

StopWatch Evidence to the Independent Advisory Group on Stop and Search

StopWatch is a coalition of civil society organisations, academics, lawyers, community workers, activists and young people which campaigns for fair and accountable policing, with particular reference to stop and search. We work to:

- Promote effective, accountable and fair policing;
- Inform the public about the use of stop and search;
- Develop and share research on stop and search and alternatives;
- Organise awareness raising events and forums;
- Provide legal support challenging stop and search.

Since forming in 2010, StopWatch has led a wide-ranging campaign against the disproportionate use of stop and search, the increasing use of exceptional stop and search powers and the weakening of accountability mechanisms. This includes legal and policy analysis, media coverage and commentary, political advocacy, litigation, submissions to national and international organisations and community organising. The unique mix of academics, activists, young people and lawyers has proved effective at challenging the current use of the tactic and drawing attention to the realities for those on the receiving end of police powers.

For more information on StopWatch and member organisations, please see: www.stop-watch.org.uk.

StopWatch's work has primarily focused on the use of stop and search by police forces in England and Wales and we have seen significant advances in the reform of this power over the last two years. It is our knowledge and experience of the situation in England and Wales, as well as our collective expertise on the issue of stop and search, that informs this submission.

Police stop and search is a highly influential point of contact between the police and the public. Stop and search in England and Wales is the "litmus test" for determining the state of community police relations.¹ When members of the public are treated fairly and with respect, they are more supportive of the police and more respectful of the law². Research shows that unsatisfactory contact between the police and the public can have a negative impact on public confidence in the police, not only for the individual directly involved, but also for his or her family, friends, and associates.³ Research demonstrates that levels of support and trust in the police are lower among people who have recently been stopped and searched, particularly if they experience the encounter negatively.⁴ The data also show that positive stop and search experiences do little to improve trust and confidence in the police.⁵

¹ Metropolitan Police Authority (2004). Report of the MPA Scrutiny on MPS Stop and Search Practice. London: Metropolitan Police Authority. P4

² Sunshine, J. and Tyler, T. R. (2003). 'The Role of Procedural Justice and Legitimacy in Public Support for Policing', *Law and Society Review*, 37, 3, 513-548; Tyler, T. R. (2006) 'Legitimacy and Legitimation', *Annual Review of Psychology*, 57, 375-400; Tyler, T. R. and Fagan, J. (2008). 'Legitimacy and cooperation: why do people help the police fight crime in their communities?', *Ohio State Journal of Criminal Law*, 6, 231-275; Hough, M., Jackson, J., Bradford, B., Myhill, A., and Quinton, P. (2010) 'Procedural Justice, Trust and Institutional Legitimacy', *Policing: A Journal of Policy and Practice*, 4: 203-2010.

³ Miller, J., Bland N., and Quinton P. (2000), 'The Impact of Stops and Searches on Crime and the Community,' *Police Research Series Paper 127*, London: Home Office.

⁴ Stone, V. and Pettigrew, N. (2000), 'The Views of the Public on Stops and Searches,' *Police Research Series. Paper 129*, Home Office: London.

⁵ Bradford, B., Jackson, J. and Stanko, E.A. (2009), 'Contact and confidence: Revisiting asymmetry in the impact of encounters with the police,' *Policing and Society*.

Police Scotland can only perform their job if they have the consent of the people. Solving crime relies directly on the willingness of communities as witnesses or victims of crime to pass on information and comply with the law. Unfair use of stop and search drives a wedge between the police and communities and jeopardizes their support of the police and their use of their powers.

In April 2014, the Home Secretary announced reform to stop and search in England and Wales declaring- “Nobody wins when stop and search is misapplied. It is a waste of police time. It is unfair, especially to young, black men. It is bad for public confidence in the police.”

Another issue we are concerned about is the effectiveness of stop and search in detecting or preventing crime. The contribution of stops and searches to the detection and prevention of crime has been shown to be, at best, marginal because very few of the crimes that police-initiated encounters are designed to detect or prevent actually come to the attention of police officers⁶ and police forces have not ensured that their officers use their powers in a focused and intelligence-led manner.⁷ One crude measure of whether searches are effective or not is the proportion of those encounters which lead to an arrest.⁸ On this measure, searches have been extremely ineffective because alongside the massive increases in their use over the last two decades, the arrest rate has decreased and shows the lack of a targeted approach to their use.⁹ Powers which do not require reasonable suspicion have been even less effective and their lack of safeguards have meant that they have been used as a routine response to dealing with issues outside of their legal purpose, such as using terrorism powers to disperse groups of young people or deal with anti-social behaviour.¹⁰ Therefore, it is important to view the use of stop and search and other police encounters as ‘one tool in a tool box’ of powers that may or may not be appropriate in a specific circumstance rather than as an essential general tactic to fight crime.

On 31 March 2015 Scottish Ministers announced the establishment of the Independent Advisory Group on Stop and Search (hereinafter ‘the Advisory Group’). The Advisory Group launched a public consultation into the use of stop and search in Scotland, with particular regards to the issue of consensual stop and searches of people aged 12 and over (Police Scotland recently confirmed they would no longer use consensual searches in relation to those aged under 12). The remit of the Advisory Group is to:

1. Consider and report to Scottish Ministers on whether a presumption against consensual stop and search [as proposed by Police Scotland] goes far enough or alternatively, if there should be an absolute cessation of the practice.
2. Develop a draft Code of Practice that will underpin the use of stop and search in Scotland.
3. Legislative options in relation to stop and search, including ways in which the Code of Practice can have a legislative basis; and
4. The use of statutory stop and search in relation to children and young people for more general safeguarding and wellbeing.

⁶ Miller et al., 2000

⁷ ‘Stop and Search Powers: Are the police using them effectively and fairly?’, HMIC, 2013, <http://www.hmic.gov.uk/media/stop-and-search-powers-20130709.pdf>. It is of note that Section 163 stops were specifically excluded from the inspection.

