



StopWatch Submission to the Consultation on Police Powers to Stop and Search

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Executive summary

Principles

- The Home Office consultation document defines the purpose of stop and search as being to 'fight against crime'. According to Her Majesty's Inspectorate of the Constabulary ('HMIC'), however, most police forces have no clear approach to using stop and search powers, nor a strategy or objective for their exercise.¹ Existing definitions of the purpose of stop and search lack the clarity and precision required to ensure appropriate regulation of police powers and evaluation of their effectiveness. The absence of circumscription heightens the risk of those powers being abused.
- The exercise of police powers to stop an individual in a public place, to detain them for questioning, and to search their person or their belongings, constitutes an invasion of liberty and privacy. The powers are intrusive and coercive, and the circumstances in which they are exercised are frequently embarrassing, humiliating, intimidating and frightening for the individual concerned.
- Stop and search has potentially damaging effects on individuals, communities and wider society. The powers can only be justified if there is evidence that they contribute significantly to the public good and if there is no less intrusive or coercive means to achieve the same end. The evidence of effectiveness, insofar as it exists, is unconvincing and there has been insufficient effort dedicated to the development of a less costly and less invasive alternative.
- Stop and search powers can be abused and used arbitrarily, without proper grounds and for improper purposes. The exercise of these powers must therefore be properly supervised to ensure that they are lawful, necessary, proportionate, properly circumscribed, and subject to adequate legal safeguards against abuse.
- Police officers do not have a *right* to stop and search. They have a *duty* to investigate crime and contribute to community safety; to promote equality, prevent illegal discrimination; and to protect our rights and freedoms. The police are granted *powers* to carry out these duties.
- Stop and search powers require a secure base of community support. Police action must both be fair and rational, and be perceived as so being by individuals and wider society. Without community consent and legitimacy, the use of the power becomes corrosive and ineffective.

¹ HMIC, 2013, Stop and Search Powers: Are the police using them effectively and fairly?, <http://www.hmic.gov.uk/media/stop-and-search-powers-20130709.pdf>

- The exercise of stop and search powers requires constant scrutiny and reassessment, not solely in relation to arrest rates, but also to take into account the effect on the community as a whole, especially among those groups most widely affected by the power.

Recommendations:

- Stop and search should be defined clearly as a power to detect and prevent crime by enabling a police officer to allay or confirm, without resorting to arrest, a well-founded suspicion that an individual is in possession of a dangerous article, has committed an offence, or is about to commit an offence. There should be no other grounds for stop and search.
- The government should make it clear that the onus lies with the police service to justify the use of stop and search powers, and that they should not be exercised in the absence of any such justification, in maintenance of the status quo or on the basis of assumptions. Evidence of the effectiveness of the powers – where it exists – should be placed in the public domain and the negative impact of stop and search on individuals and communities should also be analysed.

Stop and account

- Stop and account represents a highly significant point of contact between the police and the public, as is evidenced by the fact that the police recorded 2.2 million stop and accounts across England and Wales in 2008-09.
- Individuals stopped do not always distinguish between a stop and account and a stop and search.
- Some police forces have adopted a policy that even where grounds of reasonable suspicion exist to justify a statutory stop/detention, officers should instead use a stop and account in the first instance, thereby circumventing a number of protections afforded to those stopped and searched, pursuant to section 2 and Code A of PACE (e.g. informing the suspect of the reason why they are being stopped and that they may be subject to use of reasonable force or arrest if they seek to leave).
- Ministry of Justice data has consistently shown racial disproportionality across many forces, with people from black and minority ethnic groups being stopped more frequently than white people.
- The law and guidance around stop and account is confusing and opaque. The absence of any requirement for the police to inform the person stopped they are free to leave at any time and do not have to answer questions allows officers to operate under the societal assumption that they have compulsive powers in these circumstances. Whilst Code A of PACE provides that failing to answer questions or

attempting to leave the encounter should not, without more, be used for grounds to invoke a search, Stopwatch are aware that in practice this is often the case.

Recommendations:

- Code A of PACE should be amended to give clearer guidelines as to when it is appropriate to use stop and account. Officers should not be permitted to use this tool to either (i) circumvent the safeguards applicable to stop and searches; or (ii) initiate engagements with a view to provoking behaviours which may subsequently justify a stop and search being undertaken.
- The person stopped should be informed as to whether they are being stopped with a view to search and thus are detained or whether it is a non-statutory stop meaning they are free to leave at any time, and of their right not to answer questions in both cases.
- Officers should be required to inform all those subject to a non-statutory stop of the guidance using wording such as:

“I am a police officer/police community support officer and I would like to ask you some questions. You are not at present suspected of any wrongdoing. You are not obliged to answer my questions and, unless I advise you otherwise, you are free to go at any time.”
- Code A of PACE should clearly articulate that an attempt to terminate an encounter or failure to answer questions cannot be considered as grounds to invoke a search power.
- All stops should be recorded and monitored under the same recording framework as PACE stop and search powers and that data should be shared with community and monitoring groups.

Section 163 Road Traffic Act 1988

- Section 163 of the Road Traffic Act 1988 is the most widely used stop power. Its deployment is not dependent upon reasonable suspicion or, explicitly, road traffic considerations, and there is no requirement for encounters to be recorded. There is therefore a significant risk that this power, which was intended by Parliament to be utilised for road traffic purposes, will be, and is being, misused.
- The British Crime Survey indicates that approximately 10 per cent of adults in England and Wales are stopped in a vehicle by police per year. We estimate that there were approximately 5.5 million vehicle stops in 2010/11.
- Survey data shows that members of black and ethnic minority communities are disproportionately subject to traffic stops.

- There is evidence that traffic stops are being misapplied and abused, with individuals being subjected to Section 163 stops for matters wholly unrelated to road traffic purposes.
- There is concern that Section 163 stops are being utilised to circumvent the requirements and safeguards applicable to alternative powers of stop and search such as the right not to give your name and address, and to enable officers to compel engagement with an individual, with a view to provoking behaviours sufficient to provide the requisite basis for the subsequent exercise of stop and search powers.
- Section 163 stops are not recorded and are therefore absent of accountability. There are no checks and balances to ensure that the power is being used lawfully and appropriately.

Recommendations:

- A further consultation be carried out, in order to assess the adequacy of Section 163 RTA;
- Officers be required to record stops conducted under Section 163 RTA, together with the reasons for the stop, where those stops are of individual vehicles (as opposed to halting traffic *en masse*);
- Section 163 RTA be amended so that its use is restricted to road traffic purposes;
- Where a Section 163 stop proceeds to a search, an officer be required to document in the search record the reasons for which the Section 163 power was used;
- Where an officer is found to have exercised Section 163 RTA inappropriately, immediate intervention in the form of management/disciplinary action should result;
- Police forces be required to collate data regarding the use of Section 163 and submit this to the EHRC, HMIC and IPCC for review.
- Section 163 stops be recorded and monitored under the same recording framework as PACE stop and search powers and that data be shared with community and monitoring groups. This should include information on ethnicity of the driver, and consequential arrests, convictions and complaints.
- Officers be trained on the appropriate use of Section 163 RTA, and in particular its restricted application to road traffic issues.
- HMIC to include Section 163 stops in the remit of its next inspection into stop and search.

Police and Criminal Evidence Act 1984 and Misuse of Drugs Act 1971

- Stop and search under the Police and Criminal Evidence Act 1984 and Misuse of Drugs Act 1971 are investigative powers, designed to allay or confirm suspicions

about individuals without resorting to arrest. In accordance with Parliament's intention, the power should be used for detecting specific crimes as opposed to a general tool to prevent crime or anti-social behaviour.

- The police recorded 1.2million stop and searches across England and Wales in 2011-12; a decrease of 9 per cent on the previous year. Despite what appears to be a recent downward trend, the level of stop and search has grown rapidly over the last three decades. This bears little or no relationship to levels of crime, which have declined over the same period.
- There is extensive research exploring the reasons for the disproportionality in stop and search statistics. Despite problems with under-recording, police records of stop and search powers can be taken as a reasonable *indicator* of the extent and circumstances of their use, variations between different ethnic groups, and changes that occur over time.
- The term 'disproportionate' in this context describes the degree to which the police power to stop and search is out of proportion to the composition of different ethnic groups in society.
- Analysis from the most recent 2011 census data shows that, in relation to 'reasonable suspicion' stop and searches, black people were stopped and searched at 5.6 times the rate of white people and Asian people were subject to stop and search at 1.8 times the rate.
- The data has repeatedly shown that black people are subject to a greater rate of stop and search than white people, with disproportionality ratios varying from five to eight times since 2001/02. The disproportionality ratio for Asian people has stayed between 1.5 and 2.5 during this time.
- Disproportionality is usually calculated on the basis of residential census data. This has been criticised because resident populations do not take account of the time spent in the streets and other public places when individuals could be described as 'available' to be stopped. Offending behaviour has also been suggested as an appropriate measure. However, there are significant weaknesses with using 'available population' or offending behaviour as a benchmark to measure disproportionality.
- In our view, the most robust measure of disproportionality in the use of stop and search powers, which relies on the fewest assumptions, is the *per capita* stop and search rate.
- The statistical data on racial disproportionality in stop and search is consistent with the very extensive research on racism, racial stereotyping and racial discrimination in police work. The literature shows that stereotyping is extensive, pervasive and consistent over time. There is a documented and widespread tendency for police

officers to think of people from ethnic minorities as crime prone, disorderly and with tendencies towards violent behaviour and drug taking.

- Although the links are complex, it is clear that racially prejudiced attitudes affect the way in which people behave. Police officers are no exception.
- The statistical and empirical research evidence indicates that stop and search is often carried out, not on the basis of objective information relating to a specific suspect but on generalisations or stereotypical images of certain groups or categories of people as being more likely to be involved in criminal activity.
- Disproportionality and discrimination can also extend to treatment after the original stop. Black and Asian people are more likely to have negative experiences of stop and search encounters compared to other ethnic groups in the population.
- The police service has, as a public authority, a duty to advance equality in their day-to-day business. In the exercise of their functions – including the exercise of their powers to stop and search – police officers must have due regard to the need to eliminate unlawful discrimination, harassment and victimisation, advance equality of opportunity and foster good community relations.
- Around a quarter of all stop and searches are carried out on children under the age of 17, although the actual figure may be greater than this; there is some uncertainty as national data is not routinely broken down by age. Code A of PACE is silent on the treatment of children during stop and search encounters, in sharp distinction from the safeguards that are provided to children taken into police custody.
- Stop and search has been shown to make only a small contribution to tackling crime. In 2011-12, just 9.4 per cent of recorded stop and searches led to an arrest. The proportion of stop and searches leading to arrest has declined over the last decade and arrest rates differ significantly between forces.
- Arrest rates are at best an optimistic measure of the effectiveness of stop and search. They do not take into account stops (whether statutory or voluntary) that do not result in a search and are therefore not recorded, and they also fail to consider the quality of the arrest or final outcome. There is no systematic measure of arrest outcomes; however research has demonstrated that as many as a third to one half of arrests do not result in a caution, charge or conviction.
- Arrest data fails to record whether an arrest relates to the basis of the initial stop. Very often this will not be the case, with the arrest instead resulting from, for example, an individual expressing discontent at having been stopped, which is then said to constitute a public order offence.
- A Home Office review of the effectiveness of stop and search concluded that it has 'only a minor role in detecting offenders for the range of all crimes that they address,

and a relatively small role in detecting offenders for such crimes that come to the attention of police’.

