

## REGULATING STOP AND SEARCH: A CHALLENGE FOR POLICE AND COMMUNITY RELATIONS IN ENGLAND AND WALES

REBEKAH DELSOL

*Centre for Research in Ethnic Relations, University of Warwick,  
Conventry, CV4 7AL UK*

MICHAEL SHINER\*

*Department of Social Policy/Mannheim Centre for Criminology,  
London School of Economics, Houghton Street, London, WC2A 2AE UK  
E-mail: m.shiner@lse.ac.uk*

**Abstract.** Policing in England and Wales has become increasingly contested since the 1960s and has been subject to unprecedented levels of public scrutiny. Stop and search powers have played a central role in this process and, though often described as an essential part of modern policing, have continued to provide a flashpoint in police–community relations. In this article the authors briefly review the history of stop and search in England and Wales, drawing particular attention to the concerns that have been raised about the use of this power in relation to minority ethnic communities. The article goes on to consider how issues of public trust and confidence have been addressed and raises questions about the effectiveness of efforts to regulate this area of activity. Finally, we suggest that regulation has become too tightly bound to “race” and measures of disproportionality. Instead, we argue that the current focus on “race” should be broadened to include other groups that may be subject to over-policing and that monitoring should be based on a system of triangulation, which combines multiple indicators and mixed methods.

### Introduction

Following a series of damaging scandals and controversies, the final decades of the 20th century witnessed a struggle to restore the legitimacy of the police in England and Wales. There has, however, been no new “legitimizing myth” and the politics of policing is now said to be “beyond legitimation” (Reiner 2000: 80). Political conflict and popular suspicion have been blunted so that controversies and complaints now

focus more on the failure of the police to achieve their widely agreed mission of crime control than on any critique of their overall purpose or place. Yet support for the police remains limited and qualified. According to Robert Reiner (2000: 162) practical policing policy has never been more fiercely controversial and:

A more sophisticated public awareness of conflict, inside and outside the police organization, precludes anything but a pragmatic, conditional legitimation in specific narratives, challenged by others ... Having lost the automatic trust they once enjoyed, the police cannot retrieve it wholesale: public confidence is tentative and brittle and has to be renegotiated case by case.

In this article we focus on public confidence in relation to one aspect of policing – police initiated stops. We consider such a focus to be justified for two principal reasons. Not only is stop and search widely considered to be crucial to modern policing, but it has also proved to be something of a flash point in police–community relations. As well as being important in its own right, therefore, police stops provide a useful case study, which may highlight important lessons that are of more general value. We begin by briefly reviewing the history of stop and search, before going on to trace the growth of concern in this area, paying particular attention to the position of black and minority ethnic communities. In the second part of the paper we focus on the ways in which issues of public trust and confidence have been addressed in relation to police stops. We describe the established system of regulation and consider recent developments in this area, including the implementation of Recommendation 61 from the Macpherson Inquiry, which requires the police to make a written record of all stops. Our analysis is based largely on our own research, which includes a recently published study, funded by the Home Office, looking at the implementation of Recommendation 61 (Shiner 2006); and as yet unpublished comparative research exploring racial disparities in policing in England and the United States.<sup>1</sup> One of the main arguments we develop below is that the current focus on policing black and minority ethnic communities should be tied much more explicitly to police accountability and legitimacy. As part of this process, we believe that the role of “race” should be examined alongside other characteristics, which may also be linked to disproportionate policing.

## The Role of Stop and Search

Stop and search is primarily an *investigative* power used for the purposes of crime detection or prevention in relation to a specific individual at a specific time (Lustgarten 2002). Such powers have a long history in England Wales, dating back to the 1824 Vagrancy Act. This legislation, passed to deal with public disorder in the first decades of the 19th century, gave officers the power to search and arrest on the offence of being a “suspicious person” or “reputed thief being in or on any highway with the intent to commit a felony” (Demuth 1978). Section 66 of the 1839 Metropolitan Police Act also gave the police in London the power to stop and search people they “reasonably suspected” of carrying anything “stolen or unlawfully obtained”, while similar powers existed in the West Midlands, Manchester and Liverpool. Until fairly recently, however, the police had powers to stop and search nationally only on suspicion of drugs and firearms offences (Willis 1983). Under these powers officers could stop a suspect solely on the basis of suspicion and did not require external evidence such as a witness description or crime report. It is this emphasis on officer suspicion that led to the use of the phrase “sus laws” in connection to stop and search.

