



# Children's rights and policing: Spit-hoods and children's rights

## 1. Introduction

This briefing gives an overview of children's rights and the use of spit-hoods by the police. It sets out background information on spit-hoods, our concerns about them, the latest national data on their use on children and highlights figures that show disproportionate use on children from Black, Asian and Minority Ethnic groups (BAME).

## 2. Children's rights and the use of spit-hoods

Children are not mini-adults. The UN bodies, which enforce human rights standards, have recognised that they must be treated differently because of their unique situation – children have distinct vulnerabilities, greater developmental needs and evolving capacities. This, when combined with the reality of having less power than adults and often not being taken seriously, means they must be treated differently when they come into contact with the criminal justice system.

Like all public institutions, the police are bound by children's human rights standards. In 2015, the National Police Chiefs' Council (NPCC) published *Child Centred Policing* (the first national strategy for the policing of children and young people) which emphasised that: *'it is crucial that in all encounters with the police, those below the age of 18 should be treated as children first. All officers must have regard to their safety, welfare and wellbeing as required under [...] the Convention on the Rights of the Child'*<sup>1</sup>

**In 2016, when the UN Committee on the Rights of the Child last examined the UK on how well it is meeting its children's rights obligations, it recommended that the UK Government prohibit the police using any harmful devices on children.**<sup>2</sup> The police also have obligations under Article 3 of the Human Rights Act relating to the prohibition of inhuman and degrading treatment.

The UN Convention on the Rights of the Child (CRC) applies to all children aged 17 years and under, and sets out the basic things that children need to thrive: the right to an adequate standard of living, to be protected from all forms of violence, an education, to play, be healthy, and be cared for. Children's rights should act as a safety net, meaning children always receive at least this minimum standard of treatment whatever the changing economic or political climate. The CRC also has four general principles which are rights in themselves, but also the framework through which all the rights in the CRC should be interpreted. They are: non-discrimination, the best interests of the child, survival and development and respect for the views of the child.

## What are spit-hoods?

A spit-hood is a bag made of mesh-like material with a drawstring to tighten it, which is placed over a person's head. It is a restraint device used to prevent spitting or biting.

The use of spit-hoods has significantly increased over the last five years with more and more police forces rolling out their use (a staggering 41 of the 43 police forces in England and Wales now use them). In 2019, the Metropolitan Police Service (MPS) backtracked on previous commitments and joined other police forces in offering them to all front-line officers despite the MPS Commissioner insisting six months before, that spit-hoods may cause more harm than good to officers.<sup>3</sup>

Those supportive of their use argue it is vital in helping to protect officers from assault and protection against exposure to any risk of infections like hepatitis. However, the Hepatitis C Trust and the National AIDS Trust have made it clear that Hepatitis C and HIV cannot be transmitted via spitting.<sup>4</sup> The minimal risk of Hepatitis B transmission can be vaccinated against – this exercise already occurs for other professionals who face a risk of being exposed at work, such as nurses, doctors and dentists.<sup>5</sup>

### 3. Dangers of spit-hood use

Spit-hoods have been described as 'cruel' and 'dehumanising' and human rights groups<sup>6</sup>, some senior police chiefs and members of the London Assembly have voiced serious concerns over their use.<sup>7</sup>

Risk assessments by the police have highlighted the dangers of breathing restriction and asphyxia and the Independent Office of Police Conduct (IOPC) has investigated the deaths of several adults following the use of spit-hoods. Deaths have been attributed to spit-hoods both in the UK and US, including Jonathan Pluck in Cambridgeshire when in 2009 he was restrained in a cell, strip-searched and left face down on a mattress<sup>8</sup>, and Terry Smith in 2013.<sup>9</sup>

Another concern is the requirement for a person to be handcuffed before the spit-hood is employed. This means a person would be unable to remove it quickly in an emergency and can only draw attention to difficulties if they are able to speak and are listened to.

Given these serious concerns, **it is extremely worrying that there has been no assessment of how safe they are to use on under-18s and there is no national guidance for spit-hood use on children.**

A response to a Freedom of Information (FOI) request to the Centre for Applied Science and Technology<sup>10</sup> (now integrated with the Defence Science and Technology Laboratory), by The Omega Foundation, revealed that it had not:

- Formally evaluated spit-hoods;
- Identified suitable models or types suitable for use; and
- Produced any risk, safety, ethical, medical or other relevant use-based assessments for UK police forces.

