

## Written evidence submitted by StopWatch (POP0050)

### About StopWatch

StopWatch is a coalition of academics, lawyers, civil society organisations, young people, and community stakeholders, which works to promote fair, effective and accountable policing. Since forming in 2010, StopWatch has campaigned vociferously against the disproportionate use of stop and search, the use and expansion of exceptional stop and search powers, and the weakening of associated accountability mechanisms. Our campaigning includes research, legal and policy analysis, media commentary, political advocacy, litigation, submissions to national and international organisations, and community organising.

StopWatch welcomes the opportunity to respond to the Home Affairs Committee's call for evidence on policing priorities in England and Wales. The following submission addresses questions one, four and five of the published terms of reference and contains a list of proposals for improving public confidence in law enforcement. In summary, StopWatch recommends that:

- For the police service to realise its vision of becoming an anti-racist organisation, **public admission of institutional racism is a necessary precondition** for the proper implementation of policies seeking to rebuild the confidence of marginalised groups
- To strengthen community oversight of unlawful uses of force, the government should **create a statutory instrument requiring forces across England and Wales to establish regulatory misconduct systems that directly involve members of the public** and sanction liable officers through an 'escalating process'
- **Live Facial Recognition and any other associated 'predictive policing' systems are withdrawn** until robust legal safeguards that protect against their discriminatory and disproportionate enforcement are introduced.

## 1) What does a modern police service, fit for the 2020s and beyond, look like?

- 1.1. The principle of 'policing by consent' has long been regarded as fundamental to the fair, effective and accountable nature of law enforcement in a democratic society. The integrity of police forces across England and Wales is reliant on the support and trust of the public in the exercise of their functions, including with regards to racial and ethnic minority communities.
  - 1.2. Recent months have seen an increasing focus on the role of cultural and structural issues within law enforcement as key factors enabling police misconduct and abuse of power. On 28 June 2022, Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) announced that the Metropolitan Police Service (MPS) had been placed alongside five other forces into the 'Engage' phase of monitoring, a form of special measures, following 'several high-profile incidents that raise ongoing concerns about the force's performance, or that are likely to have a chilling effect on public trust and confidence in the MPS'.<sup>1</sup> In a learning report issued to the MPS following the conclusion of Operation Hotton, a series of nine linked investigations into allegations of bullying and harassment within the force between 2016 and 2018, the Independent Office for Police Conduct (IOPC) identified a nexus between the 'casual exchange and blasé nature' of discriminatory and offensive communications between officers and 'the picture of unfair treatment of Black, Asian and Ethnic Minority (BAME) groups by the police'.<sup>2</sup>
  - 1.3. Racial and ethnic disproportionality in the use of police powers and procedures, and the use of stop and search tactics in particular, has led to long-standing concerns about the ability of forces to uphold the law fairly and firmly, to detect and prevent crime, and to foster relations with affected communities.<sup>3</sup> According to the most recent figures published by the Home Office, the number of stop and searches carried out by the police increased by 24% in the year ending March 2021; 'individuals from a Black or Black British background were searched at a rate 7.0 times higher than that of those from a White ethnic group'.<sup>4</sup> No further action was taken in 77% of recorded cases, and only 11% of stop and searches resulted in an arrest.
  - 1.4. StopWatch believes that a modern and efficient police service, fit for the 2020s and beyond, must take active steps to eliminate the harms associated with the discriminatory and disproportionate use of police powers, including by ensuring that officers who misuse their powers are held accountable for their actions and given appropriate disciplinary and/or criminal sanctions. We understand efforts made by the National Police Chiefs' Council and the College of Policing to improve outcomes for Black people who work within or interact with law enforcement through the publication of the Police Race Action Plan (Action Plan), as well as through the establishment of an Independent Scrutiny & Oversight Board to monitor its enforcement.
  - 1.5. However, despite an admission that 'change has not been fast nor significant enough in Black communities' since the publication of the Macpherson Report in 1999, the Action Plan contains no explicit admission of institutional racism within the police. Instead, the Action Plan merely acknowledges that 'many people believe
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policing to still be institutionally racist', and that 'there remains overt racist behaviour in policing', suggesting that 'racism, discrimination and bias' is solely attributable to the conduct of individual officers rather than a systemic issue.<sup>5</sup> For the police service to realise its vision of becoming an anti-racist organisation, public admission of institutional racism is a necessary precondition for the proper implementation of policies seeking to rebuild the confidence of marginalised groups.