The 1984 Police and Criminal Evidence Act (PACE) granted the police a new national power to stop and search any person or vehicle for stolen goods or prohibited items so as “to enable officers to ally or confirm suspicions about individuals without exercising their powers of arrest”.<sup>2</sup> Including PACE there are currently 21 Acts granting stop and search powers to the police, but some of these powers are rarely used and most stop searches are conducted under the auspices of just three Acts: PACE, the Misuse of Drugs Act 1971 and the Firearms Act 1968 (MPA 2004). Although the number of stop searches conducted under the Terrorism Act 2000 has increased in recent years, such stops still only account for a small proportion of the total: 29,407 searches were made under this legislation in 2003/2004 compared with a total of 738,016 stop searches of people recorded under PACE and other legislation (Home Office 2005).

Although frequently used, stop and search does not ordinarily lead to arrest, doing so in only 13% of cases in 2003/2004 (Home Office 2005). Such an apparently low arrest rate has given rise to some doubts about the effectiveness of these powers, but stop and search does make a considerable contribution to the detection and prevention of certain types of crime such as possession of an offensive weapon (FitzGerald

1999). Its role in crime prevention has also been highlighted by some commentators (Miller et al. 2000a; Havis and Best 2004).

### *Origins of Concern About Police Stops*

Public concern about stop and search has formed part of a broader crisis of legitimacy facing a range of criminal justice agencies, particularly the police (Crawford 1999). Although evident across diverse sections of society, this crisis has been inescapably linked to “race”. The “catastrophic deterioration” of relations with the black community has been central to the politicisation of policing since the 1960s and particular concerns have been raised about the “over policing” of certain black and minority ethnic communities (Reiner 2000; see also McLaughlin 1991). Evidence of subcultural patterns of racism and machismo began to be uncovered within the British police service during the early 1970s against a background of a racialised moral panic about ‘mugging’ (Hall et al. 1978; Rowe 2004). A submission to the Royal Commission on Criminal Procedure by the Institute of Race Relations (1979, 1987) drew attention to the mass stop and search of black people, to rude and hostile questioning accompanied by racial abuse, to co-ordinated police raids, the use of riot squads, and continuous surveillance directed against black communities. Similar concerns were raised by a report from the Institute of Race Relations (1979: 12) which recorded numerous cases where:

... black parents were constantly worried whenever their children went out. They were liable to be stopped on the way to school or work, at bus stops and in the underground, not return home when expected and only hours later would parents discover that they were being held in the local police station.

These anecdotes were reinforced by a study of stop and search in two metropolitan and two provincial police forces. The study conducted by Willis (1983: 22) found that in practice officers did not follow the requirement of reasonable suspicion and that: “blacks, particularly young black males, were much more likely to be stopped and searched by the police than whites” – despite subsequent prosecution rates being the same. Similar findings were reported by Smith and Gray’s (1983) study of policing in London, which found that officers were exceeding their powers to stop and search, and that these actions were having deleterious effects on relations between the police and minority groups.

The continued significance of stop and search as a source of tension between the police and black communities was highlighted some years later by the late Bernie Grant, former Member of Parliament for Haringey, London when he said (cited in NACRO 1997: 3):

Nothing has been more damaging to the relationship between the police and the black community than the ill judged use of stop and search powers. For young black men in particular, the humiliating experience of being repeatedly stopped and searched is a fact of life, in some parts of London at least. It is hardly surprising that those on the receiving end of this treatment should develop hostile attitudes towards the police. The right to walk the streets is a fundamental one, and one that is quite rightly jealously guarded.

Accompanying the perception that some black and minority ethnic communities were subject to disproportionate policing, there was increasing evidence of police failure to respond effectively to racially motivated attacks (Bowling 1998). A combination, which gave rise to claims that Britain's black and minority ethnic communities were being "over-policed and under-protected".

*The Brixton "riots" and the Scarman report*

The increasingly strained nature of police relations with some black and minority ethnic communities was vividly brought to public attention by a period of marked urban unrest during the early 1980s. Although disturbances occurred in numerous locations – including Southall, Manchester, Liverpool, and various parts of the West Midlands – it was the Brixton "riots" which most captured the public imagination and seemed to epitomise the pervading sense of crisis. In the aftermath of these events, Lord Scarman was appointed to head a public inquiry into the causes of the Brixton disturbances and to make recommendations with the aim of preventing further disorder. Scarman criticised the heavy-handed approach to policing in Brixton and highlighted the role of operation "Swamp 81", which involved more than 120 officers patrolling the area with the instruction to stop and search anyone that looked "suspicious". Over 4 days, 943 people were stopped and 118 were arrested, more than half of whom were black (Bowling and Philips 2002). Although young people from various ethnic groups were involved in the disorder, Scarman (1981: 45) concluded that the disturbances were "essentially an outburst of anger and resentment by young black people against the police". He attributed this resentment to the adoption of policing priorities and practices that did not command local

support and impacted disproportionately on black and minority ethnic communities. Scarman also pointed to the failure of formal liaison with such communities, which contributed to the withdrawal of public “consent”, something that he considered essential in securing legitimacy for policing in a democratic society. In order to promote legitimacy Scarman made a range of recommendations which included identifying racial prejudice amongst recruits, improving the disciplinary process in cases of racially prejudiced behaviour by officers, recruiting more ethnic minority officers, increasing community consultation through statutory liaison committees, introducing an independent review of complaints against the police, and the introduction of lay visitors to police stations.