⁸ Arrests rates arising from searches is often used as a crude measure of success but can only be used as an indicator because there are other outcomes that could arise, such as a warning or a fine, and many arrests do not then proceed onto conviction.

⁹ Michael Shiner and Rebekah Delsol (2015) *The Politics Of The Powers in* Rebekah Delsol & Michael Shiner (eds) *Stop and Search: The Anatomy of a Police Power*. Palgrave Macmillan

¹⁰ Simon Hallsworth (2006) Racial targeting and social control: looking behind the police. *Critical Criminology* 14(3) pp. 293-311

StopWatch will address each of these points in turn below:

1. Consensual stop and search should be abolished

The scale of stop and search in Scotland is of real concern, with the power being used at a rate of 977 searches per 10,000 of the population (both statutory and ‘consensual’ searches)¹¹ during the period April 2013 to December 2013. Compare this to the Metropolitan Police Service where the rate of stop and search for the same period was 306 per 10,000 of the population.¹² It is worth noting that 70% of all searches carried out by Police Scotland were consensual.¹³

Stop and search provides some of the most intrusive and contentious powers available to the police. This was acknowledged by the Her Majesty’s Inspectorate of Constabulary (HMIC) in its 2013 report when it said:

*For decades the inappropriate use of these powers, both real and perceived, has tarnished the relationship between constables and the communities they serve, and in doing so has brought into question the very legitimacy of the police service. Thirty years after the riots in Brixton, concerns about how the police use stop and search powers were again raised following the riots in England in August 2011.*¹⁴

Whether in England, Wales, Scotland or Northern Ireland, stop and search has the potential to undermine police legitimacy, particularly if it is not carried out in a fair and legitimate manner, undermine police legitimacy and trust. It is therefore vital that stop and search should be fair. StopWatch’s view is that use of the powers can only be justified when they are used to confirm or allay a genuine suspicion - that a person is carrying a prohibited item– based on objective facts that are reasonable. As stop and search is inherently invasive, it should only be used when necessary and lesser alternatives will not do.

The notion of a ‘consensual’ search is, in our view, inherently flawed and cannot meet the definition of a fair stop and search as outlined above. This is because it is impossible to give ‘informed consent’¹⁵ to police officers requesting that an individual agree to being searched. Consent in practice encompasses a range of states from approving agreement to grudging compliance. There are two important components of consent, 1) *knowledge*, the information required to understand the request and 2) *power*, the ability to make choices on the basis of that knowledge¹⁶. The nature of the relationship between the police and citizens makes an equal balance of power extremely unlikely. As a result meaningful consent is likely to be unattainable.

¹¹ Scottish Police Authority (2014), ‘Scrutiny Review – Police Scotland’s Stop and Search Policy and Practice. Final Report and Recommendations – May 2014’ p30 <http://www.spa.police.uk/assets/126884/230479/scrutinytaskgroupreport>

¹² *ibid*, p10

¹³ *ibid*, p30

¹⁴ Her Majesty’s Inspector of Constabulary (2013), ‘Stop and search Powers: Are the police using them effectively and fairly?’ London: HMIC, p3 <http://www.hmic.gov.uk/media/stop-and-search-powers-20130709.pdf>

¹⁵ We recognise that there is no doctrine of informed consent in English law i.e. that there is no single legal definition of informed consent. However the requirement for free and true consent comes from the development of case law which recognises the autonomy of each individual person.

¹⁶ Dixon, Coleman et al. (1990) ‘Consent and the Legal Regulation of Policing’ Cardiff University: Journal of Law and Society <http://www.jstor.org/stable/1410158>

Stop and search in England and Wales is governed by the Police and Criminal Evidence Act (PACE) 1984 and an associated Code of Practice¹⁷. Despite these regulations, the Inquiry into matters arising from the death of Stephen Lawrence identified particular concerns about the continued use of ‘voluntary’ or non-statutory stop-searches¹⁸. These concerns were reflected in Recommendation 61:

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

The practical significance of this recommendation was two-fold: first, the proposal to record all stops meant, in effect, extending existing regulations governing the use of stop and search to situations in which officers ask members of the public to account for themselves (i.e. their actions, behaviour, presence or possession of anything); second, the insistence on recording non-statutory stops represented a form of rule tightening as it sought to close a loophole that was widely used by officers to sidestep existing regulations¹⁹. Interviews with almost 2,000 officers found that operational officers made less than one recorded stop and search annually. This was in contradiction of their observations of street policing and reports from officers, where they would expect to carry out four or five stop and searches on a late shift.²⁰ Consent bridged the gap between the records and reality. In April 2003, PACE Code A abolished the right of the police in England and Wales to carry out ‘consensual’ stop and searches.²¹

Often officers used the process of trying to gain consent to assess suspiciousness. As the truism insists, only the guilty have reason to resist. If the ‘consensual’ nature of a search is disputed, it will usually boil down to the suspect’s word against the officer’s. Without a written record of the search (assuming that it had been accurately completed) there is no evidence that the search even took place. The social processes involved in a stop and search cannot be neatly divided into discrete actions. An encounter may begin with a consensual conversation, which may lead the officer to become suspicious and the suspect impatient. The use of voluntary searches allowed officers to circumvent the rules. Considering the scale of consensual stop and search in Scotland, with Strathclyde reporting in 2010 that 76% of all their stop and searches were consensual²², it would appear that a similar pattern of policing is occurring to that of police in England and Wales pre 2003. This is important

¹⁷ Home Office (2015) *Police and Criminal Evidence Act 1984: CODE A*, London: Home Office; <https://www.gov.uk/government/publications/pace-code-a-2015>

¹⁸ Macpherson, W. (1999), *Inquiry into the Matters Arising from the Death of Stephen Lawrence: Final Report*, London: The Stationery Office. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/277111/4262.pdf

¹⁹ Sanders, A. and Young, R. (2006), *Criminal Justice*. Oxford: Oxford University Press; Shiner, M. (2010) ‘Post-Lawrence Policing in England and Wales: Guilt, Innocence and the Defence of Organisational Ego’, *British Journal of Criminology*, 50(5): 935-953.

