, disproportionality remains an issue.³² The monitoring of these powers and related demographic information, particularly concerning ethnicity, is crucial for police accountability. It also allows the police themselves to better assess the impact of policy on groups within the local community. **Liberty recommends that the Government urgently reinstate the national requirement to record stops that don't lead to searches and 'stop and account'.**

Policing the hostile environment

18. The Government's determination to turn Britain into a hostile environment for undocumented people has seen private citizens tasked with responsibility for immigration control in sectors from education to housing, employment to health. Evidence of discrimination on the grounds of race and nationality is already emerging.³³ The hostile

³⁰ Recommendations 61 and 62 of The Stephen Lawrence Inquiry Report by Sir William Macpherson, CM4262-I (February 1999), available at <http://www.archive.official-documents.co.uk/document/cm42/4262/4262.htm>.

³¹ Sir Ronnie Flanagan, *The Review of Policing: Final Report* (February 2008), at para's 5.56 to 5.63. Available at http://www.polfed.org/Review_of_Policing_Final_Report.pdf.

³² Metropolitan Police Service, *Stop and Search Dashboard*. Available at: <https://www.met.police.uk/stats-and-data/stop-and-search-dashboard/>.

³³ See e.g. Home Office, *Evaluation of the Right to Rent scheme Full evaluation report of phase one*, October 2015. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468934/horr83.pdf.

environment has also seen a significant erosion of the dividing line between sensitive community policing and immigration enforcement. During the parliamentary passage of the Immigration Act 2016, which includes a range of new immigration related offences and search powers, then President of the National Black Police Association, Janet Hills, argued:

The divisive nature of the proposed legislation creates the conditions for making every person of colour in the UK a priori suspect, and a potential illegal immigrant. If enacted, this legislation will return the UK back to the bad old days of the SUS laws.³⁴

New offence of driving while in the UK unlawfully and related search powers

19. The Immigration Act 2016 includes a new offence of “driving when unlawfully in the UK”, which has not yet been brought into force.³⁵ Accompanying powers will allow officers to search premises (including vehicles) and individuals where they have reasonable grounds for believing a person is in possession of a driving licence, is in the UK illegally, and that the search will lead to discovery of the licence.³⁶ The existing traffic stop power, discussed above, is already a broad one that facilitates speculative and discriminatory stops based on ethnicity. An offence of “driving when unlawfully in the UK” risks creating an additional impetus for officers to use the traffic stop power on the basis of stereotypes. As Baroness Doreen Lawrence argued when opposing the introduction of the offence and search powers, the new provisions:

... will affect countless British citizens. Inevitably, black and Asian Brits will bear the brunt. The enforcement of this offence, together with lax traffic powers, will lead to discriminatory interference with the right to private life of these citizens.³⁷

20. Reports reveal that one in five people stopped by immigration enforcement teams in big cities across Britain is a UK national.³⁸ The argument that immigration-related stops are

JCWI, *Passport Please: The impact of the Right to Rent checks on migrants and ethnic minorities in England*, February 2017 and JCWI, *No Passport Equals No Home: Independent evaluation of the 'right to rent' scheme*, September 2015.

³⁴National Black Police Association, Press Release, Monday 14th December 2015. Available at: <http://www.nbpa.co.uk/wp-content/uploads/2015/12/Final-NBPA-Press-statement-Immigration-Bill-14-December-2015.pdf>.

³⁵ Section 44. It will be committed if a person drives a vehicle with knowledge or reasonable cause to believe that he or she is in the UK without valid immigration status. It is currently being piloted.

³⁶ Section 43, which also includes a driving licence seizure power. These powers are not yet in force nationally, but have been commenced in some areas of the country as part of a pilot exercise.

³⁷ Lords Hansard, 1 Feb 2016: Column 1593.

“intelligence-led” is significantly undermined by these figures, revealing the worrying leeway for discriminatory factors to enter decision-making. More concerning still, senior police officers have suggested that the new search powers may result in a move to embed immigration checks in roadside stops.³⁹ Even where an officer ultimately recognises that they do not have grounds to conduct a search, the stigmatising, inconvenient and intrusive experience of a combined traffic stop and immigration check has already occurred.