*The murder of Stephen Lawrence and the Macpherson Report*

Almost two decades after the publication of the Scarman Report and questions of policing and “race” were once again pushed to the centre of public debate. This time the focus was not on disorder but on the racist murder of black teenager, Stephen Lawrence, in South London and the subsequent failure to bring his killers to justice. The resulting public inquiry – which began several years after the original incident and only after a change of government – focused on the flawed investigation into Stephen’s murder and on the investigation and prosecution of racially motivated crimes more generally. The inquiry, chaired by Sir William Macpherson, found fundamental errors had marred the murder investigation resulting from “a combination of professional incompetence, institutional racism and a failure of leadership by senior officers” (Macpherson 1999, para 46.1). Macpherson highlighted a general lack of trust and confidence in the police amongst ethnic minorities and noted that “the experience of black people over the last 30 years has been that we have been over policed and to a large extent under protected”.<sup>3</sup> The report contained 70 recommendations “amounting to the most extensive programme of reform in the history of the relationship between the police and ethnic minority communities” (Bowling and Phillips 2002: 16). Macpherson recommended that a Ministerial Priority be declared to increase trust and confidence within ethnic minority communities by demonstrating fairness in all aspects of policing. To this end he called for vigorous inspections, improved handling of racist incidents, changes to training in racism awareness and cultural diversity and improvements to employment, recruitment and retention policies and the handling of discipline and complaints. The majority of the recommendations were accepted by the Home Secretary and a series of

annual reports have been published detailing the progress in their implementation.

According to Reiner (2000) the Stephen Lawrence case illustrates important changes in the politics of policing. Although this case “raised once again the vexed issue of police racism and discrimination”, the key concern was “a failure to deliver public protection from crime in an equitable and efficient way, rather than the allegations of heavy-handed policing that had dominated earlier controversies” (2000: 80). There were, however, clear echoes of these earlier allegations as the Lawrence inquiry noted that stop and search elicited some of the strongest reactions during the hearings at several locations throughout the country. The inquiry report was unambiguous in its condemnation of the disproportionate use of such powers against black and minority ethnic communities and in its dismissal of the rationalisations sometimes advanced by the police and academics alike:

[w]hile we acknowledge and recognise the complexity of the issue, and in particular the other factors which can be prayed in aid to explain the disparities, such as demographic mix, school exclusions, unemployment, and recording procedures, there remains, in our judgement, a clear core conclusion of racist stereotyping.

Nobody in the minority ethnic communities believes that the complex arguments which are sometimes used to explain the figures are valid... Whilst there are other factors at play we are clear that the perceptions and experiences of the minority communities that discrimination is a major element in the stop and search problem is correct.

(Macpherson 1999: para 45: 8–10).

Despite these criticisms, Macpherson recommended that stop and search powers remain unchanged (Recommendation 60). Instead the emphasis was placed on improved monitoring and administrative controls over the use of such powers, including a specific recommendation calling for a requirement that police officers must record all “stops” as well as “stops and searches” made under any legislative provision (Recommendation 61).

### **Disproportionality and “Race”**

Given the centrality of “race” to recent debates about stop and search it is important to consider the extent to which black and minority ethnic

groups are subject to the use of these powers. Police statistics and self-report surveys clearly indicate that people from some minority ethnic groups are more likely to be stopped and searched by the police than whites, though the precise meaning of this familiar finding continues to be a matter of some controversy (Bowling and Phillips 2002). In particular, there is sharp disagreement as to the extent to which these differences may be considered disproportionate. The Home Office regularly publishes information comparing the number of stop and searches with the ethnic composition of the resident population and these comparisons consistently show that minority ethnic groups are subject to heightened rates of stop and search. Figures for 2003/2004 showed that the rate of stop and search for black people was nearly six-and-a-half times that for whites, while that for Asian people was nearly twice that for whites (see Table 1). The use of these figures to support claims that minority groups are disproportionately policed has been challenged, however, with criticisms being levelled in three main areas: the reliability of stop and search records; the adequacy of the benchmark; and the impact of differential rates of offending.

### *Reliability of Records*

Home Office reports are based on police records and it is clear that not all stop and search encounters are recorded by the police (Bland et al. 2000; Shiner 2006). It has been claimed that under-recording is partic-

*Table 1.* Ethnic profile of the general population and those subject to stop and search, 2003/2004

	Estimated residential population (%)	Stop and search	
		(%)	Per 1,000 population
White	91.3	76.0	13
Black	2.8	15.0	83
Asian	4.7	7.5	25
Other	1.2	1.5	20
<i>All</i>	<i>100.0</i>	<i>100.0</i>	16

*Source:* Home Office (2005).