- Conversely, the rate of arrests resulting from PACE reasonable suspicion searches provides a measure of how reasonable officers’ determinations of suspicion are. HMIC found that 27 per cent of the stop forms that they reviewed had no record of the grounds for suspicion and were therefore potentially unlawful. Extrapolating from these findings, there may be as many as 300,000 unlawful stop and searches carried out annually in England and Wales.
- The evidence suggests that the attempted targeting of the power is woefully inaccurate and the purported basis for any reasonable suspicion is all too often absent. HMIC found that when stop and search is targeted on supposed 'crime hotspots', arrest rates are even lower than for stop and search generally. Officers appear to lack the skill to determine who is actually involved in crime, resulting in an inordinate misapplication of these powers.
- Half of all stop and searches in England and Wales are carried out on the basis of a suspicion that an individual is in possession of drugs. Indeed, the majority of searches are for possession of small quantities of cannabis. Only one in ten searches are for offensive weapons and one in 100 for firearms or criminal damage, thereby undermining any suggestion that stop and search is an effective tool in preventing serious crime and/or disorder.
- The Home Office found that stop and search is ‘unlikely ... to make a substantial contribution to undermining drug markets or drug-related crime’,² demonstrating that stop and search is also an ineffective tool when employed for this purpose.
- The misplaced focus of stop and search has been acknowledged by the Commissioner of the Metropolitan Police Service (‘MPS’), who announced that officers would be told to focus less on stopping people for small amounts of cannabis, and more on those suspected of violent offences and carrying weapons. Yet, recent data shows that the MPS have failed to reduce the proportion of their searches focused on drugs.
- The policing of minor drug possession is driving disproportionality within the criminal justice system, with the highest rates of disproportionality arising in this sphere, in comparison to other offences. Based on the 2011 census data, black people were stopped and searched for drugs at 6.3 times the rate of white people; for Asian people and those identifying themselves as mixed race these ratios were 2.5 and 2 respectively.

² Miller, J., Bland, N., Quinton, P. (2000), ‘The Impact of Stops and Searches on Crime and the Community’, Police Research Series Paper 127, London: Home Office.

- Black people are more likely to receive a harsher penalty for a drugs possession offence. In 2010, 78 per cent of black people found in possession of cocaine were charged by the MPS with possession of a Class A drug. In the same year only 44 per cent of white people found in possession of cocaine were charged with the offence; the remainder received cautions. During the same period black people in London were charged for possession of cannabis at 5 times the rate of white people
- Good practice in the use of stop and search powers requires good leadership and first line supervision. In its 2013 report, HMIC found that most chief officers do not see stop and search as a priority, have little understanding of its effectiveness and do not know how to define the successful use of the power. Not all police forces have specific policies on the use of the power; and even if they do, most operational officers do not know what they are. HMIC found ‘disturbing lowly levels of supervision’ of the conduct, recording and monitoring of stop and search or ensuring compliance with legislation, resulting in a failure to ‘protect the public from the misuse of this intrusive power’.³
- There are a number of stop and search practices that are not recognised or addressed in Code A of PACE. These include the right not to identify oneself, the collection and review of electronic data, and the entitlement of members of the public to observe a stop and search.
- Section 50 of the Police Reform Act 2002 gives a constable in uniform who reasonably believes that someone has been, or is acting anti-socially (within the meaning of section 1 of the Crime and Disorder Act 1998), the power to require that person to provide their name and address: failure to do so constitutes an offence. The breadth of the interpretation of ‘anti-social behaviour’ means that it is now relatively easy for the police to use this power during stop and search encounters to compel people to identify themselves, thus undermining the safeguard that otherwise enables individuals stopped to refuse this information.
- Code A of PACE fails to provide clear guidance regarding the right of those stopped and of observers to record stop and searches, including on mobile phones. Police officers are often unaware of what is lawful and forbid those stopped or observing from recording the encounter.
- No guidelines exist as to when police officers can request and search electronic data on mobile phones and laptops during a stop and search. Consequently, the right to privacy is often unlawfully infringed by officers examining electronic data unrelated to the offence that is being investigated.

³ HMIC, 2013, ‘Stop and Search Powers: Are the police using them effectively and fairly?’, p27
<http://www.hmic.gov.uk/media/stop-and-search-powers-20130709.pdf>

Recommendations:

- Chief Constables should set the 'tone and style' of policing and guide their officers to use the power lawfully, fairly and effectively, and supervisors should monitor stop and search practice to ensure it is compliant with the law.
- Stop and search should remain tightly defined as an investigative power. Neither its application nor justification should be extended by reference to generalist aims of 'general deterrence' or 'disruption' of crime and anti-social behaviour, nor to the purpose of 'intelligence gathering'. There is no evidence that stop and search does or can have a positive effect in these areas.
- The numbers of stop and search encounters are excessive and cannot be linked to the rate of crime. Numbers of stop and searches should be reduced.
- Stop and search should be focused on the most serious crimes and its use in targeting minor drug possession should be discouraged.
- Stop and search for drugs should be deprioritised. It is clear from the data that a large proportion of drug stop and searches are for minor possession and the majority result in no drugs being detected.
- Ethnic disproportionality should be drastically reduced or eliminated entirely.
- Action should be taken to ensure that police officers, police forces and Police and Crime Commissioners are compliant with the Equality Act.
- PACE Code A should contain specific guidance on how to treat children during stop and search encounters.
- The numbers of stop and searches leading to charge *and* conviction should be routinely measured and form part of the PACE monitoring framework. Data should also be collected on whether any arrests, charges or convictions have been related to the initial purpose of the search or have arisen from other circumstances. For example, where a stop and search is carried out pursuant to Section 1 of PACE, the rate of recovery of stolen or prohibited items should be documented and analysed. Similarly, the rate of recovery of controlled drugs should be recorded in relation to drugs searches.
- Sanctioned detections for cannabis should be abolished or weighted to represent the complexity and seriousness of the behaviour. Those caught in possession of cannabis for personal use should be dealt with in accordance with the 2009 ACPO guidance.⁴
- Clear guidance should be provided on charging standards for drug possession offences. The lack of uniformity in charging practices demonstrates the need for higher thresholds to be implemented for charging in relation to drug possession, and

⁴ Association of Chief Police Officers, 2009, 'ACPO Guidance on Cannabis Possession for Personal Use, Revised Intervention Framework', 28 January 2009.

for increased supervision and monitoring of police and CPS decision-making in relation to charging decisions. Research should be commissioned on the effectiveness of stop and search. This should include random controlled trials varying the level and focus of the power to determine if stop and search is effective, at what levels and for what crimes.

- Research should be undertaken to develop a more robust measure of effectiveness that considers the experience of those subjected to stop and search powers, and the impact of those powers upon the individuals and communities most affected.
- Efforts should be made to develop less intrusive alternatives to stop and search which achieve the stated objectives of reducing crime without the significant costs.
- The PACE Codes of Practice should be amended to provide more guidance on reasonable suspicion, with reference to practical examples. As the threshold for legitimately conducting a stop and search is in law the same as for making an arrest (i.e. reasonable suspicion), officers should be reminded that they should only initiate a stop and search where they already have cause to make an arrest and that its use should primarily be limited to avoiding unnecessary arrests through conducting on-the-spot searches in order to confirm or allay the officers' initial suspicions.
- Front-line officers should be trained on what constitutes 'reasonable grounds for suspicion', and emphasis should be placed on the importance of recording the grounds at the time of the search. Officers should also be reminded that targeting 'crime hotspots' or broadly defined persons does not in itself constitute grounds of reasonable suspicion, and that the power can only be used in relation to individuals who are actually, on the basis of objective indicators, suspected of involvement in relevant criminality at the time of the stop.
- Where officers persistently either fail to record reasonable grounds for conducting a search or exercise these powers in a discriminatory or ethnically disproportionate manner, they should be subject to disciplinary action, with a possible sanction of removing their power to carry out stops and searches for a period until they have undergone thorough retraining.
- There should be an accreditation system for officers deployed to use stop and search. Accreditation should be based on training and satisfactory performance and could then be revoked should there be a pattern of unlawful or discriminatory use of the powers.
- Sergeants should be trained on what constitutes 'reasonable grounds for suspicion' and supervising their officers' use of stop and search in line with Code A of PACE. Sergeants should be reminded that failure to comply with these requirements is a breach of the public sector equality duty.

- Where sergeants persistently fail to supervise their officers' use of stop and search, endorse records that do not record reasonable grounds for conducting a search, or fail to challenge the exercise these powers in a discriminatory or ethnically disproportionate manner, they should be subject to disciplinary action, with a possible sanction of removing their supervisory responsibilities for a period until they have undergone thorough retraining.
- PACE Code A should be amended to give clear guidance regarding the right of the person stopped and searched to refuse to give their name and address and when officers can use Section 50 of the Police Reform Act to require that such information be given. Officers using Section 50 should be required in all cases to provide an explanation as to the reasons why they consider the person stopped has engaged in 'anti-social behaviour' likely to cause 'harassment, alarm or distress to others'. Officers should ordinarily be required to inform people at the beginning of the encounter that they do not need to give their name and address.
- Code A of PACE should be amended to give clear guidance around the right of those stopped and of observers to record stop and searches, including on mobile phones.
- Code A of PACE should be amended to give clear guidelines around when police officers can request and search electronic data on mobile phones and laptops. This should be restricted to incidents when the suspicion is related to theft and clear guidance should be provided as to what the officers are permitted to search for.

Section 60 of the Criminal Justice and Public Order Act 1994

- Section 60 of the Criminal Justice and Public Order Act 1994 allows for stop and search without reasonable suspicion in an authorised area in anticipation of serious violence. The power was designed to prevent crime in specific contexts such as football grounds on match day. There is evidence that Section 60 is being used in routine policing.
- The police recorded 46,961 Section 60 searches across England and Wales in 2011-12, a decrease of 25 per cent on the previous year. Notwithstanding this recent fall in the use of this power, the number of section 60 searches grew dramatically over the last decade; between 1999/2000 and 2008/09 the number of such searches increased 20 fold or 2000 per cent.
- Officers have broad discretion to stop and search anyone within defined areas and there is evidence that police officers are relying on stereotypes and generalisations in deciding who to stop.

- National data shows that black people are stopped and searched under Section 60 at a rate of 37 times that of white people. Asian people are stopped and searched under Section 60 at a rate of 9 times that of white people.
- In 2011-12 only 2.8 per cent of section 60 searches led to an arrest and only 0.4 per cent of those arrests were for possession of an offensive weapon, the avowed purpose of the power. We are not aware of any evidence that section 60 is effective in reducing violence.
- Section 60 is unjustified in terms of its contribution to the detection and prevention of crime, it is open to abuse that is difficult, if not impossible to control because there are no particular grounds for its exercise. The power is insufficiently circumscribed; it has an extremely racially disproportionate impact and the safeguards against misuse and arbitrariness are wholly inadequate.

Recommendations:

- Section 60 should be repealed.
- Stop and search should only ever be conducted without reasonable suspicion in the most narrowly defined and tightly circumscribed situations (such as boarding an aircraft). Nobody should ever be subject to a search in a public street when there is no suspicion of involvement in crime. Where a police officer has reasonable grounds to suspect that a person is in possession of a weapon or other dangerous article, they should use section 1 of PACE.
- If the Government decides to retain Section 60, power to authorise its use should be vested in ACPO level officers, with clear guidance as to what should constitute legitimate grounds for such authorisations, the evidence/intelligence required to support those grounds, and strict limits on the geographical areas to which an authorisation can apply. Any renewal of such authorisations beyond an initial 24 hours should require authorisation beyond the police force concerned, for example by the relevant Police and Crime Commissioner, a judge or a magistrate, or the Home Secretary for authorisations extending beyond 72 hours.