21. The offence and search powers in the Immigration Act may incentivise discriminatory stops. By mainstreaming the use of immigration checks in the traffic stop process they may also increase the perception of discrimination. Even before these new provisions arrived on the statute book, 73 per cent of black drivers surveyed by HMIC agreed or strongly agreed with the statement that the police unfairly target people from ethnic minorities for traffic stops.⁴⁰

22. Sections 43 and 44 of the Immigration Act 2016 risk increasing discriminatory stops and searches on our roads and further damaging relations between the police and black and minority ethnic communities.⁴¹ **Liberty recommends that the Government introduce legislation to repeal the offence of driving when unlawfully in the UK and related search powers.**

Requirements to state nationality

23. The Policing and Crime Act 2017 introduced a new requirement to state nationality on arrest which has not yet been brought into force. A police officer can invoke the requirement where he or she “*suspects that the individual may not be a British citizen*”.⁴² A written record will then be made of the individual’s nationality. Failure to comply with the requirement is punishable by a year in prison.⁴³ Section 160 of the Act, if brought into force, would further provide for a police constable to give an individual a notice requiring the

³⁸ The Guardian, *One in five stopped by immigration enforcement is a UK citizen, figures show*, 8 October 2017.

³⁹ In evidence to Parliament, Chief Inspector David Snelling explained how the suspicion could be generated to trigger a search: “*We have a power to stop any vehicle to ascertain ownership and driver details. What we would then do is inquire into whether the driver has authority to drive that vehicle.... To fall within the provisions of the [Immigration Act 2016], we would most likely need to do a further check with the immigration authorities, which at that stage would give us reasonable grounds ... to believe that that person is driving as an illegal immigrant.* Immigration Bill Deb, 20 October 2015, column 66 (Q145, afternoon of 20 October).

⁴⁰ HMIC, *Stop and search powers 2: are the police using them effectively and fairly?*, p 53.

⁴¹ Sections 43 and 44 insert new provisions section 24C, 25CA, 25CB and 25CC into the Immigration Act 1971.

⁴² Clause 104, proposed new section 43A(2).

⁴³ Section 159.

production of a nationality document. Again this power will be used in cases where the constable suspects the person may not be a British citizen.

24. The vast majority of criminal offences have nothing to do with the immigration system, rendering details of a person's nationality irrelevant. Should an individual ultimately be convicted of an offence, the question of deportation may arise, but this is not a matter for police officers who are employed to enforce the criminal law. Requirements to state and prove nationality on arrest will serve to reinforce the concern that police are involving themselves in the enforcement of the immigration system, an assumption which has historically inflamed tensions between police and minority ethnic communities. Reacting to these provisions, Janet Hills, then chair of the National Black Policing Association, expressed concern that there was *"likely to be disproportionately, the over targeting of ethnic minorities."*⁴⁴ Lord Paddick, former Met Deputy Assistant Met Commissioner, recalled his own experiences of a conflation of policing and immigration functions: *"in the late 70s, when I was a PC, the way some officers dealt with difficult black youth on the street was to arrest them for being an over stayer."*⁴⁵ He expressed concern that: *"this is yet another measure likely to undo decades of work trying to rebuild police and community relations."*

25. Liberty recommends that the Government bring forward legislation to repeal provisions requiring individuals to state or prove their nationality on arrest.

Stop and scan

26. In February, the Home Office announced that West Yorkshire Police would be rolling out technology to allow officers to scan people's fingerprints in the street and check them against databases.⁴⁶ One of these databases is the Immigration and Asylum Biometrics System (IABS), which contains facial and fingerprint information and digital documentation relating to people seeking visas or asylum in the UK. By the end of this year, the Home Office intends that another 20 forces across the country will roll out the system.⁴⁷

⁴⁴ The Guardian, *Bill forcing people to prove nationality slammed as discriminatory*, May 2016. Available at:

<https://www.theguardian.com/uk-news/2016/may/04/bill-forcing-people-to-prove-nationality-slammed-as-discriminatory>.

⁴⁵ The Guardian, *Bill forcing people to prove nationality slammed as discriminatory*, May 2016.

⁴⁶ Home Office, *Police Trial New Fingerprint Technology*, 10 February 2018. Available at: <https://www.gov.uk/government/news/police-trial-new-home-office-mobile-fingerprint-technology>.

⁴⁷ Home Office, *Police Trial New Fingerprint Technology*, 10 February 2018.