The lack of official guidance has been identified by lawyers representing those affected as leading to glaring inconsistencies in policing.<sup>11</sup>

In January 2019, Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services published its latest inspection of conditions in MPS custody and reported a formal cause of concern

in relation to the use of spit-hoods, including the application and the length of time the equipment was being used for:

*'Through our custody record analysis, case audits and observations we identified 24 recent incidents involving the use of force that we reviewed in depth, including cross-referencing against CCTV footage. Half of the incidents were managed well overall. We found a range of learning points in the remainder. Concerns from the CCTV footage included the application and length of time detainees remained in a 'spit and bite' guard (spit-hood)... We referred two cases to the force for full review due to what appeared to be the lack of proportionality of force used.'*<sup>12</sup>

Spit-hoods are supposed to be breathable, however, if the mesh becomes permeated, usually with spit, mucus, blood, and/or vomit, there is a risk of suffocation.<sup>13</sup> The European Union Regulation 2019/125 concerning trade in certain goods, which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment therefore states that as *'such a hood covers the mouth and often also the nose, it presents an inherent risk of asphyxiation. If it is combined with restraints, such as handcuffs, there is also a risk of neck injury'*. Therefore, to mitigate against these risks, *'exports of spit-hoods should therefore be controlled'*.<sup>14</sup>

#### Risks for children

**Despite the identified risk of spit-hoods and the lack of guidance, their use on under-18s is becoming increasingly widespread. Disturbingly, our research shows police forces have used spit-hoods on children as young as 10 years old.**<sup>15</sup>

In 2012, an 11 year old girl with disabilities was restrained with a spit-hood, handcuffed and had leg straps applied. The police force responsible failed to properly explain why and were criticised by the then Independent Police Complaints Commission (IPCC).<sup>16</sup>

Sophie\*, an 11 year old girl with a rare neurological disability similar to autism, was hooded, restrained and detained in police custody for a total of more than 60 hours.

Sophie's condition means she can become upset when over-stimulated and can sometimes spit out of frustration. Between February and March

2012 she was detained in police stations by Sussex Police on four separate occasions: once under the Mental Health Act and three times for minor offences committed after she became distressed.

Her mother said:

*'It was very traumatic for Sophie to be hooded by police officers. Due to her disability she finds it very upsetting to have someone even touch her head. Having strangers put a bag over her head when she was already extremely distressed was profoundly shocking for her.'*

Sophie was twice held in cells overnight but the police refused to let her mother see her. Even though she spent over 60 hours in custody on four separate occasions, Sussex police repeatedly failed to provide Sophie with an appropriate adult: despite the clear legal requirement that officers must ask for one to attend a police station to support a child as soon as possible after their detention.

In June 2016, the then IPCC found 11 officers and one police staff member had cases to answer for misconduct and criticised a *'widespread failure by Sussex police officers to document their use of force in relation to [Sophie]'* adding: *'using force on a person so young and vulnerable is a grave occurrence.'*

In response, Sussex police said it has updated its training on the use of spit-hoods. The force has not changed its policy to ensure officers are prohibited from using spit-hoods on children.

\* Not her real name

In July 2019, an article in the Journal of Forensic and Legal Medicine determined that the use of spit-hoods stems from the need for a mechanical restraint rather than preventative measures against the transmission of infection (given the minimal risk). It concluded that it is important to weigh the perceived safety of police officers against the widely recognised detrimental effect of spit-hoods as a result of the vulnerability of children and a balance needs to be struck between perceived health and safety needs of police officers and the human

rights of detainees. It stated *"The risk of transmission of relatively minor infections and the low risk of transmission of relatively serious infections is also acknowledged. However, the vulnerability of detainees, and in particular the universally declared vulnerability of children, requires that they be at all times protected against treatment that is potentially harmful."*<sup>17</sup>

Recent developments in neuroscience have also identified that the brain development and specifically the frontal lobes (the area of the brain that helps regulate decision-making and the control of impulses that underpin behaviour) are still developing into a human's 20s. This will affect a child's ability to cope in a stressful situation with the police. Using a spit-hood risks not only heightening their fight or flight mood but also risks subsequent psychological damage. This is compounded by the fact that children who come into contact with the police are some of the most vulnerable in society - many have experienced abuse or violence, are victims of criminal exploitation, and have Special Educational Needs (SEN) or serious mental health conditions.