²⁰ Dixon, Coleman et al. (1990) ‘Consent and the Legal Regulation of Policing’ *Journal of Law and Society* p347-9 <http://www.jstor.org/stable/1410158>

²¹ PACE Code A (2003) was issued under [section 66\(a\)\(i\) of the Police and Criminal Evidence act 1984](#). It was laid before Parliament on 11 November 2002 and brought into force in April 2003 by SI 1995/450. The [current version of the Code](#) (2015) in force states the following: “1.5 An officer must not search a person, even with his or her consent, where no power to search is applicable. Even where a person is prepared to submit to a search voluntarily, the person must not be searched unless the necessary legal power exists, and the search must be in accordance with the relevant power and the provisions of this Code. The only exception, where an officer does not require a specific power, applies to searches of persons entering sports grounds or other premises carried out with their consent given as a condition of entry.”

²² Murray, Kath (2014) ‘Non-statutory stop and search in Scotland.’ Edinburgh: The Scottish Centre for Crime & Justice Research, p2 <http://www.sccjr.ac.uk/wp-content/uploads/2014/06/SCCJR-Non-statutory-stop-and-search-FINAL-1.4.pdf>

because it raises concerns that the majority of searches are occurring outside of the established regulatory framework.

Consensual stops are, by their very nature, likely to be seen as less procedurally just than those that are carried out with due regard for the established regulatory requirements, heightening feelings of police lacking legitimacy and trust. Stop and search in this context undermines the relationship between individuals, communities and the police. As discussed below children and young people are particular targets for consensual searches, with data from 2010 indication that 16 year olds in Strathclyde being searched at a rate of 1406 per 1000 of the population!²³ Through our work with Y.STOP²⁴ we have consulted with hundreds of young people who live in communities who suffer high levels of stop and search, their experiences and stories relay the real damage suffered by young people and their families, damage that has been occurring for decades.

Comments from YSTOP young participants

Treatment by police

Police attitudes can turn people into active criminals; their constant harassment means you don't fear jail anymore. If they really want to stop crime, they should break this mentality and engage people while they are young.

The police officer was not interested when I told her I was threatened with a knife. Said "I don't care I don't believe you". Mum had to report for me, but police more interested in the other boy's parents.

They do not investigate murders; my friend called police to tell them who a murderer was and nothing happened – it was never recorded. If I reported something to the police I am not sure they would do anything about it.

You look like you are in a gang if you wear baggy clothes, belt, chains, big trainers, snapbacks. Police look at how people dress which is offensive. We are scared of gangsters, we need the police to protect us from them.

I hear negative stories from family and friends e.g. they do not help when you report a crime, so I would not go to them. A friend got mugged and then arrested. I have heard we should not talk to police because they will shoot us.

Views of police

Some police are kind, but you don't see them again. I do not trust the police, I feel it in my heart, in my blood.

Would not talk to police as they make us nervous and scared. They do not trust us.

²³ Murray, Kath (January 2014) 'Stop and search in Scotland: An evaluation of police practice' University of Edinburgh: The Scottish Centre for Crime & Justice Research, p2 http://www.sccjr.ac.uk/wp-content/uploads/2014/01/Stop_and_Search_in_Scotland1.pdf

²⁴ Further details here: <http://www.y-stop.org/> Also look at: StopWatch and Open Society Justice Initiative (2013), *Viewed With Suspicion: The Human Cost of Stop and Search in England and Wales*, New York: OSF. <http://www.stop-watch.org/uploads/documents/vws-report.pdf>

Police take too long to come to our house when we call them. They take advantage of their powers which creates conflict – don't use powers in the right way.

For individuals who have been frequently stopped and searched, or who have had a negative encounter with the police, they are unlikely to seek the assistance of the police whether as victims of a crime or witnesses to one. This in turn will have an adverse impact on the communities where they are live which 'will suffer collectively as issues of law and disorder are less likely to be addressed – and even when police action is forthcoming its effectiveness will be damaged if officers are unable to rely on the assistance of local people, whether as victims, witnesses, or sources of information'.²⁵ Additionally, there is evidence that those who do perceive the police as lacking legitimacy are more likely to 'engage in 'self-help' violence'²⁶, clearly an extremely damaging consequence. Finally, it appears that negative experiences of the police can increase the risk of social exclusion²⁷ and lead to a greater likelihood of an individual entering the criminal justice system²⁸.

We understand that the Advisory Group want to consider the 'ability or capacity of some people to consent to a non-statutory search'. Of course the ability of children, young people and those who are vulnerable, to provide informed consent is more limited than that of the adult population, however, as stated, it is StopWatch's position that no person is able to give informed consent to be searched due to the imbalance of power that exists between police and citizens.

2. Code of practice

StopWatch strongly supports the decision of Scottish Ministers and the Advisory Group to develop a Code of Practice detailing police powers in relation to stop and search. As is the case in England and Wales the Code should have legislative underpinning (see point 3 for more details). Code A of PACE is a good starting point for the Scottish Government, and many of the points raised below reflect the current Code but we have also included a number of points that we believe will strengthen the legitimate use of stop and search (the points raised should apply to both street stop and searches and vehicle searches):

- The legislative powers that provide a constable with the right to stop and search an individual;
- The principles underpinning the use of stop and search;
- That a stop and search can only be undertaken where there is 'reasonable suspicion' and a clear definition of what that means and what it does not mean;
- If it is a stop and search that is carried out under a legal power that does not require reasonable suspicion the framework for the use of that power should be outlined, including procedures such as authorisation;
- The manner in which a constable carries out a stop and search;
- In what circumstances a 'more thorough stop and search' can be carried out - this should be limited to removal of outer clothing and should not be extended to strip searches, which should only be undertaken when an arrest has been made;

²⁵ Bradford B, July 2011, 'Assessing the impact of police-initiated stop powers on individuals and communities: the UK picture', http://www.jjay.cuny.edu/uk_bradford_impact_on_communities.pdf