Schedule 7 Terrorism Act 2000

- Schedule 7 is a highly intrusive stop power that does not have the safeguard of reasonable suspicion and operates outside of the regulatory framework that covers other police powers of stop and search.
- Individuals stopped under the power are not under arrest but may be detained for up to 9 hours wherein they may be questioned, searched (as well as their belongings), strip-searched and have samples of their biometric data including DNA & fingerprints

taken from them, regardless of the outcome of the encounter and in the absence of a lawyer.

- Individuals subject to Schedule 7 powers are obliged to cooperate. If they do not, they commit a criminal offence, face an arrest, imprisonment up to three months and/or fine.
- There is no right to compensation or assistance in rearranging any flights missed or other missed transportation as a result of a Schedule 7 examination or detention.
- The recent high profile case of the Schedule 7 stop on David Miranda, the partner of a Guardian journalist writing about information leaked on US and UK government mass digital surveillance programme, suggests that Schedule 7 is being used beyond its intended remit of determining whether the detained person is a terrorist.
- In 2012–13, the police recorded that 61,145 stops were carried out under Schedule 7, of which 2,277 lasted over an hour. These figures do not reflect the substantial number of people who are asked ‘screening questions’, (previously referred to as ‘short stops’), which are not recorded.
- One per cent of those examined had their biometric samples taken.
- Black and minority ethnic groups make up the majority of those subject to Schedule 7 stops (58 per cent) even though they account for approximately 14 per cent of the national population
- Only 670 (less than 1 per cent) of these stops resulted in an arrest in 2012/13. No information has been provided on the *number of people* convicted and on what charges. In 2011/12, there was 27 ‘terrorism related arrests’ – only 0.3 per cent of those stopped under Schedule 7.
- David Anderson, the Independent Reviewer of Terrorism, has found that the majority of examinations which have led to convictions were intelligence-led rather than based simply on risk factors, intuition or the ‘copper’s nose’. This highlights the importance of reasonable suspicion as a safeguard against the arbitrary and discriminatory use of stop and search powers. Changes to Schedule 7 powers have been proposed under Section 124 and Schedule 6 to the Anti-Social Behaviour, Crime and Police Bill, which is currently before Parliament. The changes reduce the permitted detention time to 6 hours, require a periodic review of the detention by an independent senior officer at regular intervals, provide that strip searches can only be conducted if the person is reasonably suspected of concealing an item, and introduce the right to legal advice.
- Schedule 7 is insufficiently circumscribed, has insufficient safeguards and is open to abuse. The proposed changes do not go far enough to ensure that this power will be used proportionately, effectively and with an acceptable level of transparency to enable accountability.

Recommendations:

- Schedule 7 powers should be repealed.
- If the Government decides to retain Schedule 7 powers, stops should only be conducted where there is reasonable suspicion that the person stopped is involved in terrorism. Reasonable suspicion should be based upon objective facts, information, and/or specific intelligence so as to minimize the risk of arbitrary or discriminatory application of stop and search powers.
- The legal maximum period of detention for Schedule 7 stop should be reduced to one hour, at which point the person should either be released or arrested.
- The power to take non-intimate biometric data (fingerprints and non-intimate sample) should be repealed. Biometric data of any type should only be taken after arrest.
- All interviews conducted during Schedule 7 stops should be recorded.
- There should be no compulsion for a person stopped under schedule 7 to answer questions. Instead, if someone stopped is subsequently arrested, the current rules of drawing inference from silence should apply.
- The copying and retention of electronic data belonging to people stopped under Schedule 7 should only take place after arrest, and should be limited to purposes related to the exercise of that power.
- Assistance should be provided to people who miss their flights or other transportation as a result of an examination or detention.
- Officer training in relation to Schedule 7 should be developed in consultation with a range of legal, academic and equality and community groups and also subject to independent and public evaluation.
- Restrictions should be placed on the scope of questioning that can legitimately be undertaken under Schedule 7 to ensure that those stopped are not required to answer questions about their religious or political beliefs or involvement in legitimate political, social and community activities.
- Code A of PACE, which governs other stop and search powers, should be extended to cover stop and searches conducted under Schedule 7 of the Terrorism Act 2000. This would require that Schedule 7 stops be monitored under the same recording framework as all other stop and search powers and that data be shared with community and monitoring groups. This should include information on arrests, convictions and complaints.
- HMIC should be required to inspect the use of Schedule 7 stops at ports and borders.

Strip-search

The term 'strip-search' refers to two distinct types of search: (i) 'more thorough searches' involving the removal of any clothing other than an outer coat, jacket or gloves, which must take place out of public view; and (ii) 'intimate searches', involving the exposure of intimate parts of the body, which can only be carried out at a nearby police station or other nearby location which is out of public view (but not a police vehicle).

- Such searches constitute grave impositions on a person's autonomy and private life, and by their very nature will often be degrading; causing that person enormous embarrassment, humiliation and distress.
- Neither PACE nor its Codes imposes any recording obligations in relation to these searches where carried out in the course of a stop and search; effectively rendering these searches invisible and making it impossible to monitor police practices.
- There is a lack of clarity regarding when these searches will be warranted, and limited guidance for officers on using these powers, giving rise to a grave risk of abuse.
- Anecdotal evidence and a number of legal challenges show misuse of these powers and the failings of current regulation, and in some cases it is clear they have been used as 'threats' to secure compliance or as punishment.
- Release and Stopwatch recently submitted FOI requests about the numbers of people being subject to 'strip-searches' outside of custody and arrest. Of the 43 police forces contacted not one force was able to provide the data requested as records of strip searches as part of a stop and search are not centrally recorded. Only 16 forces provided partial responses, with all forces citing they were unable to provide the data on excessive costs grounds (s12 Freedom of Information Act 2001). As one force stated: "There is no 'flag' to distinguish a more thorough or more intimate stop-search from a standard stop-search on systems currently in use, and as such there is no automatic way to retrieve relevant records." Strip searches are an intrusive police power and the use of this power must be limited in its application. The decision to strip search someone as part of a stop and search should form part of the PACE recording framework.
- The lack of recording of strip searches is of grave concern and means that no checks and balances can be put in place to ensure the decision to strip search is one that is only carried in circumstances that are absolutely necessary and proportionate. It is our view that the threshold for subjecting someone to a strip search is one of arrest and that the power to strip search as part of a stop and search should be abolished.

Recommendations:

- A further consultation be carried out, in order to consider the use of strip-searches.
- Clear and rigorous regulations/guidelines be drafted, ensuring that more thorough searches are only used in clearly defined and restricted circumstances.
- Strip-search to only take place after an arrest.
- More thorough searches or intimate searches of minors and other vulnerable people be prohibited in the absence of consent from an appropriate independent adult.
- Where an officer is found to have conducted a strip-search inappropriately, immediate intervention should result in the form of disciplinary action.
- Police forces be required to collate data regarding the use of strip-search and submit this to HMIC and the IPCC for review.
- Officers be trained on the appropriate use of strip-searches, the intrusive nature of the use of this power, and the need for it to be applied in only very restricted circumstances.
- HMIC to include the use of strip-searches in the remit of its next inspection into stop and search, referenced in its 2013 report.

The Impact of stop and search

- The disproportionate use of stop and search and stop and account has consequences for individuals, communities and wider society.
- For the individuals experiencing often repeat stops and/or stop and search encounters, it can be a frightening, embarrassing and humiliating experience. Stop and search and stop and account activity undermines their sense of belonging to the wider society that the police represent, and often carries an inference of criminality.
- Stop and search activity can also lead directly to social exclusion. Those subjected to stop and search experience stigmatisation and are more likely to have repeated contact with the criminal justice system as a consequence. This significantly impacts upon their life chances.
- The unfair targeting of minority groups for stop and search means that they are more likely to come to the attention of the police. In comparison to their white counterparts, black people are almost twice as likely to enter the criminal justice process as a result of being stopped and searched by the police.
- Research shows that unsatisfactory contacts 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.
- Research demonstrates that levels of support and trust in the police are lower in people who have recently been stopped and searched. People who have negative

recent experiences of stop and search tend to have significantly lower levels of trust in the police.

- The data also show that positive stop and search experiences do little to improve trust and confidence in the police. The message to the police is clear: the negative effect of stop and search on public trust cannot be reduced simply by improving the *quality* of the encounters. Only by reducing the absolute numbers of stops and searches and ethnic disproportionality can trust and confidence be improved.
- Many young men, particularly those from black and Asian communities, feel they are being stopped and/or searched simply because they fit a stereotype. This is fuelling anger and alienation amongst some communities and jeopardizing their support of the police and the use of their powers.
- Ethnic disproportionality fundamentally undermines public assessments of the fairness and legitimacy of the police and the wider criminal justice system. When members of the public are treated rudely and unfairly, trust and confidence in the police suffers. This is of immense significance in a system built on policing by consent; police officers rely on legitimacy, cooperation and compliance with the law to be able to undertake policing functions and uphold the law.
- A number of communities in the UK are affected by the use of Schedule 7 stops. The Equality and Human Rights Commission (EHRC) found that of all policing activities, Schedule 7 was having *'the single most negative impact'* on Muslim communities.⁵
- The retention of DNA and fingerprint information has caused particular discontent amongst those subject to Schedule 7. Not only has this made people feel criminalised but it has significantly undermined confidence and trust in counter-terrorism measures and perceptions of fairness.

Quality of the encounter

- People care deeply about how they are treated when stopped by police. The quality of stops and stop and searches affect people's attitudes towards stop and search and towards the police more broadly
- In the HMIC survey of people who had been stopped and searched:
 - 44 per cent said the police did not act reasonably
 - 42 per cent said that they did not understand why they were stopped and searched
 - 47 per cent felt that they were not treated with respect

⁵ Tufyal Choudhury & Helen Fenwick (2011), Research Report 72: The Impact of Counter-Terrorism Measures on Muslim Communities, Equality and Human Rights Commission, p.86

- 37 per cent said that they were not told the reason why they were stopped and searched.⁶
- This survey data signals a very significant mismatch between police practice and public perceptions of the use of the police power. Reasonableness, good grounds and respect form the bedrock of the practice of stop and search; yet, between one third and one half of the people stopped and searched said that these fundamental requirements were absent. This is consistent with the fact that no grounds were cited on over one quarter of the stop forms analysed by HMIC, further substantiating the view that police officers are using their powers unnecessarily and arbitrarily.
- Code A of PACE provides statutory safeguards for stop and search powers. Before searching a person or vehicle or detaining a person or vehicle for the purposes of a search, the officer must take reasonable steps to bring to the person's attention:
 - the officer's name;
 - the name of the police station to which the officer is attached;
 - the objective of the search; and
 - the grounds for making the search.
- The person must also be informed that he is entitled to a record of the search and to which police station he should apply to obtain the record. The mnemonic GO WISELY is taught to remind officers of these responsibilities
- Although a useful mnemonic, surveys of those stopped and searched suggests that it is not being followed and does not go far enough to ensure transparency and respect in the encounter. There are specific concerns that those stopped and searched are not told that they do not have to give their name and address.
- There are examples of innovative ways to improve the quality of the encounter. Most recently, Suffolk Constabulary included quality questions on their stop forms. Over the past two decades, various police forces have experimented with various ways of training police officers to speak to members of the public – whether as witnesses, victims or suspected offenders – with courtesy and respect. Examples include 'conversation management', 'investigative interviewing', Key Encounter Training and the 'Critical Encounters' project.