*Note:* (a) Figures for the resident population are mid-year estimates provided by the Office of National Statistics for England and Wales covering all people aged 10 years and above; (b) ethnicity was not known in 16,629 stop and searches (2.3% of the total) and these cases have been excluded from the figures given above.



ularly marked in relation to white people and that this has the effect of over estimating the extent of any disproportionality. Stop and search encounters involving people from minority groups are said to be more likely to be recorded than those involving white people because more of these incidents are confrontational and police officers feel the need to “cover their backs” (FitzGerald and Sibbitt 1997; Bland et al. 2000; Waddington et al. 2004). There is little evidence regarding these claims but that which there is suggests that most stop and search encounters are recorded by the police (Bland et al. 2000; Clancy et al. 2001). Any differences between ethnic groups in this regard remain obscure, moreover, and the idea that recording rates are relatively high for minority groups has been challenged on the basis that police officers may under-record such incidents in order to conceal evidence of discriminatory practices (Phillips and Bowling 2003).

### *Benchmarking*

The resident population provides a reasonable estimate of different groups’ overall experience of stop and search but its appropriateness as a benchmark for assessing disproportionality has been called into question. Population estimates may not be accurate and if they underestimate the size of minority ethnic groups then the extent of disproportionality will be exaggerated. It has also been noted that the resident population may not accurately reflect the population that is available to be stop and searched because it does not take account of the transient population or the time that people spend in public places. Several studies have found that the ethnic composition of the available population differs markedly from that of the residential population and that these differences go a long way in accounting for the apparent disproportionate use of stop and search against people from minority communities (MVA and Miller 2000; Miller et al. 2000a; Waddington et al. 2004). Although this evidence casts doubt over claims that disproportionality is driven by systematic personal prejudice among front-line officers, the significance of the available population remains a matter of debate. Not only has the Black Police Association described the focus on available populations as a “smokescreen” (submission to MPA 2004), but academic commentators have also pointed out that being available does not, in itself, constitute sufficient grounds for a stop search and is not a neutral criterion. As availability is tied to structural inequalities, including unemployment and exclusion from school etc, focusing on the available population may simply serve to legitimate the

uneven and potentially unjust use of police powers (Bowling and Phillips 2003).

### *Rates of Offending*

It is sometimes suggested that minority ethnic groups are disproportionately subject to stop and search because they offend at a relatively high rate. This suggestion is problematic, however, and was recently rejected by the Metropolitan Police Authority (2004) on the grounds that there is no clear evidence that minority groups offend at a higher rate than whites. While official records are unreliable as an index of offending because they reflect biases in the criminal justice system, self-report studies point to comparable rates of offending among whites and blacks, with lower rates among Asians (Bowling and Phillips 2002).

Even if we assume parity in overall offence rates some groups may be more susceptible to being stopped by the police due to the type of offences they tend to commit. It can reasonably be inferred that different ethnic groups have different offence profiles because opportunities for offending are structured by social circumstances and social circumstances continue to vary quite sharply according to ethnicity (see Modood et al. 1997). Comparing specific offence rates with the use of stop and search throws up some important anomalies, however, which indicate that disproportionality cannot be readily explained by different offence profiles (Phillips and Bowling 2003). Based on information provided by victims we would anticipate that the disproportionate use of stop and search is particularly marked in relation to robbery and theft from the person but this does not appear to be the case (Phillips and Bowling 2003; see also Home Office 2005). Conversely, while disproportionality is particularly marked in relation to drugs this cannot be readily explained by differences in offence rates (see Phillips and Bowling 2003; Sangster et al. 2002). The concentration of minority ethnic drug searches is particularly significant because many drug searches are likely to be high-discretion proactive searches initiated by the police rather than low-discretion searches conducted on the basis of information received from other sources (FitzGerald 1999). It is precisely under these circumstances that “we might expect that generalisations and negative stereotypes about likely offenders play a role” (Quinton et al. 2000: 17).

*Community Relations*

Whatever position one adopts in relation to the debate about disproportionality, there can be little doubt that stop and search is a significant source of dissatisfaction with the police and that this is particularly so among black and minority ethnic communities (NACRO 1997). These powers account for a significant proportion of official complaints about the police, particularly from minority ethnic groups (1990 Trust 2004; Havis and Best 2004) and there is a clear perception – both within minority communities and the public more generally – that they are targeted at black people (Stone and Pettigrew 2000; MORI 2004). Added to this, members of minority communities who are stopped are more likely to report being “really annoyed” by the behaviour of police officers than are whites (Sims and Myhill 2001). That said, we must guard against presenting an overly dystopian view. Black and Asian communities continue to show high levels of support for the police and members of these communities appear to call on the police when they are victimised at a similar rate to whites (Sims and Myhill 2001; Bowling et al. 2003). The implications for street level interventions by the police are clear: “There is general support for stops and searches amongst all ethnic groups but only if there are fundamental changes in the way they are used by the police” (Stone and Pettigrew 2000: 52).