²⁶ Ibid at p7

²⁷ Ibid at p9

²⁸ Ibid at p9- 12; Bowling B & Philips C, 2003, 'Policing Ethnic Minority Communities', LSE, p24
[http://eprints.lse.ac.uk/9576/1/Policing_ethnic_minority_communities_\(LSERO\).pdf](http://eprints.lse.ac.uk/9576/1/Policing_ethnic_minority_communities_(LSERO).pdf)

- Specific guidance on dealing with children, including the requirement of an appropriate adult for those aged 17 and under;
- Record keeping – it is vital that *all* stops/police initiated encounters including stop and search carried out by Police Scotland (both street and vehicle) are recorded. The following information must be collected: basis (ground) for search, whether or not an object was found, age, gender, ethnicity, location, action taken if any (outcome of search), whether a more thorough search was required and if the person searched was informed of their complaint rights.
- The introduction of an enforcement mechanism for officers who fail to adhere to the principles of the Code of Practice. One example would be where officer repeatedly fails to meet the required standards, or repeatedly abuses the use of the power, their ability to use stop and search should be suspended until they demonstrate that they would use the power proportionally, fairly and effectively.

StopWatch also recommends that the Advisory Group consider what steps could be taken to assess socio economic status of those subject to stop and search, on the basis that it is likely to be disproportional. This data should then form part of record keeping for the purposes of Code.

3. Legislative options

StopWatch strongly supports the introduction of legislation (similar to PACE) that would underpin the Code and would create a clear enforcement mechanism for officers failing to meet their duties in this area of policing.

4. Children and young people - safeguarding and well being

Over a third of all stops and searches are conducted on children between 10 and 19 years of age.²⁹ With 80% of the 25,324 searches carried out by Police Scotland in relation to children aged 10 – 14 years old being ‘consensual’ searches, 76% of the 157,368 searches of 15 – 19 year olds are also non statutory.³⁰ It is clear that children are a significant target for consensual searches. StopWatch has already made our position on this type of searching clear, and children like adults cannot consent to being searched especially considering their particular lack of capacity to do so. However, even in relation to statutory searches child safeguarding must be paramount.

It must be recognised that the decision to stop and search a young person can have a significant and detrimental effect on them, especially in relation to those who are repeatedly stopped and searched, and goes to the very heart of issues of child protection and welfare.

We note the findings of the All-Party Parliamentary Group on Children and Young People³¹ in October 2014 that “It is critical that in every encounter with the police, under 18s are be treated as children *first*, with all officers having regard for their welfare, safety and well-being, with all officers having regard for their welfare, safety and well-being, as required under sections 10 and 11 of the Children

²⁹ Scottish Police Authority (2014), ‘Scrutiny Review – Police Scotland’s Stop and Search Policy and Practice. Final Report and Recommendations – May 2014’ p30 <http://www.spa.police.uk/assets/126884/230479/scrutinytaskgroupreport>

³⁰ Ibid

³¹ All Party Parliamentary Group for Children, (Oct 2014), “‘It’s all about trust’: Building good relationships between children and the police. Report of the inquiry held by the APPG for Children 2013-2014” http://www.ncb.org.uk/media/1164355/appgc_children_and_police_report_-_final.pdf

Act 2004 and the United Nations Convention on the Rights of the Child³².” A stop and search should therefore only take place on children when absolutely necessary – to prevent unnecessary harm coming to a child.

It is vital also that safeguards are put in place to protect children in situations where they are stopped and searched. Once taken into custody there are a number of safeguards for children, such as the requirement of a responsible adult to ensure the rights and appropriate treatment of the child. In April 2013, the High Court ruled that the UK government's practice of treating 17 year olds as adults, the failure to inform the parents of their child's arrest, and the failure to provide an independent, appropriate adult to 17 year old children when detained and questioned at a police station about alleged criminal offences is "inconsistent with the UNCRC and the views of the United Nations Committee of the Rights of the Child."³³ Thus the protections have been extended to all children under the age of 18 once in custody.³⁴ These safeguards should be extended to protect young people during stop and search encounters on the street.

5. Final issues for consideration

Racial Disparity in the use of stop and search

Over a decade ago Stephen Lawrence Inquiry Report recognised that the police were “institutionally racist” and that there were disparities in stop and search figures across the UK. Whilst acknowledging the complexity of the issue – the inquiry concluded that there remained “a clear core conclusion of racist stereotyping.” The inquiry resulted in a number of recommendations and changes. Reports and inquiries have repeatedly highlighted concerns about the unfair use of stop and search on minorities. The 2009 Home Affairs Select Committee report on progress since the Lawrence Inquiry noted that minority ethnic people remain “over-policed and under-protected within our criminal justice system.” The Equalities and Human Rights Commission’s (EHRC) investigation into the use of stop and search powers in 2010 concluded that a number of police forces are using the powers in a manner that is disproportionate and possibly discriminatory – and thus potentially unlawful.

According to the latest figures published for England and Wales, in the financial year 2013-14, black people were stop and searched under powers requiring reasonable suspicion³⁵ by the police at 5 times the rate of white people - whilst Asian people and mixed-heritage people were searched at 2 times the rate of white people.³⁶

³² The United National Convention on the Rights of the Child recognises the vulnerability of young people in the criminal justice system and requires that “all decisions taken within the context of the administration of juvenile justice, the best interests of the child should be a primary consideration. United Nations (2007) ‘Children’s Rights in Juvenile Justice,’ General Comment No. 10, CRC/C/GC/10

³³ Bowcott, O. (2013) ‘Police must treat 17-year-olds in custody as children, court rules,’ The Guardian, 25th April. <http://www.theguardian.com/uk/2013/apr/25/police-17-custody-children-court>

³⁴ R (HC) v Secretary of State for the Home Department[2013] EWHC 982 (Admin)

³⁵ The Police and Criminal Evidence act 1984 (PACE), section 23 Misuse of Drugs act 1971 and associated/other legislation. Other powers included are discussed in Annex A to PACE Code of Practice A. <https://www.gov.uk/government/publications/pace-code-a-2015>