Recommendations:

- Code A of PACE should be amended to require officers to inform the person stopped and/or stopped and searched that they do not have to supply their name and address.
- All stop and search forms should include questions about the quality of the encounter. Data from these questions should be monitored and where forms show negative

⁶ HMIC Report, p.32

experiences or a failure to answer the questions, the person should be contacted by an independent third party to ask whether they would like to make a complaint.

- Officers should receive training on the impact of stop and search, how to use these powers with respect and dignity, and how to communicate with members of the public, especially young people. Local community groups and youth workers should be involved in all training to ensure it is relevant and meaningful. Community engagement should be undertaken by *all* officers carrying out stop and search.
- Supervising officers should be required to observe their officers conducting stop and search and receive training in ensuring their officers are using their powers with respect and dignity.
- An independent stop and search monitoring scheme should be developed based on the Home Office funded Independent Custody Visiting Scheme that supports volunteers to go on patrol with officers and monitor their use of stop and search to ensure it is lawful and respectful.
- Research should be conducted into the impact of body-worn cameras on officers' conduct during stop and search and whether it provides a mechanism for improving the quality of the encounter

Recording and accountability

- The requirement for stop and search encounters to be recorded was introduced through the enactment of PACE in response to long standing anxieties about the unfair use of these powers. The process of recording stop and search was designed to make officers consider their grounds for stopping people carefully, and to inhibit them from stopping people arbitrarily or unnecessarily. Recording also enables the monitoring and publication of search statistics and provides a management tool for supervisors to identify where officers might be incorrectly using their powers.
- Recording of stops and stop and search is essential to allow police forces to (i) ensure that stop and searches are being carried out lawfully; (ii) identify racial disparities; and (iii) determine the impact of policies undertaken to address them.
- The Home Office consultation documents links the recording of stop and search to 'unnecessary bureaucracy'. This misrepresents a vital form of accountability. Democratic policing should seek to limit intrusion into peoples' lives to that which is absolutely necessary and should, as a matter of routine, justify and explain any such incursions.
- In April 2011, the Government reduced the recording of stop and search; removing the requirement to record the name and address of the person - or a description if declined, and the outcome of the stop and search - whether a stolen or prohibited item was found and any injury or damage caused as a result of the search.

- The recent HMIC report concluded that removing this information has meant that now ‘too few forces are collecting and considering the information that would allow them to understand fully how effectively and fairly stop and search powers are being used’.
- Removing the requirement to record the name of the person stopped (when they give it) makes it impossible to measure repeat stops and harassment. In addition, as has been highlighted by the response to recent complaints about repeat use of stops against particular individuals, the absence of a requirement to record both stops that do not result in searches and Road Traffic Act stops means that any accusations of unlawful police conduct are much more difficult to prove in these circumstances. There are long standing concerns about the use of stop and search to target certain individuals or communities, and without collecting name data it will be difficult to assess the validity of these concerns. This undermines the purported fulfillment of the Equality Act duties as individuals are simply not able to prove that they have been repeatedly stopped. Even though police officers will often continue to check the Police National Computer (PNC) to identify the person, the information is removed so as to prevent monitoring.
- In April 2011, the Government removed the national requirement to record stop and account, which may include both statutory stops/detentions and other so-called voluntary stops that do not result in a search. Code A of PACE notes that police forces may maintain or subsequently reinstate the recording of stop and account when there are local concerns about disproportionality.
- Code A of PACE is confusing. It does not provide a mechanism by which forces can determine whether there are, or should be, concerns about disproportionality. Without stops that do not result in a search being recorded, communities do not have the means to prove that there is a problem or demonstrate the validity of concerns around the disproportionate use of stop and account that would require police forces to reinstate recording.
- This provision has resulted in a post-code lottery, with different levels of service to communities in different policing areas. The MPS, for example, continued to record stop and account after a public consultation found widespread concern about disproportionality and considerable support for continuing recording.
- Code A of PACE requires that forces collect and share statistical stop and search data with the public. In practice, HMIC found patchy implementation of this provision in the 2013 report. Thirty-four forces have specific policies on stop and search and only twenty-two forces publish data about their use of stop and search powers on their website. This is limited to statistical data rather than information about the purpose and impact of stop and search in the local area.
- Recording a stop and account or stop and search takes on average two to five minutes. The estimations of the amount of police time saved by reducing some of the details recorded are widely exaggerated. Real and much more substantial time savings can be made by ensuring

fewer, but more effective, stops, which are more likely to result from a framework of effective recording.

- Recording can be made more efficient by embracing electronic recording, as many forces have, using Airwaves, Smartphones, body-worn cameras or other handheld devices. In this way the paperwork associated with stop forms can be cut without undermining accountability. However, there are concerns that in practice officers using such technology are doing so perversely; for example, turning away from the individual stopped when communicating the reason for which the person has been stopped and searched to prevent them from hearing and/or objecting.
- Electronic recording also allows for more accurate recording of the locations in which stops are taking place using GPS technology. This can allow forces to map their use of stop and search and compare this to crime maps. This information should be shared publicly to enable external scrutiny.
- Community monitoring of stop and search is vital. Internal police safeguards are necessary but insufficient to ensure effective regulation. External scrutiny reminds the police that they are accountable to the public and encourages them to take account of community experiences and local priorities.
- Code A of PACE requires police forces to promote confidence in the use of the powers and to make arrangements for community representatives to scrutinise stop and search. HMIC found that only 19 forces had mechanisms for public scrutiny and most often this was conducted through Independent Advisory Groups checking statistics.
- In practice, scrutiny mechanisms that have developed around stop and search require the police to give account for their practices but provide no legal requirement for the police to take account of public responses. In many cases, the mechanisms have turned into ‘talking shops’ which fail to engage members of the community and in particular those who have experienced stop and search.
- The Code of Practice has not been revised since the introduction of Police and Crime Commissioners (‘PCCs’). While we would assume that the statutory requirement for Police Authorities to promote confidence and ensure public scrutiny in stop and search should also apply to PCCs, very few have taken any account of stop and search.
- StopWatch has conducted an analysis of all forty-two policing plans to assess how PCCs are addressing stop and search. Thirty-six PCCs do not mention stop and search in their policing plans. The eight PCC policing plans that do mention stop and search make vague comments about ensuring that stop and search is used fairly and effectively but none have translated this into a practical strategy with mechanisms for promoting confidence and ensuring scrutiny of stop and search use.
- In 2008, The Association of Police Authorities produced a booklet, *Know Your Rights*, endorsed by the Home Office and ACPO. This document sets out very clearly what

rights and expectations members of the public have when approached by the police. *Know Your Rights* has been widely distributed in schools and colleges, and has been used extensively in schools citizenship education and in police youth engagement strategies.

- There is anecdotal evidence that when police officers encounter young people who have been taught to 'Know Your Rights' and therefore question the police officers' grounds for searching them and for details of their name and police station, this has had the perverse effect of contributing to the officers' perception of them as a suspicious and obstructive person.
- A StopWatch study into existing 'Know Your Rights' material highlights that Police forces across the country give inaccurate information on young people's rights and focus on the importance of public compliance rather than the obligations of police officers. They also provide very little information on grounds for complaint and the complaints procedure.
- Current 'Know Your Rights' material fails to successfully engage with young people. Stop and search education is not resulting in improved interactions with the police. StopWatch and Release are currently conducting consultations with young people to find out what information they feel is necessary to empower them during interactions. This will result in the development of training and materials to help young people deal with stop and search encounters so they do not escalate or lead to arrest or injury – it is essentially a harm reduction approach to the policing of young people.
- There are innovative forms of external monitoring, which empower local communities to monitor the use of stop and search. Examples from the West Yorkshire Police and the Suffolk Constabulary highlight good practice in monitoring stop and search.

Recommendations

- All stops (including stop and accounts and stops conducted under the Section 163 Road Traffic Act 1988) and stop and search should be recorded and monitored and a receipt of the encounter given to the person stopped.
- There should be one national standardised stop form (paper or electronic) that records all of the following:
 - Ethnicity
 - Which stop and search power was used
 - Grounds for and object of search (i.e. what type of stolen or prohibited item is suspected of being carried)
 - Identity of the officer carrying out the stop and search
 - Date
 - Time

- Place
- The name and address of the person stopped (if the person has given it)
- Outcomes of the stop
 - (i.e. whether or not a search was conducted and, if so, what type of search (non-intimate search of person, more thorough search or intimate body search, search of vehicle)
 - Whether and what types of stolen or prohibited item was found
 - Whether the person was arrested or subject to other forms of sanction and the grounds for the arrest/sanction
 - Any injury or damage caused as a result of the search
- In the case of drugs stop and searches the recording should distinguish between what class of drugs the stop and search was aimed at and whether the officer suspected possession or dealing. This will provide accurate data to enable the assessment of effectiveness.
- Care should be taken to ensure that searches that result in arrest are fully recorded and the person detained given a full record of the stop and search.
- All strip-searches including more thorough searches and searches involving exposure of intimate parts of the body should be recorded as such, and appropriate justifications and outcomes documented accordingly.
- Searches that are conducted under the Misuse of Drugs Act 1971 should record whether the suspicion was focused around possession or dealing and which type of drug was suspected and found.
- Failure to record a stop or stop and search should be a disciplinary offence.
- Stop and search forms should include a section in which the person stopped is able to indicate whether or not s/he was satisfied with the stop and search, and make note of any concerns.
- Forces should be required to publish stop and search data on their websites for each quarter (with no more than a one quarter lag in time for compiling and sharing it). This should include numbers disaggregated by ethnicity, age, area and power used. It should also display clearly the outcomes of stop and search.
- The Home Office should publish all forces stop and search data every three months to allow for national comparison and scrutiny.
- Investment should be made in electronic recording systems that support increased accountability while reducing bureaucracy.
- Police.uk should include mapping stop and search to allow comparison with crime and anti-social behaviour to street level. Care should be taken to make this data accurate and meaningful.

- Code A of PACE should be amended to place statutory responsibility on PCCs to promote confidence in the police use of stop and search and develop mechanisms for the scrutiny of stop and search policies, records and statistics.
- Scrutiny mechanisms must take care to ensure that all parts of the community are involved, particularly young people and those that have experienced stop and search. Police forces and PCCs should develop a combination of mechanisms to obtain a broader picture of the issues and develop appropriate tools to encourage the engagement of different groups. Local community monitoring groups should be accessible and well publicised to impacted communities. Separate youth monitoring groups should be established to facilitate engagement with young people locally. Accountability structures should ensure that the police take into account public concerns.
- Scrutiny mechanisms, such as community reference groups, must be funded to ensure independence and meaningful scrutiny.
- Police forces and PCCs should fund high quality independent 'Know Your Rights' information and training. This should be specifically adapted to meet the needs of different groups and age ranges and utilise a range of tools to ensure wide dissemination.
- Training in stop and search should be developed to enable police officers to respond appropriately to young people who have been taught to 'know your rights' and to exercise them.

Complaints Procedure

- A robust and effective complaints procedure is fundamental to ensure trust in the use of stop and search powers and a mechanism for providing some form of redress for individuals who feel they may have been abused by the unlawful use of a stop and search power.
- Research and our combined experience shows that people rarely engage with the complaint procedure despite their dissatisfaction with the stop and search experiences they have endured.
- The majority of complaints relating to stop and search are automatically dealt with by way of local resolution by officers of the same force as those subject to the complaint. Many individuals who feel aggrieved following a stop and search will not complain about the incident for fear that the complaint will not be dealt with independently or, worse, that they will be targeted by the same officers that they have complained about as a result of having complained and that any data collected will be used against them by police.