**Accountability and Regulation**

Recent debates about stop and search largely support the contention that the politics of policing has moved into a phase where it is “beyond legitimation”. Rather than challenging the need for such a power, critics have tended to concentrate on ways of limiting its potential abuse, with particular reference to black and minority ethnic communities (Havis and Best 2004; MPA 2004). While describing stop and search as “a core aspect of policing” that “defines the unique powers embodied in the role”, for example, Cecile Wright – Chairperson of the Metropolitan Police Authority’s Scrutiny Panel on stop and search – recently noted that the use of these powers has become the “litmus test” for determining the state of community police relations and talked of the need for a “process of change to achieve a more effective, efficient and fairer use of stop and search” (MPA 2004: 4). A similar emphasis has been evident in central government. Having accepted the Lawrence inquiry’s recommendation to extend the recording of stops, Home Office ministers described this

move as “a lever for positive change”, which will help to promote greater transparency and accountability (Home Office 2004: 1). Such claims raise important questions, both about the nature of current arrangements and the extent to which they are likely to achieve the stated aims.

### *The “Tripartite Structure” and Complaints Procedures*

The regulation of police stops fits into a broader system of police governance, the formal basis of which is provided by The Police Act 1964 (Jones 2003). This Act established a “tripartite structure”, whereby responsibility for policing policy is divided between the Chief Constables in each of the 43 regional police forces, local police authorities, and the Home Office. Chief Constables “direct and control” their forces and are responsible for drafting local police plans and setting annual budgets. Police authorities – consisting of local councillors, magistrates and “independent” members – are responsible for securing the maintenance of an “adequate and efficient” force for their area; for appointing the Chief Constable (subject to the approval of the Home Secretary); and for offering him or her advice and guidance. In addition to police authorities, The Police and Criminal Evidence Act 1984 required that forces establish “local consultative committees” to improve discussion and communication between police commanders and local people. There are, however, several factors limiting the ability of local people to influence policing policy. The form of accountability that the police are expected to provide to external bodies is “explanatory and co-operative” rather than “subordinate and obedient” (Marshall 1978), which means that chief constables are required to *give account* for their decisions but are under no legal requirement to *take account* of any critical response (Reiner 1995). The potential for local influence has, in addition, waned as repeated governments have taken on a greater role in directing policing from the centre (Reiner 2000; Jones 2003).

The ability to register complaints provides a potentially important source of regulation, and members of the public may draw attention to the abuse of police powers through a general complaints and discipline procedure. The credibility of this procedure has, for many years, been cast into doubt, however, because it depends upon the police investigating the police; though the recent creation of the Independent Police Complaints Commission may help to ameliorate concerns in this area. Even allowing for this reform it is likely that the formal complaints procedure will continue to be of limited utility in regulating police stops. Very few complaints of any kind are substantiated, and wrong doing is

particularly difficult to establish in relation to stops because they occur away from the police station and often in the absence of independent witnesses (Havis and Best 2004).<sup>4</sup>

## PACE

As well as granting powers of stop and search to the police, existing legislation lays down a series of requirements governing their use – when they may be used, how they should be used and how their use should be monitored. PACE is particularly significant in this regard because it contains a code of practice covering the use of such powers. This code of practice outlines the principles governing the use of stop and search, emphasising that such powers must be used fairly, responsibly, with respect and without unlawful discrimination. It also reminds officers that the Race Relations (Amendment) Act 2000 makes it unlawful for them to discriminate on the grounds of race, colour, ethnic origin, nationality or national origins when using their powers. The code of practice is rooted in the notion of “reasonable suspicion”, which requires – in most cases – that police officers must have “reasonable grounds” to suspect that a person is in possession of stolen or prohibited articles before proceeding with a stop and search. What constitutes “reasonable grounds” will depend on the circumstances, but there must be an *objective basis* for suspicion based on accurate and relevant “facts, information, and/or intelligence” (para. 2.2).<sup>5</sup> The code of practice goes on:

... reasonable suspicion can never be supported on the basis of personal factors alone without reliable or supporting intelligence or information or some specific behaviour by the person concerned. For example, a person’s race, age, appearance or the fact that the person is known to have a previous conviction, cannot be used alone or in combination with each other as the reason for searching that person. Reasonable suspicion cannot be based on generalisations or stereotypical images of certain groups or categories of people as more likely to be involved in criminal activity.