³⁶ Home Office (2015), Police Powers and Procedures England and Wales 2013.14, London: Home Office. <https://www.gov.uk/government/publications/police-powers-and-procedures-england-and-wales-year-ending-31-march-2014/police-powers-and-procedures-england-and-wales-year-ending-31-march-2014#stop-and-search>
A summary is available here: <http://www.stop-watch.org/news-comment/story/new-stop-and-search-use-in-2013-14>

In particular ethnic minorities are disproportionately stop and searched for drugs, and where drugs are detected during a stop and search they are disproportionately arrested, charged as opposed to cautioned or given a cannabis warning, and disproportionately found guilty and given immediate custody.³⁷

Given the fact that “the belief that black people are more likely to commit crime is not substantiated by robust evidence”³⁸ – and the fact that drug use by black and Asian people is lower - stop and search is being misapplied and unfair.

In Scotland there are also concerns that stop and search³⁹ disproportionately impacts black and minority ethnic groups as well as concerns that black people receive differential treatment to white people following police initiated contact⁴⁰

In Scotland, the ethnicity of people, amongst other data, has been recorded for some time. However data is not routinely published and when it recently was disclosed, the Police Scotland Chief described the data as not “fit for purpose”⁴¹. There is a clear need to establish whether or not ethnic minorities are disproportionately targeted with a starting point being the accurate processing of recorded information and the publishing of statistics on a regular basis with statistics being provided to the public and community scrutiny groups.

Strip Search

In England and Wales there are serious concerns around police practices relating to strip-searches arising in the course of a stop and search encounter. The term ‘strip-search’ refers to two distinct types of search:

- More thorough search:
This involves the removal of any clothing other than an outer coat, jacket or gloves. PACE Code A requires such searches to take place out of public view, but this must be carried out near to the place where a stop took place.⁴² The search may only be made by an officer of the same sex as the person searched and may not be made in the presence of anyone of the opposite sex unless the person being searched specifically requests it.
- An ‘intimate search’ involving exposure of intimate parts of the body:

³⁷ Eastwood, N., Shiner, M. and Bear, D. (2013), ‘The Numbers in Black and White: Ethnic Disparities in the Policing and Prosecution of Drug Offences in England and Wales’: Release.

<http://www.release.org.uk/sites/release.org.uk/files/pdf/publications/Release%20-%20Race%20Disparity%20Report%20final%20version.pdf>

³⁸ Equality and Human Rights Commission (2010), ‘Stop and Think’

http://www.equalityhumanrights.com/sites/default/files/documents/raceinbritain/ehrc_stop_and_search_report.pdf

³⁹ For example, concern about the number of Pakistanis being stop and searched; ‘Muslim leader blasts Scotland’s top cop Stephen House for snubbing prestigious event for THIRD year running,’ Daily Record and Sunday Mail, 14 June 2015

<http://www.dailyrecord.co.uk/news/scottish-news/muslim-leader-blasts-scotlands-top-5877689>

⁴⁰ For example concerns following the death of Sheku Bayoh; Blythman, Joanna, ‘Scottish Police must provide answers about Sheku Bayoh’s death’ Guardian Comment is Free. June 2015

<http://www.theguardian.com/commentisfree/2015/jun/12/scottish-police-answers-sheku-bayoh-death>

⁴¹ ‘Police Scotland admits stop-search data ‘not accurate’’, BBC, 10th July 2015 <http://www.bbc.co.uk/news/uk-scotland-31448972>

⁴² Police and Criminal Evidence Act Code of Practice A (PACE Code A), para. 3.6

This category of search may only be carried out at a nearby police station or other nearby location which is out of public view (but not a police vehicle).⁴³ There are more detailed provisions relating to the conduct of such a search which go further than those for more thorough searches.⁴⁴

Such searches constitute grave impositions upon a person's autonomy and private life, and by their very nature will often be degrading; causing that person enormous embarrassment, humiliation and distress. Currently, neither PACE nor its Codes impose any recording obligations on police in relation to these searches being carried out in the course of a stop and search; effectively rendering these searches invisible and making it impossible to monitor police practices.

The intrusive and degrading nature of these searches clearly requires that they should only be used in very restricted circumstances, and those which are closely regulated and monitored. Indeed, the absence of any transparency or accountability in the context of such a severe power cannot, in the view of Stopwatch, be tolerated. Indeed, the Stopwatch legal group has commented upon the abuse of these powers, which have been shown to have been used unlawfully,⁴⁵ and in some cases seemingly utilised as 'threats' to secure compliance or as punishment.

There is only one published article on racial disproportionality in the use of strip-searches (after an arrest in custody) in England by Newburn, Shiner and Hayman in a police station in North London.⁴⁶ The study found that once other variables – such as age, sex, offence type and the outcome of the case – had been taken into account, "on average, being African-Caribbean rather than white European (or Irish) was associated with a virtual doubling of the probability of being strip searched"⁴⁷. More broadly, HMIC lamented that the lack of recording of pre-arrest strip search "is a very serious situation as it does not allow for a proportionate and necessary level of scrutiny of these very intrusive searches".

StopWatch recommends that the Advisory Group makes specific recommendations on the use of strip search as part of a stop search. It is our view that this power should only be used where an arrest threshold has been met and an arrest has been made. In addition, and like in England and Wales, it is important that we understand the nature and scale of the use of the power, including the manner it is being carried out. As such we suggest that the use of strip search is recorded and that the HMICS investigates how Police Scotland use this power.