#### **A child's experience of spit-hood use**

Andrew\* was 14 years old when he was placed in a spit-hood by police minutes after they entered his family home. He had been fast asleep at the time of their attendance.

They entered the house and went straight to his room where he recalls being woken to a red shining light in his face and officers going through his possessions. The incident escalated quickly and he recalls the officers' aggressive demeanour followed by officers throwing him on to his bed and his head and neck being forced head down into the mattress. He was extremely frightened and struggling to breathe. He was shouting to the officers and remembers trying to turn his body around when he saw an officer get a mask out of his bag. When the mask was placed over his face. Andrew said:

*"It all went black at this point, I wasn't sure what was happening and I was frightened."*

Andrew described the material of the spit-hood as being very weird, he couldn't talk or communicate, it affected his breathing and he didn't know what would happen next.

His mother spoke of being shocked at his treatment and begged further police officers who attended to "*please help my son*".

Andrew was placed in a police van and remained in a cage inside the van with the spit-hood on for the entire journey. He was banging on the cage and was even left in the cage upon arrival at the police station. He had the spit-hood on for 45 minutes. He spent 24 hours in a cell. He was only given access to a doctor at 4.30 am the next day.

\* Not his real name

#### 4. Lack of consistent and accurate recording of incidents and data

The Home Office annually publish use of force statistics but these are not broken down and disaggregated into the type of force used, age, ethnicity and reason for use.<sup>18</sup> Through a review of all publicly available use of force figures, we have been able to get a better picture of the numbers used on children by various police forces. The information provided across police forces is hugely inconsistent and, in some cases, non-existent. Certain forces provide detailed incident by incident information in an excel format whereas other forces provide very high-level infographics. The best forces have both. It should be noted that the way that incidents are recorded also vary.

Such lack of data means there is a lack of transparency in the use of spit-hoods on children despite the risks highlighted above. It is very important to clearly see when and how, and particularly in what circumstances, spit-hoods are being used on children in order to properly scrutinise their use and ensure there is sufficient accountability.

#### 5. Spit-hood use on children

**The latest Home Office statistics combined with responses to our FOI Requests show that spit-hood use on children has rapidly increased in recent years. Between April 2018 and March 2019, they were used 312 times on under-18s,**

**including four times on children under 11 years of age**<sup>19</sup> compared to our FOI responses, which showed there were at least 27 uses in 2016 and at least 47 uses in 2017.<sup>20</sup>

Last year, the human rights advocacy group Liberty stated that BAME communities were '*likely to be disproportionality targeted by spit-hoods*'; because of the vague guidance provided by police forces on when spit-hoods should be used – this is reflected in our statistics on use on children.<sup>21</sup> **Across the whole period requested for 2017 and 2018, BAME children accounted for 34% of spit-hood use nationally and 72% of MPS use.**<sup>22</sup> This shows hugely disproportionate use of spit-hoods on BAME children given that they make up approximately 18% of the 10-17 year old population.<sup>23</sup>

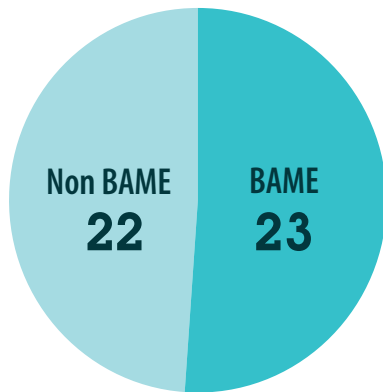
#### Spit-hood use on children in London<sup>24</sup>

The MPS introduced the use of spit-hoods in December 2016, under a pilot scheme.<sup>25</sup> The pilot scheme had initially been cancelled in October 2016 after Mayor of London, Sadiq Khan, had voiced concerns about their use.<sup>26</sup> The Mayor argued that the decision to use spit-hoods was a '*highly emotive one*' and should be '*informed by public engagement*'.<sup>27</sup> Nevertheless, a pilot scheme was introduced by the MPS. The scheme faced heavy criticisms from members of the public due to the high proportionality of individuals from BAME groups being detained. Among the women restrained through the use of spit-hoods, between December 2016 and August 2017, 72% were black and the remainder white.<sup>28</sup> At the time, Green Party Assembly Member Siân Berry argued that it was very worrying to see spit-hoods being used 'disproportionately' on black Londoners.<sup>29</sup> She has also raised concern about their use on under-18s.<sup>30</sup> Despite these concerns, in September 2019, the MPS confirmed it would be giving spit-hoods to all front line officers as part of their equipment.<sup>31</sup> Statistics show that spit-hood use on children in London is increasing.