It is highly unusual for a legislative code of practice to provide such guidance and offers “a rare example of the law attempting to take into account the social reality of policing on the streets” (Sanders and Young 2000: 87). As well as outlining the circumstances under which stop and search may be used, the code of practice lays down specific duties on

officers at different levels of the police organisation regarding the application and monitoring of these powers (see Table 2).

It should also be noted that the implementation of Recommendation 61 from the Stephen Lawrence Inquiry has meant that similar responsibilities have been extended to cover non-statutory stops.<sup>6</sup> Accordingly,

*Table 2.* Code of practice for stop and search – key requirements

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*Front line officers*

Before conducting a search officers must take “reasonable steps” to inform the subject of the search of the officers’ name and station; the legal power that is being exercised; the purpose of the search; the grounds for the search; and of their individual rights. Officers must make a record of any stop search unless there are “exceptional circumstances” that make this wholly impractical. If not done at the time, a record should be made as soon as practicable. Where a record is made at the time a copy should be given immediately to the subject of the search and should always include a note of their self defined ethnic background, the purpose of the search, the grounds, the outcome and the identity of the officer involved.

*Supervising officers*

Must monitor the use of stop and search powers and should:

- consider whether there is any evidence that such powers are being exercised on the basis of stereotyped images or inappropriate generalisations;
- satisfy themselves that the practice of officers under their supervision in stopping, searching and recording is fully in accordance with PACE;
- examine whether the records reveal any trends or patterns which give cause for concern;
- take appropriate action where necessary.

*Senior officers<sup>a</sup>*

Must monitor the broader use of stop and search powers and, where necessary, take action at the relevant level.

*Additional supervisory and monitoring requirements*

Supervision and monitoring must be supported by the compilation of comprehensive statistical records of stops and searches at force, area, and local level. Any apparently disproportionate use of the powers by particular officers or groups of officers or in relation to specific sections of the community should be identified and investigated.

In order to promote public confidence in the use of the powers, forces in consultation with police authorities must make arrangements for the records to be scrutinised by representatives of the community, and explain the use of the powers at a local level.

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*Source:* PACE.

<sup>a</sup>Defined as those with area or force wide responsibilities.

a police officer who requests a person in a public place to account for themselves (i.e., their actions, behaviour, presence in an area or possession of anything) is required to make a record of the encounter at the time and give a copy to the person who has been questioned. The record should include the reason for the stop, the outcome, and the self-defined ethnicity of the person stopped. As well as being given to the person who is subject to the stop, the Stephen Lawrence Inquiry recommended that stop and search records should be monitored and analysed by police services and police authorities and reviewed by Her Majesty's Inspectorate of Constabulary (HMIC) during inspections. The Inquiry also noted that police authorities should be obliged to undertake publicity campaigns to ensure that the public are aware of the stop and search provisions and their right to receive a record (see also Home Office, undated).

### *Forms of Accountability*

The regulatory system described above incorporates various forms of accountability (Jones 2003). By requiring officers to provide those they have stopped with a written record of the stop the system seeks to promote individual accountability of officers as they go about their day-to-day activities. Added to this, by emphasising the monitoring/scrutiny function of the police authority, community representatives, and HMIC, the system also seeks to promote corporate forms of accountability. Our research suggests there is a degree of "fit" between forms of accountability and the mechanism through which they are channelled. Once a stop has been completed, for example, external accountability is typically framed in corporate terms: that is to say forces tend to circulate general information about stops through the media, the force web site, the police authority, public meetings and meetings with community groups. The on-going accountability of individual officers, by contrast, is typically managed within the police organisation and there is little room for external bodies to call individual officers to account regarding specific incidents (Shiner 2006).<sup>7</sup>

Individual officers are generally held to account internally through supervision, with recent research emphasising the need for supervisors to scrutinise forms (not simply sign them off) and take some form of remedial action where problems are identified (Miller et al. 2000b; Quinton and Olagundoye 2004). The same research also highlighted the need for dedicated officers in forces who are responsible for monitoring records to identify officers or teams who appear to search or stop

unusually high numbers of people from minority groups. The recent evaluation of the implementation of Recommendation 61 found that some forces are developing a performance management approach for this purpose and attempts are being made to link stops to arrest rates on the basis that a consistently high level of disproportionality is a particular cause for concern where it is accompanied by a consistently low arrest rate (Shiner 2006).

### **Critical Reflections**

Recent moves to increase the scrutiny of police stops are of undoubted significance, but we believe current practice in this area reveals a number of weaknesses which are likely to limit the efficacy of what will be achieved. Identifying difficulties with both internal and external mechanisms for accountability suggests that greater attention needs to be paid to strategic dimensions, and to developing a broader focus, which sets concerns about disproportionality in a wider context.