- There is a lack of serious and independent oversight of stop and search related complaints. Following changes to the Police Reform Act 2002, the decision to investigate a stop and search related complaint by way of local resolution and not by the IPCC can be made without the consent of the individual concerned. This will only serve to weaken the complaints system and decrease the public's confidence in its effectiveness.
- There is no effective system for recording complaints relating to stop and search and different forces use different methods of recording. Complaints arising out of the use of stop and search powers are not recorded distinctly nor are they subject to external scrutiny, absent any significantly aggravating factors.

Recommendations:

- Complaints relating to stop and search should not be automatically dealt with by local resolution.
- Cases involving allegations of serious abuse of stop and search powers, such as cases involving discrimination, strip-search or the stop and search of children or vulnerable adults should automatically be referred to the IPCC.
- The investigation of stop and search complaints should involve external expert and members of the local community.
- Local resolution should offer complainants the opportunity to engage in mediation with the officers involved, facilitated by independent mediators.
- A systematic process of recording allegations relating to the use of stop and search powers should be implemented across all professional Standards Departments. Police forces should record stop and search related complaints separately. The specifics and the nature of the complaint – for example, whether there have been allegations of discrimination or relating to the age or vulnerability of those involved – should also be recorded distinctly, to ensure cases of a more severe nature are dealt with separately and at the appropriate level.
- Complaints raising allegations of discrimination or stop and search of minors and vulnerable adults should be separately recorded and monitored. Investigating officers should be adequately trained to recognise whether complaints raise discrimination related issues or allegations of stereotyping.
- Senior officers should ensure full compliance with the requirements of Code A of PACE. They should also ensure that the appropriate measures are taken to address repetitive occurrences of abuse of stop and search powers within a police force. This will also ensure that complaints involving the same officers or police stations can be identified and appropriate action taken. If the same officer is the subject of repetitive

complaints relating to stop and search, appropriate action should be taken, to include training on the requirements of a lawful stop and search.

- Records of stop and search related complaints should be reviewed/audited by the HMIC during their inspections visits to forces.
- Third party/independent monitoring of the complaints procedure should also be put in place to ensure confidence, transparency and accountability within the process.

Introduction

StopWatch is a coalition of civil society organisations, academics, lawyers, community workers, activists and young people, which campaigns for fair and accountable policing. 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.

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

On 2nd July 2013, Home Secretary Theresa May announced a public consultation into the use of stop and search powers. The consultation focuses on effectiveness, fairness, balancing public protection with the preservation of individual freedoms and bureaucracy in policing. A week later, Her Majesty's Inspectorate of Constabulary (HMIC) released an inspection report into stop and search. The report raises serious concerns about lawfulness, effectiveness and supervision of stop and search and makes wide-ranging recommendations.

Stop and search are some of the most intrusive and contentious powers available to the police. This was most recently acknowledged by the HMIC who 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 2011.⁷

Given the long history of concerns around the use of stop and search this consultation is a welcome development. However, the consultation is limited to stop and search powers under section 1 of the Police and Criminal Evidence Act 1984 (PACE), Section 23 of the Misuse of

⁷ Her Majesty's Inspector of Constabulary (2013), *Stop and search Powers: Are the police using them effectively and fairly?* London: HMIC at 3.

Drugs Act 1971 and Section 60 of the Criminal Justice and Public Order Act 1994. This excludes a number of police-initiated encounters where there are serious concerns including stop and account, stops under the Road Traffic Act 1988, and Schedule 7 and Section 43 and 47a of the Terrorism Act 2000. Members of the public, and particularly those who are stopped and/or searched do not distinguish between the different powers and so it is crucial that all police initiated contacts are considered and actions taken to improve the regulation and practice. This consultation response covers all police-initiated powers.

Principles

In her statement to the House of Commons on 2 July 2013, the Home Secretary said that police officers have a 'right to stop and search people'. This cannot be correct. Of course, police officers have human rights, just like everyone else, but they do not have a fundamental *right* to use their power over others. Surely, the position is that the police have a public *duty* to investigate crime and contribute to community safety alongside a *duty* to promote equality, prevent illegal discrimination and to protect our rights and freedoms. The police are granted *powers* to carry out these duties. It is a fundamental principle of democratic government that the onus lies with the state to justify any interference with the rights and freedoms of the individual. Put simply, it is for the government and the police service to justify the use of stop and search powers. They cannot simply take them for granted, as if the police had a fundamental 'right' to use coercive power against the citizen.

So, what is the official justification for the power to stop and search? The Home Office consultation document says that the purpose of stop and search is to 'fight against crime'. This vague definition of the purpose or goals of stop and search powers is characteristic of much of public discussions on the topic. The consultation document fleshes out slightly what it means by the fight against crime by reference to 'preventing and detecting crime and antisocial behaviour', 'arresting suspects', 'deterring criminals from committing offences', a 'preventive quality', 'increased visibility' and 'addressing the fear of crime through reassurance'. The research evidence also suggests that police officers use stop and search to 'gather intelligence', 'disrupt crime', 'disrupt drugs markets', 'maintain public order' 'break up groups of young people' and – more generally – to 'control the streets'.

According to HMIC (2013), most police forces have no clear approach to using stop and search powers. Most police forces have no stop and search policy, no statement of the goals or purpose of the use of the power. Even where stop and search policies exist police officers are usually unaware of them, and they are not based on a 'foundation of evidence' of its effectiveness. Quite often, front-line police officers have no clear idea why they are stopping

people and to what end. The result is an incoherent stop and search policy leading to inconsistent and frequently unlawful practice on the streets.

The confusion in public discussion and within the police service about the definitions of the purpose of stop and search is highly problematic. Without a proper definition of the purpose of the power, it is impossible to achieve the clarity and precision required in law, to regulate police powers or to evaluate its effectiveness. The lack of circumscription opens the door to the abuse of power.

Despite the confusion about the purpose of stop and search in police practice and in public discussion, it is in fact quite clearly defined in legislative acts. The most commonly used powers to stop and search are defined clearly in law as a power to detect and prevent crime by enabling a police officer to allay or confirm, without resorting to arrest, a reasonable suspicion that an individual is in possession of a unlawful article. This principled approach to stop and search has been compromised and confused by the creation of powers to stop without reasonable grounds and with the widespread 'mission creep' of powers intended to be based on reasonable suspicion. In our view, there should be no other grounds for stop and search, except when there is well-founded suspicion that an individual is in possession of a dangerous article, has committed an offence or is about to commit an offence. In a liberal democracy, the power to stop and search on the public streets can never be justified by goals such as 'general deterrence', 'intelligence gathering' or 'control of the streets'.

It is important to recognise that the police powers to stop an individual in a public place, to detain them for questioning, and to search their person or their belongings interferes with the liberty and privacy of the individual. They are intrusive and coercive powers that can be experienced as embarrassing, humiliating, intimidating and sometimes even frightening. Stop and search has potentially damaging effects on individuals and wider society. The powers can only be justified if there is evidence that they make a significant contribution to the public good and if there is no less intrusive or coercive means to achieve the same end. The evidence of effectiveness is unconvincing and there has been insufficient effort dedicated to the development of a less costly alternative.

The research evidence is clear that stop and search powers can be abused, used arbitrarily, without proper grounds and for improper purposes. The use of these powers must therefore be properly supervised to ensure that they are lawful, necessary and proportionate, properly circumscribed and subject to adequate legal safeguards against abuse. The key point is that no policing practice can or should survive in a democracy without legitimacy and consent. In the most extreme cases, the inappropriate use of stop and search carries the risk of creating

confrontations between police and public that has the potential to trigger disorder. As the late Carole Willis, a senior Home Office official put it thirty years ago:

Without a secure base of community support ('consent') the use of [stop and search powers]... rapidly becomes hazardous and ineffective. To maintain their effectiveness, therefore, their exercise needs constantly to be reassessed not merely in relation to arrests or clear up rates, but also in the light of the effect on the community as a whole. In other words, the satisfactory and fruitful exercise of powers in this area depends crucially in the long term on police action being perceived by individuals and groups as acceptably fair and rational.⁸

A number of steps are required going forward. The police and government must be clear about the purpose and goals of stop and search and should specify and publish fundamental values and principles to guide the use of the power. Its use should be within the law, accountable (can be explained and justified in a way that would satisfy an independent observer), proportionate (that the level of intrusion or period of detention is consistent with the purposes of the search), parsimonious (no other less intrusive or coercive method would do as well) and effective (makes a verifiable contribution to the investigation and prevention of crime). Its use should also be equitable, respectful of human rights and guarded against discrimination. In delivering 'procedural justice' certain aspects of fairness are required including openness and transparency, the capacity to listen to what people treated as suspects have to say, avoiding embarrassing them, allowing people – whether they are victims, witnesses, suspects or arrestees – to give their version of the facts and to answer their questions.⁹

Recommendations

- Stop and search should be defined clearly as a power to detect and prevent crime by enabling a police officer to allay or confirm, without resorting to arrest, a well-founded suspicion that an individual is in possession of a dangerous article, has committed an offence or is about to commit an offence. There should be no other grounds for stop and search.

⁸ Carole Willis (1983) 'The Use, Effectiveness and Impact of Police Stop and Search Powers. Home Office Research and Planning Unit Paper 15'. (London: Home Office, 1983) at page 23.

⁹ Ben Bowling (2008) Fair and Effective police methods: towards 'good enough' policing, *Scandinavian Studies in Criminology and Crime Prevention* Vol. 8/S1 pp17-23; Ben Bowling, Coretta Phillips, Alex Campbell, and Maria Docking (2004) *Human Rights and Policing*. Geneva: United Nations Research Institute for Social Development. (UNRISD)

- The government should make it clearer that the onus lies with the police service to justify the use of stop and search powers rather than simply taking them for granted. Evidence of the effectiveness of the powers – where it exists – should be placed in the public domain and consideration should be given to the negative impact of stop and search on individuals and communities.

Stop and account

“Stops” or “stop and accounts” refers to those encounters where police officers stop (and, in many cases, effectively detain) members of the public to ask them to account for their actions, behaviour or presence in an area but do not go on to search them.

In 2008- 09, there were 2.2 million recorded stop and accounts across England and Wales.¹⁰ The large number of police stops makes them highly influential as a point of contact between the police and the public. Research has shown that the public do not always distinguish between a stop and account and a stop and search;¹¹ both are on a continuum of police-initiated contact meaning they cannot be separated. While stop and search is clearly more intrusive, the sheer numbers of stop and account, as well as the possibility of abuse, means that it has considerable potential to alienate individuals and communities.

Ministry of Justice data has consistently shown disproportionate rates of stops in many forces, with people from black and minority ethnic groups being stopped more frequently than white people. Black people were 2.7 times more likely to be subject to stop and accounts than white people across England and Wales in 2008/9.¹² Asian people were stopped at 1.4 times the rate of white people for the same period. The extent to which stop and account is disproportionately targeted at black and minority ethnic groups varies quite markedly across police forces.¹³ There are some forces where black people are stopped by the police and asked to account for themselves at, or below, the rate of white people, while there are others where they are subject to much higher rates of stop and account: the difference between the West Midlands and Durham constitute the extremes in this regard. In the West Midlands, where there is a local policy for the police to use stop and account even where there already exists grounds of reasonable suspicion justifying a stop and search,

¹⁰ Ministry of Justice (2009) *Statistics on Race and the Criminal Justice System 2007/08*, London: Ministry of Justice. This is the most recent nationally available data on stop and account as in 2011 the national requirement for recording was removed.

¹¹ Quinton, P. and J. Olagundoye (2004). An evaluation of the phased implementation of the recording of police stops: in response to recommendation 61 of the Stephen Lawrence Inquiry. London, Home Office.