Traffic Stops

Section 163 of the Road Traffic Act 1988 is the most widely used stop power and can be deployed by officers without reasonable suspicion and without making a record of the encounter. According to this power a person driving a motor vehicle or riding a cycle on a road must stop if required to do so by a constable in uniform and failure to do so constitutes an offence. Section 163 does not assert any specific threshold for carrying out a stop, which affords the police an enormous amount of latitude in its use. This position has been confirmed by case law, as the courts have held that unless a stop is 'arbitrary and capricious' it will not be unlawful.⁴⁸ There is therefore a significant risk that this power,

⁴³ PACE Code A, paragraph 3.7

⁴⁴ PACE Code C, Annex A, paragraph 11

⁴⁵ See, for example, <http://www.fishermeredith.co.uk/legal-advice/casestudies/police-admit-liability-for-unlawful-strip-search-and-pay-damages#>

⁴⁶ Newburn, T., Shiner, M. And Hayman, S. (2004) 'Race, crime and injustice? Strip Search and the Treatment of Suspects in Custody. *British Journal of Criminology*, 44, 677-694

⁴⁷ *ibid*

⁴⁸ R (Smith) v DPP [2002] EWHC 113 (Admin); Miller v Bell 2004 SCCR 534; R (Beckett) v Aylesbury County Court [2004] EWHC 100 (Admin); and R (Rutherford) v Independent Police Complaints Commission [2010] EWHC 2881 (Admin)

which was intended by Parliament to be utilised for road traffic purposes, without necessarily requiring an officer to have any particular reason to stop a vehicle, will be misused.

HMIC found in its 2015 report into stop and search that 47 percent of 10,094 people surveyed about Road Traffic act powers reported having been stopped in a vehicle by the police⁴⁹. Although there is no official data on the number of vehicle stops, the British Crime Survey indicates that, over the last decade or so, approximately 10 per cent of adults in England and Wales are stopped in a vehicle by police every year.⁵⁰ We estimate that there were approximately 5.5 million vehicle stops in 2010/11, approximately 5 million of which did not involve a search (and were not, therefore, covered by the recording requirement).⁵¹ HMIC in their 2015 report revealed that “The highest proportion of stops was for suspected driving offences, with fewer for ownership checks, routine checks and vehicle defects. It is of some concern that 7 percent of respondents said that no reason was given.”⁵²

There is evidence that traffic stops are disproportionately focused on black and minority communities and are unlawfully carried out. Analysis of British Crime Survey data from 2008/09, 2009/10 and 2010/11 shows that black and ethnic minority communities report higher levels of car stops. People from with mixed black and white ethnicities (33 per cent), Asian Muslim (18 per cent), and black Caribbean (18 per cent) ethnicities were more likely to report being stopped than those with white ethnicities (11 per cent)⁵³. Numerous media reports present anecdotal evidence of car stops being used disproportionately⁵⁴ and a recent complaint by Stuart Lawrence against the Metropolitan Police centred on repeat traffic stops.⁵⁵ Members of the Stopwatch legal group have reported examples⁵⁶ of individuals being subjected to s.163 stops for matters wholly unrelated to road traffic purposes, such as their location in a high crime area. However this flagrant misuse of the RTA power continues unchecked.

Although s.163 does not extend to a power of search, its impact upon those targeted should not be minimised or disregarded. S.163 provides a mechanism whereby the police can require an individual

⁴⁹ Her Majesty’s Inspector of Constabulary (2015), ‘Stop and search Powers 2: Are the police using them effectively and fairly?’ London: HMIC, p52 <https://www.justiceinspectorates.gov.uk/hmic/wp-content/uploads/stop-and-search-powers-2.pdf>

⁵⁰ Moon, D, Flatley, J., Parfremment-Hopkins, J., Hall, P., Hoare, J., Lau, I., and Innes, J. (2011) ‘Perceptions of Crime, Engagement with the Police, Authorities Dealing with Antisocial Behaviour and Community Payback: Findings from the 2010/11 British Crime Survey,’ London: Home Office.

⁵¹ These estimates were calculated by applying the figures reported by Moon et al (2011) to the number of adults, aged 16 years and above, in England and Wales as recorded by the 2011 Census. Allowance has also been made for multiple stops – of the BCS respondents who had been stopped in a vehicle, 74 per cent had been stopped once, 16 per cent had been stopped twice and 9 per cent had been stopped three times or more (for the purposes of the calculation it was assumed that those in this group had been stopped three times).

⁵² Her Majesty’s Inspector of Constabulary (2015), ‘Stop and search Powers 2: Are the police using them effectively and fairly?’ London: HMIC, p52 <https://www.justiceinspectorates.gov.uk/hmic/wp-content/uploads/stop-and-search-powers-2.pdf>

⁵³ British Crime Survey data from 2008/09, 2009/10 and 2010/11.

⁵⁴ See, for examples, ‘A middle-class black man raised by white parents, Ben had always respected the police. Until one night they stopped his car...’ Daily Mail, 15th March 2013: <http://www.dailymail.co.uk/news/article-2293635/A-middle-class-black-man-raised-white-parents-Ben-respected-police-Until-night-stopped-car.html> ; ‘They presumed my car was stolen’: Lions rugby star Ugo Monye claims he was victim of racism after being stopped by police,’ Daily Mail, 27th June 2011: <http://www.dailymail.co.uk/news/article-2008759/England-rugby-star-Ugo-Monye-claims-victim-racism-stopped-police.html>; <http://rt.com/news/london-police-racism-search-501/> ; ‘England star Jermain Defoe sues ‘racist police’ because he’s always stopped in his car’, Daily Mail, 14th August 2009: <http://www.dailymail.co.uk/news/article-1206523/England-star-Jermain-Defoe-sues-racist-police-hes-stopped-car.html>; ‘Jamelia: I am always stopped by racist police,’ The Metro, 21st June 2011: <http://metro.co.uk/2011/06/21/jamelia-im-always-stopped-by-racist-police-56206/>

⁵⁵ ‘Stephen Lawrence’s brother lodges racism complaint against Met police,’ The Guardian, 9th January 2013: <http://www.theguardian.com/uk/2013/jan/09/stephen-lawrence-brother-racism-police>

⁵⁶ Which must remain anonymous at this time.

to engage with them despite having no objective reason for this. Being subjected to a stop constitutes a clear infringement of an individual's liberty, and the effect of this will inevitably be increased in circumstances in which it is perceived to lack any justification (and indeed where little or no justification is required in any event). Indeed, HMIC has found that some people believe they have been stopped and searched when, in fact, they have been stopped under s.163 - such is the lack of distinction between the experiences⁵⁷.