#### *Internal Regulation*

Although clearly important, internal regulation is not a panacea. The discretion involved in front-line policing makes effective supervision difficult (Reiner 1985, 2000), and doubts have been expressed about the extent to which supervising officers actually supervise stops, or can be realistically expected to do so given the competing demands on their time (Shiner 2006). There are, in addition, a variety of other factors that may serve to reduce the rigour of internal regulation. Police ownership of disproportionality and related issues is often very limited and the extension of recording to cover non-statutory stops has been highly contested (Shiner 2006). Some of the objections that the police have raised in this regard relate to practical matters, such as the increase in bureaucracy, but there is also a clear sense in which the requirement to record all stops has been seen as part of an externally imposed agenda and an attack on the integrity of the police. In practice, some forces have reframed the new recording requirement in ways that reflect their own priorities and practices, with the result that the intended monitoring function of stop records has been displaced by a reformulated intelligence function. This process raises serious doubts about the extent to which internal mechanisms can be expected to provide the basis for robust scrutiny. Moreover, internal regulation is premised upon the idea



that problems are concentrated among the rank and file and can be corrected by supervision/management, which presupposes that there are some fairly fundamental differences of orientation at different ranks. Although our research indicates that officers' attitudes to disproportionality and recording do vary, these variations do not appear to be reducible to rank or role. Crucially, senior officers echo many of the concerns raised by the rank and file, and there is some evidence of attempts to re-brand the recording of stops in a way that diverts attention away from the original Lawrence agenda (Shiner 2006; Delsol, unpublished).

### *External Accountability*

In the context of limited police ownership, external accountability has a key role to play in supporting effective monitoring and regulation though it is subject to its own limitations and difficulties (Shiner 2006). It has been noted elsewhere that an over-reliance on external controls may be counter productive if they foster indifference or resistance within the police organisation and weaken internal monitoring systems (Stenning 1995). Specific attempts to involve external agencies in the regulation of police stops have, in addition, given rise to familiar complaints about the unrepresentative nature of community representatives and the lack of genuine influence (Shiner et al. 2004). Community engagement often takes fairly passive forms (e.g., consultation or awareness raising), moreover, and suggests a degree of "damage limitation" on the part of the police. Not only do the police tend to view community engagement as an opportunity to counter the perception that there is a problem with disproportionality, but this orientation may also be accompanied by a reluctance to share information with outside agencies and a failure to engage critical elements of the community – including black and minority ethnic groups – where opportunities arise (Shiner 2006).

As already noted, the regulation of police stops in England and Wales has become virtually synonymous with "race" and disproportionality. Indeed, so strongly has this link been made that some of those involved in implementing the new recording requirement claimed that this initiative was not a priority for their force because black and minority ethnic groups constituted a very small proportion of the local population (Shiner 2006). We believe that the regulation of stops has become too tightly bound to disproportionality and that there is a need to reconsider the nature of this relationship. It is our contention that disproportionality does not provide a sufficient basis for monitoring and

regulating police stops and that this indicator should be located more explicitly within a broader focus on accountability, police legitimacy and strategic decision-making. Our main concerns about disproportionality are as follows:

- There is a lack of clarity surrounding disproportionality (Shiner 2006). Those involved in providing public scrutiny of this area have reported feeling paralysed by the competing claims that are made about disproportionality and have indicated that they were unclear about what they should be looking for. While there was some suggestion that there may be such a thing as an “acceptable” level of disproportionality, moreover, this remained a vague notion and there was very little clarity about where the boundary might lay between what is acceptable and what is not. In the absence of such a boundary, statistical indicators – when used in isolation – provide a limited basis for meaningful scrutiny.
- Disproportionality is a quantitative measure, which conveys very little, if anything, about the quality of the stop. This is particularly important given that the manner in which stops are conducted has been identified as a key source of dissatisfaction (Sims and Myhill 2001; 1990 Trust 2004; Havis and Best 2004; MPA 2004).
- Current measures of disproportionality are insensitive to the range of experiences included within each ethnic group. It is likely that there are specific categories of people in each ethnic group that face particularly disproportionate levels of street intervention by the police – working class youth, the unemployed, users of class A drugs, the homeless etc. Moreover, by treating the white category as a benchmark against which to assess the experience of minority ethnic groups current measures of disproportionality implicitly assume that stops are being used appropriately in relation to the white community, but this may not be the case. It may be that stops are being over used in relation to all ethnic groups – albeit to a varying degree – and that there are sections of the white community that have particular misgivings about the way they are policed. This point was illustrated by a group of white secondary school students included in the recent evaluation of the implementation of Recommendation 61: approximately a third of this group said they had been stopped by the police and complaints were made that the police were “rough” and “act like they own you”. There is, therefore, a clear need to consider the appropriateness of stops more generally.