¹² Analysis based on data from: Ministry of Justice (2009) *Statistics on Race and the Criminal Justice System 2007/08*, London: Ministry of Justice and Ministry of Justice (2010) *Statistics on Race and the Criminal Justice System 2008/09*, London: Ministry of Justice.

¹³ Ministry of Justice (2009) and (2010); Equalities and Human Rights Commission (2010), *Stop and Think: A critical review of the use of stop and search powers in England and Wales*, London: EHRC.

black people were stopped and asked to account for themselves at 6.9 times the rate of whites in 2008/09, while in Durham they were stopped and asked to account for themselves at a fifth of the rate of whites.

In April 2005, the regulatory framework governing the recording and monitoring of stop and search was extended to cover stop and account based on a recommendation from the Inquiry into Matters Arising from the Death of Stephen Lawrence.¹⁴ As a result, police officers were required to provide people who they stopped and asked to account for themselves with a record of the stop (including reason for the stop, outcomes of the stop and self-defined ethnicity) and aggregate data was collected for internal management and external monitoring. In March 2011, the government removed the national requirement to record stop and account, giving individual forces the discretion to choose whether or not to continue such recording.

The police have no power to stop and detain people for the purposes of questioning but the law and guidance (Code A of PACE, 2011) is incomplete because it does not explain to officers the rights of the individual, what they should be informed about, and whether they have to co-operate. The Code states:

There is no power to stop or detain a person in order to find grounds for a search. Police officers have many encounters with members of the public which do not involve detaining people against their will. If reasonable grounds for suspicion emerge during such an encounter, the officer may search the person, even though no grounds existed when the encounter began. If an officer is detaining someone for the purpose of a search, he or she should inform the person as soon as detention begins. (Para. 2.11).

The Code is silent on whether the person questioned has to account for themselves. It does not require officers to make clear at the start of the encounter whether the person has to answer questions or to inform them that they are not detained and free to leave. Nor does Code A of PACE stipulate whether or not a refusal to answer questions or an attempt to walk away could give grounds for the statutory stop and search powers to be invoked. There is a need for clarity and transparency around stop and account both to ensure compliance with the law and so that those stopped fully appreciate when that they are legally detained. The person stopped should be informed as to whether they are being stopped with a view to being search and thus are detained or whether it is a non-statutory stop meaning they are free to leave at any time, and of their right not to answer questions in both cases. Unless

¹⁴ Macpherson, W. (1999) *Inquiry into the Matters Arising from the Death of Stephen Lawrence: Final Report*. London: The Stationery Office, at para 47.6.

there is transparency as to when statutory powers to stop and search are being used, there is a risk that the member of the public who is being stopped may not appreciate that he or she is being detained. An attempt by that person to leave the scene could result in their being arrested and facing criminal charges, for example, for obstruction of a police officer in the execution of his or her duty or public order offenses. Code A of PACE should articulate that the failure to answer questions or an attempt to leave the encounter cannot be used for grounds to invoke a search.

Recommendations

- Code A of PACE should be amended to give clearer guidelines as to when it is appropriate to use stop and account. Officers should not be permitted to use this tool to either (i) circumvent the safeguards applicable to stop and searches; or (ii) initiate engagements with a view to provoking behaviours which may subsequently justify a stop and search being undertaken.
- The person stopped should be informed as to whether they are being stopped with a view to search and thus are detained or whether it is a non-statutory stop meaning they are free to leave at any time, and of their right not to answer questions in both cases.
- Officers should be required to inform all those subject to a non-statutory stop of the guidance using wording such as:

“I am a police officer/police community support officer and I would like to ask you some questions. You are not at present suspected of any wrongdoing. You are not obliged to answer my questions and, unless I advise you otherwise, you are free to go at any time.”
- Code A of PACE should clearly articulate that an attempt to leave such an encounter or failure to answer questions cannot be considered as grounds to invoke a search power.
- All stops should be recorded and monitored under the same recording framework as PACE stop and search powers and that data be shared with community and monitoring groups.

Section 163 Road Traffic Act 1988

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.¹⁵ There is therefore a significant risk that this power, which was intended by Parliament to be utilised for road traffic purposes, will be misused.

Although there are no official data recorded 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.¹⁶ 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).¹⁷ The most common reason for these stops is so that officers can carry out routine checks on the vehicle or check ownership and insurance.

There is evidence that traffic stops are disproportionately focused on black and minority communities and 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).¹⁸ Numerous media reports present anecdotal evidence of car stops being used disproportionately¹⁹ and the recent complaint by Stuart Lawrence against the Metropolitan Police centred on repeat traffic stops.²⁰ Members of the Stopwatch legal group have reported examples²¹ 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.

¹⁵ *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)

¹⁶ 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.

¹⁷ 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).

¹⁸ British Crime Survey data from 2008/09, 2009/10 and 2010/11.

¹⁹ 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/>

²⁰ 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>

²¹ Which must remain anonymous at this time.

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 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, it is of note that in the recent HMIC report,²² it was commented that some individuals subjected to a s.163 stop mistakenly believe that they have been stopped and searched, such is the lack of distinction between the experiences.

The resulting infringement of liberty is increased further by virtue of the obligations that are imposed on a driver subjected to a s.163 stop (for example, to provide their name and specified documents).²³ Indeed, where an individual appears opposed to a stop, due to the fact, for example, that they believe there to have been no reason for it, that opposition can be, and has been known to be, relied upon by the police as providing the requisite basis on which to conduct a search.²⁴ As such, Stopwatch is of the view that s.163 is being utilised in order to circumvent the requirements and safeguards applicable to alternative powers of stop and search.²⁵

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. Although 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 the power and there are no checks and balances in place to ensure that the power is being used lawfully and appropriately, meaning that there is absolutely no 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

²² '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.

²³ S. 165 RTA

²⁴ Which will commonly be carried out under s.1 PACE or s.23 MDA.

²⁵ Which can also be exercised to conduct vehicle stops.

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 Jamaica²⁶ and Australia,²⁷ where concerns regarding the abuse of power and discriminatory effects have compelled the courts to restrict the operation/application of those provisions.

Recommendations:

- A further consultation be carried out, in order to assess the adequacy of Section 163 RTA;
- Officers be required to record stops conducted under Section 163 RTA, together with the reasons for the stop, where those stops are of individual vehicles (as opposed to halting traffic *en masse*);
- Section 163 RTA be amended so that its use is restricted to road traffic purposes;
- Where a Section 163 stop proceeds to a search, an officer be required to document in the search record the reasons for which the Section 163 power was used;
- Where an officer is found to have exercised Section 163 RTA inappropriately, immediate intervention should result in the form of management/disciplinary action;
- Police forces be required to collate data regarding the use of Section 163 and submit this to the EHRC, HMIC and IPCC for review.
- Section 163 stops to be recorded and monitored under the same recording framework as PACE stop and search powers and that data be shared with community and monitoring groups. This should include information on ethnicity of the driver, arrests, convictions and complaints.
- Officers be trained on the appropriate use of Section 163 RTA, and in particular its restricted application to road traffic issues.
- HMIC should include Section 163 stops in the remit of its next inspection into stop and search.

Police and Criminal Evidence Act 1984 **and Misuse of Drugs Act 1971**

Most stop and searches are conducted under the *Police and Criminal Evidence Act 1984* (section 1) and the *Misuse of Drugs Act 1971* (section 23), regulated by the Police and Criminal Evidence Act (PACE) Code of Practice A. Stop and search is an investigative power, used for the purposes of crime detection or prevention in relation to specific

²⁶ "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>

²⁷ "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>

individuals at a specific time.²⁸ According to the PACE Code of Practice: ‘The primary purpose of stop and search power is to enable officers to allay or confirm suspicions about individuals without exercising their power of arrest.’²⁹ The primary purpose is to detect individuals in the possession of stolen property, which may indicate that they have been involved in crimes such as theft, burglary and robbery. Searches conducted for drugs, firearms or weapons are hoping to identify those illegally carrying these items or who may be involved in violence. Stops and searches conducted under PACE must be justified by reasonable suspicion, an objective and articulable basis that should not rely on stereotyping and generalisations. The power was originally introduced to reduce the numbers of unnecessary arrests and to provide safeguards for those searched. The definition of stop and search, provided in the consultation document, refers to stop and search as a tool for “preventing crime and anti-social behaviour” is not consistent with the law.³⁰ The power must be used for detecting crime as opposed to general crime prevention and cannot be used in relation to anti-social behaviour.

In 2011-2012, the police recorded 1.2 million stop and searches across England and Wales, a decrease of 9 per cent on the previous year.³¹ Despite, what appears to be a recent downward trend, the level of stop and search has grown rapidly over the last three decades. There were just over one hundred thousand stop and searches in 1986, when monitoring began. The upsurge in stop and search activity over the last three decades or so cannot simply be explained as a function of increased crime, as it continued after 1995 when the crime rate went into decline.³² There is no straightforward relationship between crime levels in police force areas and rates of stop and search, as some forces with high crime rates make relatively little use of stop and search powers.³³ This was also demonstrated by recent changes to the volume of stop and searches in five forces assessed by the Equality and Human Rights Commissions research into stop and search.³⁴ There has been a fall in the numbers of stop and searches and reductions in the rate of ethnic disproportionality across all five forces with no impact on crime rates in those areas.³⁵ It therefore follows that trends in the recorded use of stop and search do not appear to be driven by the amount of

²⁸ Lustgarten, L. (2002), ‘The Future of Stop and Search’, *Criminal Law Review*, 603--618.

²⁹ Police and Criminal Evidence Act 1984 Code of Practice A, 2011 version, para. 1.4

³⁰ Home Office (2013), *A Consultation on police powers of stop and search*, pg.5. Available at: <https://www.gov.uk/government/consultations/stop-and-search>

³¹ Home Office (2013), *Police Powers and Procedures England and Wales 2011.12*, London: Home Office.

³² Newburn, T. (2007), “‘Tough on crime’: penal policy in England and Wales”, in M. Tonry (ed.), *Crime, Punishment and Politics in Comparative Perspectives*, Chicago: University of Chicago Press.

³³ Miller, J., N. Bland, et al. (2000). *The Impact of Stops and Searches on Crime and the Community*. London, Home Office.

³⁴ Equality and Human Rights Commission (2013), *Stop and Think Again: Towards Race Equality In Police PACE Stop and Search*, London: EHRC.

³⁵ Equality and Human Rights Commission (2013), *Stop and Think Again: Towards Race Equality In Police PACE Stop and Search*, London: EHRC.

reasonably suspicious behaviour taking place in an area but rather by policies and practices of the police, whether at an institutional or individual officer level.³⁶

Disproportionality and discrimination

There is extensive research exploring the reasons for the disproportionality in stop and search statistics.³⁷ Police recording practices vary widely from force to force and within forces.³⁸ In a Home Office observational study of 138 encounters “that should have been recorded by the police” a record was made in only 27 per cent of encounters.³⁹ More recently, recording rates have increased. Despite these methodological problems, police records of stop and search powers can be taken as a reasonable *indicator* of the extent of their use and variations between different ethnic group and changes in their use over time.

The term ‘disproportionate’ in this context describes the degree to which the police power to stop and search is out of proportion or out of balance in relation to different ethnic groups. The most commonly used baseline criterion against which to compare the use of the power is resident populations, expressed in terms of the number of stops and searches conducted *per capita*, or per 1,000 head of population within each ethnic group.