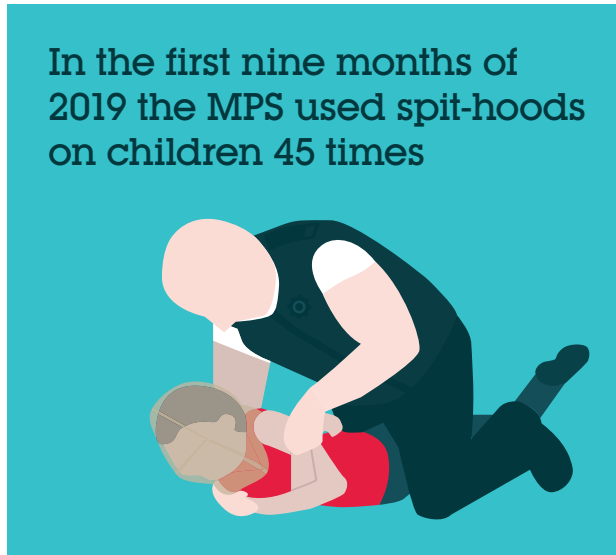
#### 6. Recommendations and what needs to change?

**CRAE wants the use of spit-hoods on children to be prohibited. Failing that there should be a strong presumption against their use on children. Urgent action must be taken to protect children's safety and well-being and respect their rights.**

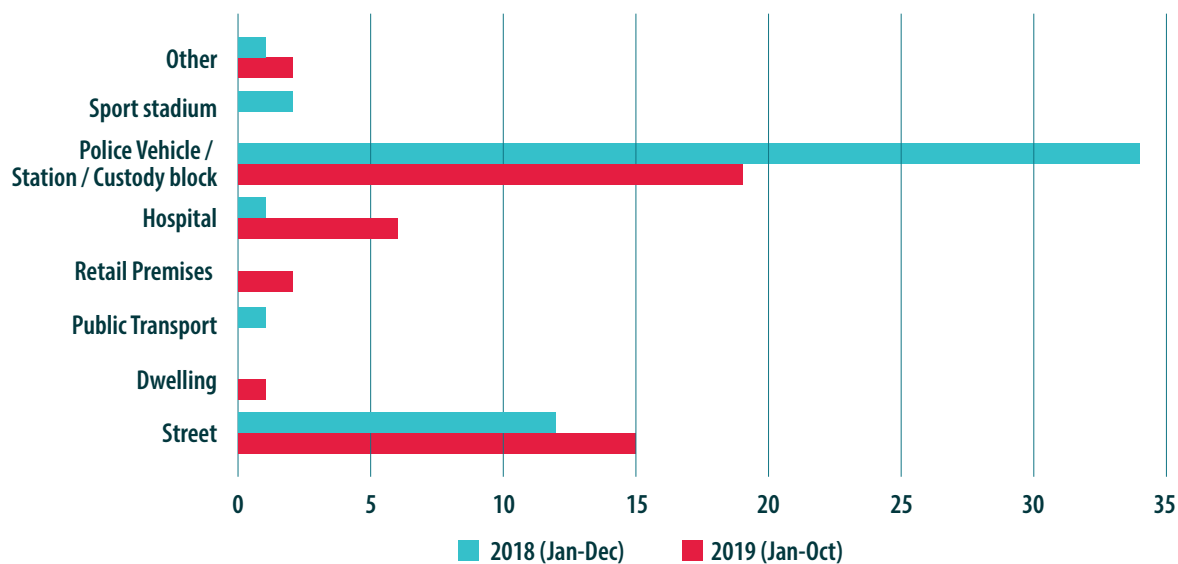
MPS use of spit-hoods on children by ethnicity



First nine months of 2019



MPS spit-hood use on children by location



Source for all figures: CRAE FOI request responses

National guidance

- Under the Children Act 2004, the police must make arrangements to safeguard and promote the welfare of children. This includes the police's use of spit-hoods that must comply with this statutory duty.
- Currently there is no specific, national guidance for police on the use of spit-hoods on children. A clear policy statement from police leaders at the National Police Chiefs Council (NPCC) outlining that spit-hoods should only ever be used on children in the rarest situations where it is absolutely necessary could have a big impact on practice.
- This must then be adapted by all forces in England (including the Metropolitan Police Service) in their local policies on spit-hood use.