#### **4) What can be done to improve trust in police officers and forces, including on funding and on disciplinary powers when police officer behaviour falls below required standards?**

- 4.1. An independent and effective police complaints system is vital to the maintenance of public trust in the accountability of law enforcement. Whether handled by professional standards departments within forces, local policing bodies, or in the most serious cases by the IOPC, investigations into complaints must be accessible and responsive to the needs of those that 'lack confidence in the complaints system and are less likely to use it'.<sup>6</sup> It is the responsibility of the appropriate authority, typically the relevant police force or local policing body, to bring misconduct proceedings against an accused officer following the conclusion of an investigation into a complaint. Appropriate authorities must determine whether there is a case to answer for misconduct or gross misconduct according to the civil standard of proof, whether disciplinary proceedings should be brought against an officer, and what form the proceedings should take.<sup>7</sup>
  - 4.2. At present, the police are under no obligation to record demographic information relating to complaints, including the ethnicity and age of complainants. Figures published by the IOPC on police complaints in England and Wales in 2020/21 identified that dissatisfaction with the use of police powers and procedures accounted for 21% of the 109,151 recorded allegations against officers.<sup>8</sup> Allegations specifically relating to stops, and stop and search (2,275 allegations), powers to arrest and detain (3,407 allegations), and the use of force (6,752 allegations) accounted for more than 50% of recorded data in this subcategory.
  - 4.3. The gaps in the recording of demographic data make it impossible to determine the racial and ethnic background of complainants of police violence, despite admission by the IOPC 'that people from Black, Asian and minority ethnic communities, and young people, have less confidence in the police'.<sup>9</sup> Placing a specific legal duty on forces to collect and publish this information, pursuant to the general requirements of the Public Sector Equality Duty, would facilitate effective monitoring and evaluation of the accessibility of the complaints system to individuals from minority ethnic backgrounds.<sup>10</sup> Without this official data, it is difficult to comprehensively identify the number and type of complaints filed by affected communities, to determine how complaints from these groups are handled in comparison to their counterparts, and to develop evidence-based strategies to tackle disparities in the complaints system.
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- 4.4. StopWatch have long called for the police to investigate the prevalence of pre-arrest handcuffing and TASER use as forceful tactics open to abuse during stop and search encounters, and to address the discriminatory and disproportionate impacts of such practices on individuals from minority ethnic backgrounds.<sup>11</sup> A report by HMICFRS in 2021 found that ‘officers were more than nine times as likely to have drawn TASERs (but not discharged them) on Black people than on White people’; that ‘Black people were eight times more likely to be “compliant handcuffed” than White people’; and that ‘the use of handcuffs during stop and searches is becoming routine in some forces’.<sup>12</sup> It is imperative in the interests of public safety that, in addition to the guidance-based training they will inevitably receive, officers found to have misapplied handcuffs or misused TASERs receive appropriate disciplinary sanctions, including dismissal without notice where a finding of gross misconduct is made by an independent panel.
- 4.5. The requirement that forces arrange local community scrutiny of stop and searches is one of the vital regulatory controls established by paragraph 5.4 of the *Police and Criminal Evidence Act 1984* Code A, though – as identified by an inspection undertaken by HMICFRS in 2017 – ‘only a minority of forces [have] very effective and independent groups’.<sup>13</sup> Some forces have attempted to regulate the use of stop and search powers in a manner conducive to improving police and community relations. The Reasonable Grounds Panel (RGP) developed by Northamptonshire Police, for example, engages members of the public directly to determine whether individual officers have fulfilled the legal requirements of the ‘reasonable grounds’ test when using their powers. The RGP also allows for follow-up action to be taken where it is deemed that officers did not exercise their powers in compliance with the law, including referral to the force’s professional standards department. An evaluation of the RGP by the Open Society Justice Initiative determined that the panel was ‘highly innovative in two respects: firstly, in the way it directly involves members of the public in the process of assessing officer performance; and secondly, by establishing an escalating process of professional development for officers and their supervisors where performance is found wanting’.<sup>14</sup>
- 4.6. To strengthen community oversight of unlawful uses of force, StopWatch proposes the creation of a statutory instrument requiring forces across England and Wales to establish regulatory misconduct systems that directly involve members of the public and sanction liable officers through an ‘escalating process’. The RGP is one example of a procedural system where decision-making is shared equally amongst members of the public and officers. Such a model could be rolled out across other forces and be accommodated within the existing architecture of complaints and disciplinary mechanisms to ensure strategic oversight of the use of police powers. A statutory scheme allowing communities to regulate stop and searches in a joint participatory process would therefore place important obligations on the Home Office and Police and Crime Commissioners to ensure consistency of training, decision-making, standing, compliance and effectiveness within scrutiny groups and associated forces. It is vital that representatives from affected groups that have been disproportionately subjected to stop and searches, such as individuals from minority
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ethnic backgrounds, have adequate representation and are able to participate effectively in the regulatory process.