Home Office data shows that black people are stopped and searched by the police at seven times the rate of whites, while Asians are stopped and searched at more than twice the rate of whites across England and Wales.⁴⁰ The data has repeatedly shown that black people are subject to a greater rate of stop and search than whites, with disproportionality ratios varying from five to eight times since 2001/02.⁴¹ The disproportionality ratio for Asian people has stayed between 1.5 and 2.5 during this time. Analysis conducted by the Equalities and Human Rights Commission (EHRC) in 2010 concluded that a number of police forces are using the powers in a manner that is disproportionate and possibly discriminatory. The

³⁶ Miller, J., N. Bland, et al. (2000). *The Impact of Stops and Searches on Crime and the Community*. London, Home Office; Sanders, A., Young, R. and Burton, M. (2010) *Criminal Justice*, fourth edition, Oxford: Oxford University Press.

³⁷ See for example, Bowling, B. and Philips, C. (2007) ‘Disproportionate and Discriminatory: Reviewing the Evidence on Police Stop and Search’, *The Modern Law Review*, 70(6): 936-961. Bowling, B. (2008) Fair and effective police methods: towards ‘good enough’ policing, *Scandinavian Studies in Criminology and Crime Prevention* Vol. 8/S1 pp17-23; MVA and Joel Miller (2000) *Profiling Populations Available for Stops and Searches*. Police Research Series Paper 131. London: Home Office: 84; Waddington, P. A. J, Stenson, K. and Don, D. (2004) ‘In Proportion: Race and Police Stop and Search. *British Journal of Criminology*. 44, 889-914

³⁸ FitzGerald, M. and Sibbitt, R. (1997) *Ethnic Monitoring in Police Forces: a Beginning*. Home Office; Bland, N. and Miller, J. (2000) *Police Stops, Decision-Making and Practice*. Police Research Series Paper 130. London: Home Office: vii

³⁹ Bland, N. and Miller, J. (2000) *Police Stops, Decision-Making and Practice*. Police Research Series Paper 130. London: Home Office: vii

⁴⁰ Ministry of Justice (2011), *Statistics on Race and the Criminal Justice System - 2010*, London: Ministry of Justice. It is worth noting that these rates of disproportionality are measured against the 2001 census rather than the more recent 2011 census data.

⁴¹ Miller, J. (2010) “Stop and Search in England: A Reformed Tactic or Business as Usual?” *British Journal of Criminology*, 50:5, p 954-974; Ministry of Justice (2010).

EHRC assessed how many more stops and searches are conducted on black and Asian people than would be the case if they were stopped and searched at the same rate as white people. In 2007-08, there were 145,000 “excess” stop and searches conducted on black people and 43,000 “excess” stop and searches on Asian people in England and Wales.⁴²

These *per capita* measures can be taken as a reasonable estimate of different ethnic groups’ overall experience of the use of the power to stop and search. As a Home Office study put it, “when they are based on a wide enough geographical area, they [statistics based on resident populations] still give us an important indication of how often members of different ethnic communities are actually stopped or searched within that area”.⁴³

The *per capita* measure has been criticised because resident populations do not take account of the time spent in the streets and other public places when they could be described as ‘available’ to be stopped.⁴⁴ The advantage of this ‘available populations’ as a measure is that it recognises that some demographic groups – distinguished on the basis of age, ethnic origin, gender, etc. – are more likely than others to spend their time at home, at work or are otherwise in private space where they are ‘unavailable’ to be stopped by the police, while others, conversely, are more likely to be ‘available’ by virtue of their demographic characteristics and lifestyle. The Home Office exploring this comparator concluded that resident populations give a poor indication of the populations available to be searched. Within ‘available populations’, white people tend to be stopped and searched at a higher rate, Asian people tend to be under-represented and black people are sometimes under- and sometimes over-represented.⁴⁵ Similar results were produced in the Thames Valley police area by Waddington *et al.* in 2004.⁴⁶

There are four problems with using this measure in the present context. First, while the Home Office research studies have recommended that police forces monitor ‘available populations’, it is not clear how this could be done on a routine basis. Second, ‘availability’ – however defined – is not a neutral criterion against which to compare stop and search rates. The extent to which a social group is ‘available’ to be stop and searched depends on such factors as unemployment, exclusion from school, homelessness, employment in occupations

⁴² Equalities and Human Rights Commission (2010) *Stop and Think: A Critical Review of the Use of Stop and Search Powers in England and Wales*. London: EHRC.

⁴³ MVA and Joel Miller (2000) *Profiling Populations Available for Stops and Searches*. Police Research Series Paper 131. London: Home Office: 84

⁴⁴ FitzGerald, M. and Sibbitt, R. (1997) *Ethnic Monitoring in Police Forces: a Beginning*. Home Office Research Study 173. London: Home Office Research and Statistics Directorate; Home Office (2000) *Race and the Criminal Justice System 1999: a publication under section 95 of the Criminal Justice Act 1991*. London: Home Office Research and Statistics Directorate; MVA and Joel Miller (2000) *Profiling Populations Available for Stops and Searches*. Police Research Series Paper 131. London: Home Office

⁴⁵ MVA and Joel Miller (2000) *Profiling Populations Available for Stops and Searches*. Police Research Series Paper 131. London: Home Office

⁴⁶ Waddington, P. A. J, Stenson, K. and Don, D. (2004) ‘In Proportion: Race and Police Stop and Search. *British Journal of Criminology*. 44, 889-914

that involve evening and night work, all of which are known to be associated with ethnic origin.⁴⁷ While these factors are beyond the control of the police,⁴⁸ it remains the case that the 'availability' is, in practice, biased against some ethnic groups. Third, in studies exploring this, a person is considered 'available' in relation to time spent in the times and places where stop and search powers are most extensively used.⁴⁹ Specifically, the research was targeted at 'stop zones', or those areas where 70-80 per cent of police stop and searches occur. This means that established police practice sets the parameters of 'availability' and is therefore self-referential and self-reinforcing. As Home Office researchers put it, "because people can only be available if they are in places where and when police carry out stops and searches, police decisions about where and when to target stops and searches will also structure available population characteristics".⁵⁰ Finally, many of the places in which police stop and search powers are concentrated are those with large ethnic minority populations (or in ethnic minority social hubs), meaning those same populations are more likely to be defined as 'available'. In other words, those people who do not live in, or travel through a 'stop zone' – many of which are within areas with large ethnic minority populations – are judged to be 'unavailable' for stopping. This problem fundamentally undermines the neutrality of the concept of 'available populations', making it an inappropriate criterion against which to compare the extent of police powers.

Controlling for the factors that place an individual at greater 'risk' of being stopped or being 'available' to be stopped can be achieved using survey data by employing a technique known as 'logistic regression'. This enables a number of factors to be 'held constant'. The results of this analysis for British Crime Survey data in 2001 showed that the likelihood of being stopped in a vehicle was still higher for black respondents even once age, sex, academic qualifications, owning a car, unemployment, occupation, earnings, living in an inner city, being a student, living in London, and going out after dark more than three times a week were accounted for.⁵¹ This was confirmed in 2012, which analysis showing that the likelihood of being stopped on foot or in a vehicle was higher for black, mixed black-white, and Muslim Asian communities once presence or residence in "high crime areas", age, gender, and social class were controlled for.⁵²

⁴⁷ For example, interviews conducted by Stone and Pettigrew (2000) found that some of the black and Asian people in their study tended to work in jobs with unsociable hours, such as in fast food outlets, mini-cab drivers, shift work at factories and postal workers.

⁴⁸ MVA and Joel Miller (2000) *Profiling Populations Available for Stops and Searches*. Police Research Series Paper 131. London: Home Office: 87

⁴⁹ *ibid*

⁵⁰ *ibid*

⁵¹ Clancy, A., Hough, M., Aust, R. and Kershaw, C. (2001) *Crime, Policing and Justice: the Experience of Ethnic Minorities Findings from the 2000 British Crime Survey*. Home Office Research Study 223. London: Home Office: 66

⁵² StopWatch and Open Society Justice Initiative (2013), *Viewed With Suspicion: The Human Cost of Stop and Search in England and Wales*, New York: OSF.

It has also been argued that police stop and search powers can be compared against the extent of criminal offending among specific ethnic groups. This measure accepts that offending may not be uniformly distributed across the population in terms of age, gender and ethnic origin. In attempting to be efficient, some commentators have suggested that police officers might reasonably select suspects from within those groups believed most likely to be involved in crime.

There are a two general problems with using crime statistics for comparison with stop and search, one empirical and one conceptual. The empirical problem with comparing stop and search rates against 'crime rates' relates to the validity and reliability of established estimates of criminal involvement among different ethnic groups. There currently exists no robust measure of general 'crime rates' that can be used for the purposes of comparison.⁵³

The conceptual problem relates to what is sometimes known as 'statistical discrimination'⁵⁴ or even 'racial profiling'. This occurs when recorded crime statistics are used, in themselves, as a basis for decisions about whom to stop and search. According to Code A of PACE, stop and search should not be based on generalisations or stereotypes about which groups are most likely to be involved in crime, but rather on objective information relating to the specific individual suspected of involvement in a specific offence at a specific time.⁵⁵ Using ethnic differences in crime rates – real or perceived – might, therefore, encourage police officers to target stop and search powers on the basis of generalisations based on ethnic origin, rather than objective evidence of criminal involvement in a specific case.

In our view, the most robust measure of disproportionality in the use of the police stop and search powers, and which relies on the fewest assumptions, is the *per capita* stop and search rate. Based on a geographical area like the Metropolitan Police Area, statistics based on resident populations provide an important indication of how often members of different ethnic communities are actually stopped or searched within that area. As Home Office researchers put it, *per capita* stop and search rates show clearly that "being black means that you get stopped more often".⁵⁶

⁵³ This question has been, and continues to be, the subject of extensive debate (see Bowling, B. and Phillips, C. (2002) *Racism, Crime and Justice* London: Longman. Phillips, C. and Bowling, B. (2012) 'Racism, ethnicity, crime and criminal justice' in Maguire, M., Morgan, R. and Reiner, R. (eds.) *The Oxford Handbook of Criminology* (Oxford: Oxford University Press, 5th ed.

⁵⁴ Reiner, R. (2000) *The Politics of the Police*. (3rd edition). Oxford: Oxford University Press

⁵⁵ Lustgarten, L. (2002) 'The future of Stop and Search', *Crim. L. R.* pp603-618

⁵⁶ MVA and Joel Miller (2000) *Profiling Populations Available for Stops and Searches*. Police Research Series Paper 131. London: Home Office: 84; see also Bowling, B. and Philips, C. (2007) 'Disproportionate and Discriminatory: Reviewing the Evidence on Police Stop and Search', *The Modern Law Review*, 70(6): 936-961.

The statistical data on racial disproportionality in stop and search is consistent with the very extensive research on racism, racial stereotyping and racial discrimination in police work. The literature shows that stereotyping is extensive, pervasive and consistent over time.⁵⁷ There is a widespread tendency for police officers to think of people from ethnic minorities as crime prone, disorderly and with tendencies towards violent behaviour and drug taking. John Newing, (who was President of ACPO and Chief Constable of Derbyshire at the time), in his evidence to the Lawrence Inquiry captured this well. He said, “In the police service there is a distinct tendency for officers to stereotype people. That creates problems in a number of areas, but particularly in the way officers deal with black people. Discrimination and unfairness are the result. I know because as a young police officer I was guilty of such behaviour”.⁵⁸

Although the links are complex, it is clear that racially prejudiced attitudes affect the way in which people behave.⁵⁹ Police officers are no exception. Hall *et al* argue that “while there is no automatic or straightforward link between racially prejudiced attitudes and language and discriminatory or differential behaviour... there is a consistency in the pervasive nature and expression of racial stereotypes and their influence on police expectations and behaviours”.⁶⁰

It has been acknowledged by senior police officers that criminal intelligence is often inaccurate or too imprecise to be of operational value.⁶¹ Such intelligence is also frequently self-referential and self-reinforcing. That is, police officers target black people for stop and search and this yields evidence of involvement in crime (such as a high rate of arrests). This is then used as the basis for intelligence justifying the targeting of stop and search.