27. This is the latest of a suite of hostile environment policies which facilitate discriminatory policing practices. In its announcement, the Home Office failed to address the issue of consent or the importance of legal advice where people are asked to hand over their biometric information. The Government has given no detail about what happens if someone declines a request or the circumstances in which data will be shared with the Home Office. As with the proliferation of facial recognition technology, discussed below, the use of this technology was divulged after the event. The Home Office has given no apparent consideration to the potential discriminatory implications of requiring police to perform immigration functions in an intensively sensitive area of policing. **Liberty recommends that the Government abandon a stop and scan scheme which adds undefined immigration control considerations to already sensitive street stops.**

Data sharing

28. A Home Office Serious Violence Strategy, published this month, suggests ministers are considering new arrangements for sharing and processing data.⁴⁸ Information sharing is an important part of intelligence-led policing, but the Government is heralding a new Law Enforcement Data Service at the same time as pushing through a Data Protection Bill that erodes protections around the automated processing of data for law enforcement purposes.⁴⁹ The Bill also removes people's right to restrict or object to their personal information being processed to prevent or detect crime. In the context of a hostile environment, many aspects of the lives of undocumented migrants, such as working or driving, or simply being present in the UK without the requisite permission, are criminalised.

29. Concerns about police data sharing with the Home Office carry the potential to undermine victim and witness confidence in policing and frustrate the effective investigation of serious crime. Distressing ad hoc police data-sharing practices involving victims of crime have already been reported. In 2017, a woman who was five months pregnant went to report being repeatedly raped to the police, but was subsequently arrested at a rape crisis centre on immigration grounds.⁵⁰ Police data-sharing with the Home Office further risks creating the

⁴⁸ Home Office, *Serious Violence Strategy*, April 2018. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698009/serious-violence-strategy.pdf.

⁴⁹ For more see Liberty, *Defend Our Data Protection Rights*. Available at: <https://www.libertyhumanrights.org.uk/defend-our-data-protection-rights>.

⁵⁰ Politics.co.uk, *Woman reports rape to police - and is arrested on immigration charges*, 28 November 2017 <http://www.politics.co.uk/news/2017/11/28/woman-reports-rape-to-police-and-is-arrested-on-immigration>; Politics.co.uk, *Met police hands victims of crime over to the Home Office for immigration enforcement*, 5 April 2017: <http://www.politics.co.uk/news/2017/04/05/met-police-hands-victims-of-crime-over-to-the-home-office>

perception that police are making assumptions about an individual's nationality based on appearance.

30. Liberty recommends that the Government drop provisions from the Data Protection Bill that (i) erode protections around the automated processing of data for law enforcement purposes, and (ii) remove people's right to restrict or object to their personal information being processed to prevent or detect crime. The Government must issue guidance clarifying that information about the immigration status of victims and witnesses of crime must never be passed by police to the Home Office. It must also provide broader protections against information sharing which will further embroil police in immigration enforcement.

Databases and algorithms in policing

31. Data analytics, algorithmic decision-making and new technologies may offer important benefits for effective law enforcement. However they may also pose serious human rights concerns. The implications of surveillance technologies and data-matching on personal privacy are well recorded and Liberty addressed them in detail in a 2017 submission to the Science and Technology Committee.⁵¹ Perhaps less well understood is the discriminatory potential of new policing approaches. Liberty is concerned that the Government is failing in its obligation to ensure that these new approaches do not facilitate or engrain discrimination.

The Gangs Matrix

32. The Metropolitan Police Service's (MPS) Gangs Matrix is an intelligence system built in the wake of the 2011 London riots, designed to list the names of those suspected of gang involvement. A person's inclusion on the Matrix has serious repercussions. It may be used to inform decisions on stop and search. It is used in prosecutions to prove joint enterprise or to demonstrate that a person is more likely to have committed the crime charged, and to increase sentencing. It is also used to inform the MPS's initiative, Operation Shield, which seeks to enforce collective punishment against individuals who are thought to be members of

⁵¹ Liberty's submission to the Science and Technology Committee's Inquiry into Algorithms in Decision-Making. Available at: <https://www.libertyhumanrights.org.uk/sites/default/files/Liberty%20Submission%20on%20Algorithms%20in%20Decision%20Making%20to%20the%20Science%20and%20Technology%20Committee.pdf>

or associated with gangs. Punishments reportedly include injunctions prohibiting individuals from certain areas, and can even lead to them being evicted from their homes.