## **5) What can the Metropolitan Police specifically do to increase trust under its new Commissioner?**

- 5.1. As the largest police force in the United Kingdom, the MPS have a critical part to play in rebuilding public trust in policing across the country. To strengthen the accountability of the police service to the public, the new commissioner must recognise the diversity of the population in throughout the capital and ensure that all operational strategies are responsive to the unique needs of historically over-policed and under-protected communities.
  - 5.2. The effectiveness of the police's response to specific social problems rests on their ability to collaborate with and, wherever necessary, delegate authority to other services in the public sector, including education, healthcare, social services and other community resources. Recent incidents such as that involving Oladeji Omishore, who fell into the River Thames following use of TASER by two Met officers on Chelsea Bridge, whilst experiencing a mental health crisis,<sup>15</sup> and the strip search of the 15-year-old girl known as 'Child Q'<sup>16</sup> – as well as long-standing concerns about excessive use of force on Black people and the risk of adultification bias towards Black and minority ethnic children – demonstrate how a holistic, cross-sectoral approach is required to address the underlying causes of disproportionate policing and police misconduct. StopWatch welcomes the decision to appoint Baroness Casey as the chair of an ongoing review of the MPS's culture and professional standards, and urges the new commissioner to publish and implement its recommendations as a step towards rebuilding trust in the force's internal operations. However, to ensure that the MPS can deliver an effective and adequate response to the needs of marginalised groups, a shift from policy-based solutions towards long-term community-based approaches would help mitigate the harms associated with adversarial police contact.
  - 5.3. An express commitment to rolling back the systems that perpetuate ethnic and racial profiling in policing would also serve as a key step towards tackling the harassment of disempowered groups by law enforcement. On 29 January 2022, the MPS announced that it had made four arrests following the overt deployment of Live Facial Recognition (LFR) in the Oxford Circus area of central London, the first use of such technology since February 2020.<sup>17</sup> Since then, the MPS has deployed LFR on five additional occasions, despite ongoing concerns about the necessity and proportionality of the technology, as well as the disproportionate misclassification of individuals from Black and minority ethnic backgrounds.<sup>18</sup> An opinion issued by the Information Commissioner's Office on the use of LFR by law enforcement notably concluded that 'the blanket, opportunistic and indiscriminate processing, even for short periods, of biometric data belonging to thousands of individuals in order to identify a few minor suspects or persons of interest is much less likely to meet' the threshold of 'strict necessity' required under s.35 (5) of the Data Protection Act 2018.<sup>19</sup>
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5.4. StopWatch calls on the MPS to reverse the ramping up of surveillance systems such as LFR and endorses the recommendations contained in the independent 'Ryder Review' of the governance of biometric data in England and Wales. Though not excluding 'the possibility that [LFR] could be deployed in a rights-compatible way', the review called for a 'moratorium on its use until an adequate legal framework is introduced'.<sup>20</sup> In lieu of a framework that supplements duties on the police arising under the Human Rights Act 1998, the Equality Act 2010 and the Data Protection Act 2018, it is vital that LFR and any other associated 'predictive policing' systems are withdrawn until robust legal safeguards that protect against their discriminatory and disproportionate enforcement are introduced. The increasingly frequent deployment of such technology, combined with the misuse of powers such as stop and search, threaten to further entrench racial and ethnic biases in policing and undermine public confidence in law enforcement.

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<sup>1</sup> Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services. 'Police forces in Engage'. <https://www.justiceinspectors.gov.uk/hmicfrs/about-us/what-we-do/our-approach-to-monitoring-forces/police-forces-in-engage/>

<sup>2</sup> Independent Office for Police Conduct. *Operation Hotton: Learning report* (p.10). <https://www.policeconduct.gov.uk/sites/default/files/Operation%20Hotton%20Learning%20report%20-%20January%202022.pdf>

<sup>3</sup> See Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services. 'Disproportionate use of police powers and procedures: a spotlight on stop and search and the use of force'. <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/disproportionate-use-of-police-powers-spotlight-on-stop-search-and-use-of-force.pdf>

<sup>4</sup> Home Office. 'Official Statistics: Police powers and procedures: Stop and Search and arrests, England and Wales, year ending 31 March 2021 second edition'. <https://www.gov.uk/government/statistics/police-powers-and-procedures-stop-and-search-and-arrests-england-and-wales-year-ending-31-march-2021/police-powers-and-procedures-stop-and-search-and-arrests-england-and-wales-year-ending-31-march-2021#stop-and-search>