Stopwatch is of course aware of the broad application of this power, and its relevance to many different scenarios (for example, enabling police officers to halt traffic following an accident). Yet this does not in turn mean that it cannot be amended to ensure that when used to stop individuals, appropriate safeguards will apply.

The lack of accountability in this context results, at least in part, from the absence of any recording obligations upon the police when carrying out a s.163 stop, irrespective of the circumstances in which the stop is carried out. In circumstances in which a s.163 stop progresses on to a search under another power, it will be recorded as an exercise of that secondary power. Consequently, no comprehensive data exists as to the use of s.163 RTA and there are no checks and balances in place to ensure that the power is being used lawfully and appropriately, meaning that there is a complete absence of accountability.

Stopwatch is particularly concerned about Section 163 stops due to the enormous use of this power, evidence that it is used disproportionately against ethnic minorities, and the concerns that it is being used for purposes other than traffic control. Stopwatch also note that similar road traffic provisions have recently been subject to successful challenges in Jamaica⁵⁸ and Australia,⁵⁹ where concerns regarding the abuse of power and discriminatory effects have compelled the courts to restrict the operation/application of those provisions.

StopWatch recommends that s163 RTA is not used as a basis for a stop and search rather that specific legislation is drafted that details the power to stop and search a vehicle for a prohibited item can only be initiated on the same legal basis as a street stop and search. In the interests of transparency we also recommend, in line with that of the HMIC, that these stops are recorded and statistics on their use published regularly.

Searches for Drugs

In 2013/14, 53 per cent of all stop and searches carried out by police in England and Wales were for drugs.⁶⁰ This equates to nearly half a million stop and searches being carried by police in a 12 month period, and is reflective of previous years where drugs regularly account for approximately 50 per cent of all stop and searches. As identified in the 2013 HMIC report the majority of these stop and searches are for 'low level street possession' of drugs⁶¹ and are not targeted at more serious trafficking offences. Importantly, stop and search records do not differentiate between suspected drug

⁵⁷ 'Stop and Search Powers: Are the police using them effectively and fairly?', HMIC, 2013, <http://www.hmic.gov.uk/media/stop-and-search-powers-20130709.pdf>. It is of note that Section 163 stops were specifically excluded from the original inspection but included in the 2015 inspection.

⁵⁸ 'STOP IT NOW - Judge tells police to end illegal stop and search of vehicles; state ordered to pay taxi driver millions,' The Gleaner, 30th June 2013: <http://jamaica-gleaner.com/gleaner/20130630/lead/lead1.html>

⁵⁹ 'Police power to stop cars under threat,' The Age, 21st June 2013: <http://m.theage.com.au/victoria/police-power-to-stop-cars-under-threat-20130620-2oluv.html>

⁶⁰ Home Office (2013), 'Police Powers and Procedures England and Wales 2013-14,' London: Home Office

⁶¹ Her Majesty's Inspector of Constabulary (2013), 'Stop and search Powers: Are the police using them effectively and fairly?' London: HMIC

possession and drug trafficking offences, however from the final arrest figures it is clear that the majority of searches are not aimed at supply side activities. We would propose that Police Scotland are required to record different levels of offence.

Recent evidence indicates that drug searches are the main driver for disproportionality within all 'reasonable suspicion' stop and searches. In 2009/10 the overall search rate for drugs across the population as a whole was 10 searches per 1000 people. For those from the white population it was 7 per 1000, increasing to 14 per 1000 for those identifying as mixed race, 18 per 1000 for those identifying as Asian and to 45 per 1000 for those identifying as black.⁶² Based on 2011 census data, black people were stopped and searched for drugs at 6.3 times the rate of white people⁶³, while Asian people were stopped and searched for drugs at 2.5 times the rate of white people and those identifying as mixed race were stopped and searched for drugs at twice the rate of white people. When compared to other offences the rates of disproportionality are higher for drugs. In 2009/10 disproportionality rates for all searches including drugs were for black people 5.6 times more likely to be stopped and searched and for Asian people the rate was 1.8 times. When drugs are removed from all searches the rate falls to 5 times for black people and 1.2 times for Asian people.

In terms of effectiveness the arrest outcomes for drugs searches are, like other types of searches, very low. In 2010 7 per cent of searches resulted in arrest. It is difficult to know whether these arrests resulted in a sanctioned detection or whether the matter was subject to no further action. Some police forces are using 'positive outcome targets' to demonstrate effectiveness, this includes measuring out of court disposals such as a cannabis warning or a Penalty Notice for Disorder as part of the performance indicators. Even where such an approach is adopted the target rates can range from 14 per cent to 27 per cent.⁶⁴ The danger with this approach is that police officers will be incentivised to focus on low level cannabis offences. Research has shown that this can result in the police actively seeking out people that are more likely to be in possession of small amounts of drugs⁶⁵ rather than focusing on crimes that communities care about such as violent or property crime.

The problematic focus of stop and search was acknowledged by the Commissioner of the Metropolitan Police Service, Bernard Hogan-Howe, in January 2012 when he announced that officers would be told to focus less on stopping people for small quantities of drugs, and instead focus on those suspected of violent offences and carrying weapons or prohibited articles⁶⁶. According to press reports, the use of stop and search was being overhauled amid fears that the force was alienating many Londoners. Yet, since then the majority of searches have consistently been for drugs, and are actually rising with drug searches now regularly accounting for 60% of all searches in the capital⁶⁷.

⁶² Eastwood N, Shiner M, Bear D, (2013), 'The Number in Black and White: Ethnic Disparities in the Policing and Prosecution of Drug Offences, Release, http://www.release.org.uk/sites/release.org.uk/files/pdf/publications/Release%20-%20Race%20Disparity%20Report%202013_0.pdf

⁶³ In 2008/09 and 2009/10 black people were, respectively, 6.7 times and 6.3 times more likely to be stopped and searched for drugs in England and Wales than white people.