- The concept of accountability has greater currency within the police service than the notion of disproportionality and has considerably less political baggage (Shiner 2006). As such, it is likely that initiatives which are framed more broadly in terms of accountability will gain a greater degree of cooperation from officers than those that are linked specifically to disproportionality. Linking recording to accountability and police legitimacy rather than to a particular section of the community has the added advantage of emphasising to officers the wider purpose of recording and the principles behind it. In order to address these concerns we propose that the regulation of police stops should include an explicit focus on strategic decision-making. The implications of recent research on available populations are that disproportionality may be driven by operational and institutional decisions about where and when to deploy resources. It follows therefore that these matters should provide a focus for negotiation between the police, the police authority and local communities, including black and minority ethnic groups where relevant. Such a focus will, we believe, help to provide those responsible for monitoring police stops with a stronger sense of purpose and a clearer set of reference points. Where high levels of stop and search are likely to threaten the legitimacy of the police, moreover, the closer involvement of communities in reviewing local policing policy and considering alternative approaches may well help to ease tensions and promote consent.

We also propose that the monitoring of stops should be based on a system of triangulation, which combines multiple indicators and mixed methods (see Shiner 2006). Both quantitative and qualitative indicators should be used, with statistical information being scrutinised alongside detailed records of individual encounters and stop records being augmented by other sources of information, including complaints, feedback from community organisations and community surveys. The apparent “fit” between forms and mechanisms of accountability should also be challenged, so that external mechanisms allow for some assessment of the quality of individual stops. Finally, “race” should continue to provide a key focus for scrutiny – albeit one that is integrated into a broader perspective – both because it is important in its own right and because it provides a useful barometer for police–community relations more generally. Police relations with minority ethnic communities contain particular tensions and if police stops can be managed satisfactorily in this context then it is likely that there will be positive knock

on effects in relation to other sections of the community. It is, in other words, probably the case that what constitutes good practice in relation to black and minority ethnic communities constitutes good practice more generally. In order to ensure that disproportionality provides the basis for robust scrutiny clear guidance is required about how the figures should be interpreted and what those involved should be looking for.

## **Conclusion**

Policing in England and Wales has been shaped by an on-going quest for legitimacy (Reiner 2000). Something like the optimum level of consent had been secured by the 1950s, but thereafter public confidence in the police and criminal justice more generally began to decline sharply amidst a series of scandals, conflicts and controversies (Reiner 1985, 2000; Crawford 1999). As police–community relations deteriorated, police initiated stops came to be identified as a major source of tension, particularly in many inner city areas where black and minority ethnic communities tend to be concentrated. Partly as a result of these tensions police stops have been subject to increasing levels of scrutiny and regulation. Various moves have been made in this direction, which have been broadly consistent with more general trends in police governance (Jones 2003). The police are, in many ways, more accountable today than they have ever been and are certainly under greater scrutiny. Media and public debate has become more informed and more critical; the gaze of external bodies including the Home Office has become ever more intense; and a variety of performance indicators have been introduced in order to assess what the police do and how they do it. Yet a number of “worrying trends” remain. There are, most notably, persistent inequalities in the policing experience of different social groups and the role of local democratic institutions continues to be squeezed by expanding national influences. What this has meant in relation to the regulation of police stops is that disproportionality has dominated the agenda – regardless of the local context – and that local mechanisms for external accountability have remained underdeveloped. Both the focus of regulation and the mechanisms promoting it need to be expanded if police stops are to be applied in a manner that is locally responsive and democratically informed.

## Notes

1. This research was conducted by Rebekah Delsol and provides the basis for her ESRC-funded doctoral thesis.
2. This Code has been updated six times since the introduction of PACE, most recently in December 2005.
3. David Muir, Representing black church leaders, cited in Macpherson (1999) *The Stephen Lawrence Inquiry, CM 4262-I*. London: The Stationary Office, para 45.7.
4. In 2000–2001 903 complaints were substantiated, representing nine percent of complaints that were investigated but only three percent of all complaints made (Povey and Cotton 2001).
5. Reasonable suspicion does not apply to all stop and search powers, such as that created for weapons under s. 60 of the Criminal Justice and Public Order Act 1994 (Sanders and Young 2003).
6. Recommendation 61 has been implemented in a series of stages. An initial pilot was followed by “phased implementation” in selected sites across the country, with all forces being required to start recording stops by April 1st 2005. The selection of recording to cover all non-statutory stops has been overseen by the Stop and Search Sub Group of the Lawrence Steering Group (LSG) and the Home Office Stop and Search Action Team (SSAT).
7. The complaints and discipline procedure provides an obvious exception to this general pattern, but – as noted above – is of limited use in relation to police stops.

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