33. The Matrix disproportionately affects young people from black and other minority ethnic groups, feeds a popular narrative of gang violence which is inaccurate and discriminatory, and fails to properly address youth violence in the UK by which black and other minority ethnic individuals are disproportionately affected. Far from reducing violent crime, the database risks increasing discrimination and division among London's diverse communities.

34. A Freedom of Information Act request in 2015 revealed some features of the system that are of serious concern, but other aspects remain unclear.⁵² A 2017 report by HMIC record that two corroborated pieces of intelligence that the individual is in a gang are required for inclusion and that the level of propensity to violence is also taken into account.⁵³ However, the report includes no detail on the criteria by which a person's "*gang membership*" is determined and does not consider what the "*two corroborated pieces of intelligence*" might be. No information is given about how a person's propensity to violence is assessed. There is further nothing to indicate that there are any checks or safeguards on the inclusion of individuals on the Matrix and no information about how individuals may be taken off, or even apply to have their names removed. As David Lammy MP found in his recent report:

Prisoners I have spoken to ...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.

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.⁵⁴

⁵² *WhatDoTheyKnow*, Patrick Kenner, 'Gang Matrix', 2015, available here: https://www.whatdotheyknow.com/request/gang_matrix.

⁵³ Her Majesty's Inspectorate of Constabulary, 'PEEL: Police effectiveness 2016', March 2017, p. 54, available here: <https://www.justiceinspectors.gov.uk/hmic/wp-content/uploads/peel-police-effectiveness-2016-metropolitan.pdf>.

⁵⁴ *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>.

35. Figures from the Mayor's Office for Policing and Crime reveal that "only 6% of individuals [in the Gangs Matrix] 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.'⁵⁵ 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.⁵⁶ The combined figure of those in custody and those subject to judicial restrictions is still only 44 per cent.⁵⁷

36. All of this raises real worries that the Gang Matrix's criteria for inclusion are over-broad and disproportionate. Little is known about how and why people are added to the Matrix, but its disproportionality is stark. Data for 2016 suggests that BAME people make up some 87 per cent of those on the database, with black men accounting for 78 per cent.⁵⁸

37. The Mayor is now undertaking a review of the operation of this untested and unaccountable system of data collection.⁵⁹ **The Government, too, must engage with this issue and produce guidance requiring that police databases such as the Gangs Matrix set out targeted criteria for inclusion and removal, outline a process for challenging a person's inclusion, explain the sources used to populate the database and establish safeguards to prevent discriminatory use of data.**

Facial recognition technology and algorithms in policing

38. Facial recognition technology uses biometric software to create maps of people's unique facial characteristics. These are then measured and matched to images stored elsewhere. The technology is increasingly being used by police at public events including festivals, football matches and protests.⁶⁰ Last year the Home Office announced plans to

⁵⁵ 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.

⁵⁶ 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>.

⁵⁷ HMIC, 2017, p. 58.

⁵⁸ Metropolitan Police freedom of information request (2016) . Available at:

https://www.met.police.uk/globalassets/foi-media/disclosure_2016/february_2016/information-rights-unit---current-information-related-to-gang-matrix.

⁵⁹ Mayor of London, *The London Knife Crime Strategy 2017*. Available at:

<https://www.london.gov.uk/what-we-do/mayors-office-policing-and-crime-mopac/governance-and-decision-making/mopac-decisions-424>.

⁶⁰ See for example: <https://www.independent.co.uk/news/uk/crime/download-festival-facial-recognition-technology-used-at-event-could-be-coming-to-festivals-10316922.html>;
<https://www.walesonline.co.uk/news/local-news/facial-recognition-software-used-anyone-12952250> ;
<https://www.thecanary.co.uk/2018/03/29/south-wales-police-under-fire-for-using-facial-recognition-technology-against-protesters/>.

spend £5 million more on the software.⁶¹ Facial recognition cameras scan the faces of every passing person and matches are used to trigger police stops, compounding the potential for discriminatory encounters. Liberty observed police use of this technology at Notting Hill Carnival in 2017.⁶² It produced multiple false positives and only one match which, it later transpired, was based on stale information.⁶³ This member of the public was left to go on his way, but not before he had experienced an intrusive and unnecessary stop.