<sup>5</sup> College of Policing and National Police Chiefs' Council. *Police Race Action Plan: Improving policing for black people* (pp.3-4). <https://assets.college.police.uk/s3fs-public/Police-Race-Action-Plan.pdf>

<sup>6</sup> Independent Office for Police Conduct. *Statutory Guidance on the Police Complaints System* (p.17). [https://www.policeconduct.gov.uk/sites/default/files/Documents/statutoryguidance/2020\\_statutory\\_guidance\\_english.pdf](https://www.policeconduct.gov.uk/sites/default/files/Documents/statutoryguidance/2020_statutory_guidance_english.pdf)

<sup>7</sup> Regulation 23, *The Police (Conduct) Regulations 2020*. <https://www.legislation.gov.uk/uksi/2020/4/made>

<sup>8</sup> Independent Office for Police Conduct. *Police Complaints: Statistics for England and Wales 2020/21* (p.24)

<sup>9</sup> Ibid (p.14).

<sup>10</sup> Section 149, *The Equality Act 2010*. <https://www.legislation.gov.uk/ukpga/2010/15/section/149>

<sup>11</sup> See, for example: (1) StopWatch's response to the College of Policing's consultation on 'Use of handcuffs: Proposed addition to APP on stop and search'. <https://www.stop-watch.org/what-we-do/research/stopwatch-response-to-college-of-policing-consultation-use-of-handcuffs-proposed-addition-to-app-on-stop-and-search/>. (2) StopWatch's submission to the U.N. Committee on the Rights of the Child, 'The Policing of Children in England and Wales and International Human Rights Standards'. <https://www.stop-watch.org/what-we-do/research/the-policing-of-children-in-england-and-wales-and-international-human-/>

<sup>12</sup> Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services. 'Disproportionate use of police powers and procedures: a spotlight on stop and search and the use of force' (pp.4-5) <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/disproportionate-use-of-police->

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[powers-spotlight-on-stop-search-and-use-of-force.pdf](#)

<sup>13</sup> Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services. 'PEEL: Police legitimacy 2017' (p.27). <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/peel-police-legitimacy-2017.pdf>

<sup>14</sup> Open Society Justice Initiative, 'An Evaluation of the Northamptonshire Police Reasonable Grounds Panel: Regulating Stop and Search' (p.56). <https://www.justiceinitiative.org/uploads/353acfb-085c-44bd-8051-016f66b0f633/regulating-police-stop-and-search-20191106.pdf>

<sup>15</sup> Inquest. 'Oladeji Omishore: Family announce legal action against police watchdog'. <https://www.inquest.org.uk/oladeji-omishore-legal-action>

<sup>16</sup> Local Child Safeguarding Practice Review – Child Q | chscp. <https://chscp.org.uk/portfolio/local-child-safeguarding-practice-review-child-q/>

<sup>17</sup> Metropolitan Police. 'Four arrests in Live Facial Recognition operation in Central London'. <https://web.archive.org/web/20220203061806/https://news.met.police.uk/news/four-arrests-in-live-facial-recognition-operation-in-central-london-441509>

<sup>18</sup> See, for example: (1) Professor Peter Fussey and Dr. Daragh Murray. 'Independent Report on the London Metropolitan Police Service's Trial of Live Facial Recognition Technology'.

<http://repository.essex.ac.uk/24946/1/London-Met-Police-Trial-of-Facial-Recognition-Tech-Report-2.pdf>; (2)

Big Brother Watch. 'Face Off: The lawless growth of facial recognition in UK policing'.

<https://bigbrotherwatch.org.uk/wp-content/uploads/2018/05/Face-Off-final-digital-1.pdf> For a more

comprehensive overview of how historical biases in policing are entrenched in novel technologies, see:

European Network Against Racism. 'Data-driven policing: The hardwiring of discriminatory policing practices across Europe' (2019). <https://www.statewatch.org/media/documents/news/2019/nov/data-driven-profiling-web-final.pdf>

<sup>19</sup> Information Commissioner's Office. 'The use of live facial recognition technology by law enforcement in public places' (p.21). <https://ico.org.uk/media/about-the-ico/documents/2616184/live-frt-law-enforcement-opinion-20191031.pdf>

<sup>20</sup> Matthew Ryder QC. 'Independent legal review of the governance of biometric data in England and Wales' (p.80). <https://www.adalovelaceinstitute.org/wp-content/uploads/2022/06/The-Ryder-Review-Independent-legal-review-of-the-governance-of-biometric-data-in-England-and-Wales-Ada-Lovelace-Institute-June-2022.pdf>

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