**Recommendation:** The NPCC and the College of Policing should publish clear guidance on the use of spit-hoods with a section dedicated to their use on children. This should remind officers of their duty to respect children's rights as set out in the NPCC strategy on policing children and young people and ensure spit-hoods are only ever used on children when absolutely necessary.

Training

- CRAE wants the College of Policing to amend their use of force training package and general training on the use of force on children, with specific reference to the use of spit-hoods, which should include:
  - An explanation of children's rights;
  - An in-depth focus into the child and adolescent brain;



- How children are likely to react differently to situations than an adult; and
- A detailed focus on the heightened risks of spit-hood use on children and young people.
- This will help educate officers and understand why spit-hood use on children should be avoided. Although officers undergoing training receive information about defusing situations, we want to see more focus in the training on learning and using de-escalation techniques (such as Verbal Judo). This is already successfully deployed by other frontline workers who work with children and young people in challenging situations.

**R Recommendation:** The College of Policing should ensure that its training packages include a focus on children's rights, the child and adolescent brain and de-escalation techniques, and specific reference to the adverse implications of using a spit-hood on a child.

#### Data

- There have been welcome improvements in the way police forces gather and record data on the use of force. However, statistics on the use of spit-hood broken down by age and ethnicity are not routinely published through either the Home Office annual publication of use of force statistics or on individual forces' own websites.
- Publicly available data by individual forces varies considerably with some forces providing little to no information on the number of spit-hood uses. Currently, the only way to extract this data is when organisations like CRAE make freedom of information requests. Even with that data, it is difficult to get a complete picture of what is happening and the circumstances in which spit-hoods are being used on children.

**R Recommendation:** The Home Office must routinely publish disaggregated, detailed data on the use of spit-hoods on children – including going into the granularity of categorising by ethnicity and circumstances or reasons for use both nationally and by individual police force.

#### Scrutiny and monitoring

- As well as gathering and publishing data, mechanisms must be developed by police leaders at all levels (including the NPCC and individual forces) for routinely analysing and

reflecting on statistics about spit-hood use on children.

- Monitoring and analysing spit-hood use locally is vital. Such monitoring should help ensure spit-hoods are not being used too readily and too often by particular police officers or teams.
- Police and Crime Commissioners (PCCs), including the Mayor's Office for Policing and Crime (MOPAC) in London, and any local policing ethics committees should regularly review data around spit-hood use for their police force, which will allow similar police forces to identify reasons for any significant differences. This should include regular dip-sample analysis of spit-hood use records to ensure the equipment is only being used in appropriate circumstances.

**R Recommendation:** Local and national mechanisms for scrutinising spit-hood use on children must be established and improved. PCCs (including MOPAC in London) should develop robust processes for analysing data and circumstances of spit-hood use on children and challenge forces where appropriate.

- The IOPC has an important monitoring role of the police use of spit-hood on vulnerable groups such as children. CRAE wants the Government to change the law so that any use of spit-hood on a child results in a mandatory notification to the IOPC and supply of detailed information about circumstances around the use of force. This would enable the IOPC to collate, analyse and make recommendations for improvements or 'lessons to learnt' to police forces, the College of Policing and the NPCC.

**R Recommendation:** The IOPC should be enabled to monitor the use of spit-hoods on children by ensuring they are notified of all spit-hood uses on children .

- Currently there is no requirement for police forces to have a post-incident debriefing session when officers use spit-hoods on children. The introduction of such operational safeguards would increase police accountability and further co-operation between children and their local police force. The use of debriefing sessions could be similar to the current debriefing used in child prisons when restraint techniques have been applied.

**R Recommendation:** Police forces should explore the incorporation of post-incident debriefing sessions when officers use spit-hoods on children.