⁶⁴ MPS Stop and Search, (2013), 'Stop and Search Key Performance Indicator Progress Report,' MPS Publication Scheme, http://www.met.police.uk/foi/pdfs/priorities_and_how_we_are_doing/corporate/stop_search_kpi_june2013.pdf

⁶⁵ Eastwood N, Shiner M, Bear D, (2013), 'The Number in Black and White: Ethnic Disparities in the Policing and Prosecution of Drug Offences,' Release, p44 http://www.release.org.uk/sites/release.org.uk/files/pdf/publications/Release%20-%20Race%20Disparity%20Report%202013_0.pdf

⁶⁶ 'Police stop and search slashed,' Evening Standard, 12th January 2012: <http://www.standard.co.uk/news/police-stop-and-search-slashed-7307091.html>

⁶⁷ MPS Stop and Search (2012-15), 'Stops and Searches Monitoring Mechanism,' MPS Publication Scheme. See page 5 of the reports issued for the following months: March 2012, March 2013, March 2014, May 2015. Up to date reports accessible here: http://www.met.police.uk/foi/units/stop_and_search.htm

It is our view that drugs policing can seriously undermine community relations where police officers actively seek out young people in possession of cannabis or use ‘smell of cannabis’ as a ground for a search – something that is very hard to disprove. It also focuses police resources on an issue that is not seen as a priority for communities who are more concerned with weapons or property crime.

Examinations and Detentions at Ports and Airports under Schedule 7 to the Terrorism Act 2000

Schedule 7 is a national power confined to ports and airports, providing counter-terrorism and immigration officers with the right to question and search the travelling public for up to 6 hours without requiring suspicion to believe that they are involved in terrorism. During the 6 hours, the person may also have their biometric data taken from them; data on their mobile phones, laptops, tablet PCs or any other electronic items scanned and downloaded, and they may also be subject to a strip-search (the latter being the only provision requiring the application of reasonable suspicion to believe that the person is concealing an item useful for terrorism in order to then conduct the search).^{68[1]}

This is a considerably wide-ranging power and one which has been well documented as causing strong, negative reactions from people examined or detained under the power over the last decade, particularly people from Asian or Muslim backgrounds, and notably on-going concerns at Glasgow Airport.^{69[2]} Such is the impact of this power on communities, that people have refrained from travelling abroad or travelled considerable distances across the UK to depart at ports where they felt less likely to be subject to those powers.^{70[3]} People have complained of being pressured by counter-terrorism police officers to spy on their communities,^{71[4]} having their biometric data taken despite being their innocence,^{72[5]} calls for a review or repeal of those powers.^{73[6]} A report commissioned by the Equality and Human Rights Commission investigating the impact of counter-terrorism policing on Muslim communities concluded use of the power had “the single most negative impact” on Muslim communities and also reported that: “for some Muslims, these stops have become a routine part of their travel experience” and that the power “is silently eroding Muslim communities’ trust and confidence in policing.”^{74[7]} Other studies have found that the use of these powers had undermined

⁶⁸ See our following briefing on the power for more information: http://www.stop-watch.org/uploads/documents/StopWatch_Briefing_Schedule_7_-_July_2014_FINAL.pdf

⁶⁹ Muslims 'boycott' Glasgow Airport. BBC News (23 July 2006)

http://news.bbc.co.uk/1/hi/scotland/glasgow_and_west/52080852.stm

Moves to tackle minority anger over Glasgow Airport stop and search BBC News (6th February 2012)

<http://www.bbc.co.uk/news/uk-scotland-glasgow-west-16906869>

⁷⁰ The Terrorism Acts In 2011: Report Of The Independent Reviewer On The Operation Of The Terrorism Act 2000 And Part 1 Of The Terrorism Act 2006 by David Anderson Q.C. Independent Reviewer of Terrorism Legislation. London: The Stationery Office

⁷¹ Airport police accused of spy trap on Muslims. Herald Scotland (2 May 2010):

<http://www.heraldscotland.com/news/home-news/airport-police-accused-of-spy-trap-on-muslims-1.1024620>

⁷² ‘They asked me where Bin Laden was, then they took my DNA’. The Independent Newspaper (21 Sept 2010)

<http://www.independent.co.uk/news/uk/home-news/they-asked-me-where-bin-laden-was-then-they-took-my-dna-2084743.html>

⁷³ Moves to tackle minority anger over Glasgow Airport stop and search. BBC News (6th February 2012)

<http://www.bbc.co.uk/news/uk-scotland-glasgow-west-16906869>; Yousaf calls for review of stop and search powers

http://www.glasgow.snp.org/MSPs/Humza_Yousaf_MSP/Yousaf_calls_for_review_of_stop_and_search_powers

⁷⁴ Choudhury, T. & Fenwick, H. (2011) The Impact of Counter-Terrorism Measures on Muslim Communities. London: The Equalities and Human Rights Commission.

Scottish people's faith in counter-terrorism measures and also made them feel excluded from society through the undermining of their strong national identity.^{75[8]}

For these reasons, the use of these powers should be made transparent through being subject to community scrutiny, data published on use to facilitate that and that the same level of attention now given to the operation of general street encounters is also extended to schedule 7.

Further Assistance

If StopWatch can be of further assistance in this process please contact – info@stop-watch.org, 0207 324 3533

⁷⁵ Blackwood, L., Hopkins, N. & Reicher, S. (2012): I Know Who I Am, But Who Do They Think I Am? Muslim perspectives on Encounters with Airport Authorities, *Ethnic and Racial Studies*. Published online at DOI:10.1080/01419870.2011.645845; Blackwood, L. M., Hopkins, N. & Reicher, S. D. (2012) Divided by a Common Language? Conceptualizing Identity, Discrimination, and Alienation in Jonas, K. J. and Morton, T. A. [eds] *Restoring Civil Societies: The Psychology of Intervention and Engagement Following Crisis*. West Sussex: John Wiley & Sons, Inc