39. A 2017 report from the US Department of Commerce's National Institute of Standards and Technology highlighted concerns about the effectiveness of facial recognition technology as a policing tool.⁶⁴ The Institute noted its limitations in identifying "non-cooperative" subjects, including those who are not facing the camera or whose faces are obscured.⁶⁵ The report found that accurate facial recognition can only be achieved in controlled environments with high quality cameras. Over and above limitations on the effectiveness of facial recognition software, experts have raised concerns about the potentially discriminatory impact of the technology. In March 2017 the US Government Accountability Office found that facial recognition algorithms used by the FBI are more likely to misidentify female and black faces.⁶⁶

40. Notwithstanding this potential for bias, forces have resisted calls from Liberty and others to subject software to demographic accuracy testing. Police chiefs are not alone in their failure to respond to the threats posed by this technology. At present there is no legal framework governing the use of facial recognition technology and no effective system of regulation and oversight.

41. Facial recognition technology is further used in conjunction with unwieldy police image databases. A Government report on the use and retention of custody images was

⁶¹ Public Technology.net, *Home Office plots £5m project to equip police with facial-recognition software*, August 2017. Available at: <http://www.publictechnology.net/articles/news/home-office-plots-%C2%A35m-project-equip-police-facial-recognition-software>.

⁶² Liberty, *Misidentification and improvised rules - we lift the lid on the Met's Notting Hill facial recognition operation*, August 2017. Available at: <https://www.libertyhumanrights.org.uk/news/blog/misidentification-and-improvised-rules-we-lift-lid-mets-notting-hill-facial-recognition>.

⁶³ Between the construction of a police watch list and Carnival, that individual had already been arrested and was no longer wanted.

⁶⁴ National Institution of Science and Technology, *Face In Video Evaluation (FIVE) Face Recognition of Non-Cooperative Subjects*, March 2017. Available at: <https://nvlpubs.nist.gov/nistpubs/ir/2017/NIST.IR.8173.pdf>.

⁶⁵ National Institution of Science and Technology, *Face In Video Evaluation (FIVE) Face Recognition of Non-Cooperative Subjects*, March 2017.

⁶⁶ Note also that the FBI facial recognition database has images of approx. 50% of Americans, without consent, 80% of which are non-criminal entries, many derived from drivers' licenses and passports. <https://oversight.house.gov/hearing/law-enforcements-use-facial-recognition-technology/>

published last year. It followed a successful legal challenge, in which Liberty intervened, to a police policy of holding photographs of innocent people.⁶⁷ Millions of custody images are held by police, including pictures of people who have never been convicted of or even charged with an offence. The review revealed that 16 million custody photographs have become part of a searchable facial recognition gallery.⁶⁸ Moreover, in evidence to the Science and Technology Committee in April 2018, a Minister explained that officers have to manually delete custody images because outdated computed systems don't allow for the automation of this process.⁶⁹ Yet the Government has failed to introduce any statutory oversight of image databases or safeguards on the retention of photographs, leaving forces to revise their own guidance.

42. Alongside a long-delayed Biometrics Strategy due to be published in June, **Liberty recommends the Government introduce strict regulation, including a legislative framework, governing the use of facial recognition technology. Given the potential of this technology to interfere with rights and freedoms, new regulation must, at a minimum, require transparency around its use, provide for independent oversight and require independent testing of all facial recognition algorithms used by law enforcement for racial and other biases. Liberty further recommends that the Government introduce statutory regulation of police image databases and put processes in place to ensure the images are automatically deleted as appropriate.**

Conclusion

43. Stop and search is still a major source of mistrust among minority communities. The Prime Minister must finish what she started and deliver meaningful and lasting reform. It is further the responsibility of government and Parliament to ensure that laws do not invite discrimination. The appeal of technological solutions and the myopic push to embed immigration control in every part of community life must never come at the expense of fair and effective policing. Until everyone in the UK is policed equally, some will have more opportunities, more freedom, more protection and more hope than others. And until that day comes, we have not honoured Stephen's life.

⁶⁷ *RMC and FJ vs Claimants Commissioner of Police of the Metropolis*, [2012] EWHC 1681 (Admin).

⁶⁸ Home Office, *Review of the Use and Retention of Custody Images*, February 2017. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/594463/2017-02-23_Custody_Image_Review.pdf.

⁶⁹ Available at: <https://www.parliament.uk/business/committees/committees-a-z/commons-select/science-and-technology-committee/>.