**The police say spit-hoods help them to protect officers from biting and spitting but this must not come at the cost of children's safety and human rights.**

## Endnotes

1. National Police Chiefs Council (2015) *Child centred policing: A national strategy for the policing of children & young people*
2. UN Committee on the Rights of the Child (2016) *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*
3. BBC News (7 February 2019) 'Front-line Met Police officers to get spit hoods in U-turn decision'.
4. The Hepatitis C Trust (February 2017) 'The Hepatitis C Trust and NAT respond to spit hoods debate'
5. Liberty (February 2019) 'The Rise of Spit Hoods: dangerous, degrading and unjustified'.
6. Liberty (February 2019) 'The Rise of Spit Hoods: dangerous, degrading and unjustified'.
7. The London Assembly (September 2019) 'News from Siân Berry: Met uses 'dehumanising' spit hood on 80-year-old'.
8. Children's Rights Alliance for England (2016) *State of Children's Rights 2016: Policing and Criminal Justice*.
9. Inquest (July 2018). "Inquest into the death of Terry Smith concludes neglect contributed to death involving excessive restraint by Surrey Police."
10. The government body is part of the Home Office and describes itself as: "...made up of scientists and engineers who develop technological solutions to fight crime. CAST works with academia and industry."
11. Donoghue Solicitors (October 2016) "The Spit Hoods Balancing Act"
12. HM's Inspectorate of Constabulary and Fire & Rescue Services (2018) *Report on an unannounced inspection visit to police custody suites in Metropolitan Police Service by HM Inspectorate of Prisons and HM Inspectorate of Constabulary and Fire & Rescue Services*.
13. Regulation (EU) 2019/125 of the European Parliament and of the Council of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment
14. Regulation (EU) 2019/125 of the European Parliament and of the Council of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment
15. A CRAE FOI response identified that a spit hood was used by Cheshire police on a 10 year boy in May 2018.
16. *The Independent* (8 June 2016) 'Sussex Police put 11-year-old disabled girl in handcuffs and leg restraints, Independent Police Complaints Commission finds'.
17. Kennedy, K.M., Payne-James, J.J., Payne James, G.J., and Green, P. (2019) *The use of spit guards (also known as spit hoods) by police services in England, Wales and Northern Ireland: to prevent transmission of infection or another form of restraint?* Journal of Forensic and Legal Medicine
18. Home Office (2019) *Police use of force statistics for England and Wales between April 2018 to March 2019*.
19. Home Office (2019) *Police use of force statistics for England and Wales between April 2018 to March 2019*.
20. Children's Rights Alliance (2019), *State of Children's Rights 2018: Policing and Criminal Justice*.
21. Liberty (February 2019). 'The Rise of Spit Hoods: dangerous, degrading and unjustified'.
22. Children's Rights Alliance for England (2019), *State of Children's Rights 2018: Policing and Criminal Justice*.
23. For ethnicity, population is based on the 2011 census. The current ethnic breakdown of the population will likely have changed from 2011, so these figures should be treated as an estimate
24. The information is based upon the Use of Force statistics published by the Metropolitan Police force (downloaded on 29 November 2019 - <https://data.london.gov.uk/dataset/use-of-force>). This extrapolated information is based on the qualifications and assumptions related to such data – in particular, incident numbers may be over-representative due to duplicative results being reported in the relevant tables (i.e. where more than one officer has used force on the same subject, this was shown on the relevant table on separate rows of data, which, as such, resulted in duplicate metadata)
25. The Guardian (2 September 2017) 'Concern over Met police use of spit hoods on black detainees'
26. BBC News (12 November 2016) 'Cruel' spit hoods used by third of UK police forces'
27. Evening Standard (6 September 2016) 'Met Police backtracks on 'spit hoods' plan as Sadiq Khan enters row over use at London police stations'
28. The Guardian (2 September 2017) 'Concern over Met police use of spit hoods on black detainees'

29. The Guardian (2 September 2017) 'Concern over Met police use of spit hoods on black detainees'
30. The Evening Standard (11 September 2019) 'Spit hood used on 80-year-old man by Met Police officers, figures reveal'
31. The London Assembly (September 2019) 'News from Siân Berry: Met uses 'dehumanising' spit hood on 80-year-old'.

### About CRAE

The Children's Rights Alliance for England (CRAE) is part of the charity Just for Kids Law. We work with over 150 organisations and individuals to promote children's rights – making us one of the biggest children's rights coalitions in the world.

We believe that human rights are a powerful tool for in making life better for children. We fight for children's rights by listening to what they say, carrying out research to understand what children are going through and using the law to challenge those who violate children's rights. We campaign for the people in power to change things for children and we empower children and those who care about children to push for the changes that they want to see.

With support from Trust for London, CRAE facilitates the London Forum on Children and Policing which brings together voluntary, community and statutory sector organisations to discuss and tackle issues around the policing of children.



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