The statistical and empirical research evidence indicates that stop and search is frequently carried out, not on the basis of objective information relating to a specific suspect, but on generalisations or stereotypical images of certain groups or categories of people as more likely to be involved in criminal activity. These stops are unlawful under PACE.⁶²

Disproportionality and discrimination can also extend to treatment after the original stop. Black and Asian people are more likely to have negative experiences of stop and search

⁵⁷ FitzGerald, M and Sibbitt, R. (1997) *Ethnic Monitoring in Police Forces: A Beginning*, Home Office Research Study 173, London: Home Office Research and Statistics Directorate: 36

⁵⁸ Macpherson, S. W. (1999) *The Stephen Lawrence Inquiry, CM4262-I*, London: The Stationary Office: 32

⁵⁹ Wheeler, S. Christian; Petty, Richard E. (2001). ‘The effects of stereotype activation on behaviour’ *Psychological Bulletin* **127** (6): 797–826; Devine, P. G. (1989), ‘Stereotypes and Prejudice: Their Automatic and Controlled Components,’ *Journal of Personality and Social Psychology*, Vol. 56 No. 1, 5-18.

⁶⁰ Hall, S., Lewis, G. and McLaughlin, E. (1998) *The Report on Racial Stereotyping*. Milton Keynes: Open University: 9

⁶¹ Metropolitan Police Authority (2004) *Report of the Scrutiny Panel on MPS Stop and Search Practice*. London: MPA

⁶² PACE Code A, paragraph 2.2

encounters compared to other ethnic groups in the population. British Crime Survey data shows much higher levels of dissatisfaction with stops amongst ethnic minority communities. Overall, only 3 percent of people reported having an unsatisfactory stop experience in the past year. However, this number rises significantly to 5 percent of Asian Muslims and Black Africans, 9 percent of Black Caribbeans and 12 percent of those with mixed Black White ethnicity, highlighting significant differences in how minority groups are experiencing stop and search. Research has shown that dissatisfaction with stop and search is strongly linked with the failure of the police to give a reasonable explanation. National data shows that Asian Muslims and Black Caribbeans were significantly less likely to report being given a reason for a stop than other ethnic groups.⁶³

Section 149 of The Equality Act 2010 specifically requires the police service, as a public authority, to have due regard to three equality-enhancing aims in the day to day performance of their public functions in respect of those groups protected by the Equality Act 2010. Public functions include the exercise of their powers to stop and search. By virtue of s.149 (the Public Sector Equality Duty), police officers must have due regard to the need to eliminate unlawful discrimination, harassment and victimisation, advance equality of opportunity and foster good community relations. The s.149 obligation applies both at the stage of the design of any policy devised in the course of or for the purposes of performing a public function and at the stage of implementation or decision-making⁶⁴. The discharge of this duty therefore requires the proper consideration of the advantages of any particular policy proposal or decision (including operational decisions made by individual officers) against the adverse impact which may be visited upon members of a protected group, such as black or Asian persons, by the policy/decision subject to scrutiny. In light of the clear evidence of racial disproportionality, and the reported deleterious impact upon BME communities of the manner in which stop and search practice is applied to them, compliance with the Public Sector Equality Duty requires forces to take active steps to address the issues raised by the research referred to above. At present there is no credible evidence that the police service has taken such steps. Active steps might involve training, monitoring of the application of stop and search to vulnerable or disadvantaged groups, robust disciplinary procedures for dealing with departures from non-discriminatory conduct on the part of officers and proposals for addressing the disproportionality identified.

⁶³ StopWatch and Open Society Justice Initiative (2013), *Viewed With Suspicion: The Human Cost of Stop and Search in England and Wales*, New York: OSF.

⁶⁴ See *R(Watkins-Singh) v GB Aberdare GHS* [2008] ELR 561.

Stop and search of children

Up to a quarter of all stops and searches are conducted on children between 10 and 17 years of age.⁶⁵ In these instances, a child is searched on the street by a police officer without the presence of a responsible adult. National data is not routinely broken down by age but the statistics show 126,349 children aged between 10 and 17 were stopped in London last year, 26 per cent of all stops. Furthermore, a youngster below the age of 10 was stopped and searched by police officers in the capital, on average, every week.⁶⁶ Code A of PACE is silent on the treatment of children during stop and search encounters. The 2006 ACPO 'Practice Guidance on Stop and Search' has the following advice for officers dealing with children as part of stop and search:

“Stopping and searching young or vulnerable persons can be particularly intimidating for them. Officers must clearly communicate the grounds for the search using simple and easy to understand language, and check that the person has understood the grounds before continuing with the search.”⁶⁷

This is the only guidance, in this 53 page document, provided by ACPO for officers dealing with children and the guidance does not appear to have been updated since 2006.

The Metropolitan Police's 'Stop and Search Practitioner's Toolkit' (2013) states 'where a young person is stopped and searched officers must consider the requirements of Every Child Matters (ECM) instructions.'⁶⁸ No further detail is provided on how stop and search can impact on the welfare of a child and it would appear that the ECM policy only is enacted where the police consider a child is at risk because of other external factors. The MPS ECM policy is silent on the issue of stop and search.⁶⁹

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. It

⁶⁵ StopWatch and Open Society Justice Initiative (2013), *Viewed With Suspicion: The Human Cost of Stop and Search in England and Wales*, New York: OSF.

⁶⁶ Metropolitan Police Service (2012), Stops and Searches Monitoring Mechanism, December 2011, London: Metropolitan Police.

⁶⁷ ACPO, 2006, Practice Guidance on Stop and Search', Centrex, p7, <http://content.met.police.uk/cs/Satellite?blobcol=urldata&blobheadername1=Content-Type&blobheadername2=Content-Disposition&blobheadervalue1=application%2Fpdf&blobheadervalue2=inline%3B+filename%3D%22436%2F865%2FPractice+Advice+on+Stop+and+Search.pdf%22&blobkey=id&blobtable=MungoBlobs&blobwhere=1283565271771&ssbinary=true>

⁶⁸ Metropolitan Police, 2013, Stop and Search Practitioner's Toolkit, <http://www.met.police.uk/foi/pdfs/priorities+and+how+we+are+doing/corporate/stop+search+qa+2013.pdf>

⁶⁹ MPS, 2008, Every Child Matters Policy, http://www.met.police.uk/foi/pdfs/policies/every_child_matters_policy.pdf

is quite frankly shocking that there are no safeguards in place to protect children in situations where they are stopped and searched.

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.”⁷⁰ 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."⁷¹ Thus the protections have been extended to all children under the age of 18 once in custody.⁷² These safeguards should be extended to protect young people during stop and search encounters on the street.

Stop and search for drugs

In 2011/12, 50 per cent of all stop and searches carried out by police in England and Wales were for drugs.⁷³ This equates to over 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 HMIC report the majority of these stop and searches are for ‘low level street possession’ of drugs⁷⁴ and are not targeted at more serious trafficking offences. Importantly, stop and search records do not differentiate between suspected drug possession and drug trafficking offences, however from the final arrest figures it is clear that the majority of searches are not aimed at the supply side activities.

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

⁷⁰ United Nations (2007) *Children's Rights in Juvenile Justice, General Comment No. 10*, CRC/C/GC/10

⁷¹ Bowcott, O. (2013) “Police must treat 17-year-olds in custody as children, court rules,” *The Guardian*, 25th April. Available at: <http://www.theguardian.com/uk/2013/apr/25/police-17-custody-children-court>

⁷² R (HC) v Secretary of State for the Home Department[2013] EWHC 982 (Admin)

⁷³ Home Office (2013), *Police Powers and Procedures England and Wales 2011.12*, London: Home Office

⁷⁴ Her Majesty's Inspector of Constabulary (2013), *Stop and search Powers: Are the police using them effectively and fairly?* London: HMIC

black.⁷⁵ Based on 2011 census data, black people were stopped and searched for drugs at 6.3 times the rate of white people⁷⁶, 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 stop 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. As detailed previously, 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 cannabis warnings or PND's 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.⁷⁷ 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 drugs⁷⁸ 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 2012 when he announced that officers would be told to focus less on stopping people for small amounts of cannabis, and instead focus on those suspected of violent offences and carrying weapons or prohibited articles rather than small quantities of drugs.⁷⁹ According to press reports, the use of stop and search was being overhauled amid fears that the force was alienating many Londoners. Yet, recent data shows that the MPS have failed to reduce the proportion of their searches focused on drugs. Additionally, the Met Commissioner also committed to reducing negative drug searches by half, to some extent the intention behind this proposal is welcomed. However

⁷⁵ 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

⁷⁶ 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.

⁷⁷ 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

⁷⁸ Eastwood N, Shiner M, Bear D, (2013), 'The Number in Black and White: Ethnic Disparities in the Policing and Prosecution of Drug Offences, Release, page 44

http://www.release.org.uk/sites/release.org.uk/files/pdf/publications/Release%20-%20Race%20Disparity%20Report%202013_0.pdf

⁷⁹ "Police stop and search slashed," *Evening Standard*, 12th January 2012: <http://www.standard.co.uk/news/police-stop-and-search-slashed-7307091.html>

this policy may have unintended consequences where police officers will fail to record negative drug searches in order to support the policy aim and meet MPS performance indicators that now include a measurement for negative drug searches.

Even when out of court disposals, such as cannabis warnings, are adopted as part of the measurement for performance indicators the level of detection remains low, with the vast majority of people being stopped and searched having no drugs in their possession. This demonstrates the fact that target or arrest rates are an inappropriate measure of effectiveness and begs the question at what level would detection rates be seen as successful.

Research from Release and LSE has also demonstrated that there is disproportionality in terms of the treatment of those caught in possession of drugs, with black people being more likely to receive a harsher penalty for such an offence.⁸⁰ In 2010, 78 per cent of black people caught in possession of cocaine were charged by the Metropolitan Police service with possession of a Class A drug. In the same year only 44 per cent of white people caught with cocaine were charged with the offence, the remainder received cautions. During the same period black people in London were charged for possession of cannabis at 5 times the rate of white people. Clear charging guidelines must be adopted to address this disparity. Additionally, it is strongly recommended charging and out of disposals data are monitored and published so that the impact of such decisions on people from BME backgrounds is available for scrutiny.

Effectiveness and targeting of stop and search

Although stop and search is used routinely by the police, it makes a small contribution to tackling crime.⁸¹ In 2011-12, only 9.4 per cent of recorded stop and searches lead to an arrest.⁸² Over the last three decades, stop and search activity has substantially increase, while the arrest rate from stop and search has steadily declined from a high point of 17.2 per cent in 1986 to 9.2 per cent in 2009/10. There is significant variation in the percentages of stop and searches leading to arrest across police forces, ranging from 3 to 19 per cent.⁸³ This highlights inconsistency of approaches to stop and search between different forces, which needs further investigation. Arrest rates are at best an optimistic measure of the effectiveness of stop and search as they fail to consider the quality of the arrest or final

⁸⁰ Eastwood N, Shiner M, Bear D, (2013), 'The Number in Black and White: Ethnic Disparities in the Policing and Prosecution of Drug Offences, Release, page 31

http://www.release.org.uk/sites/release.org.uk/files/pdf/publications/Release%20-%20Race%20Disparity%20Report%202013_0.pdf

⁸¹ Sanders, A., Young, R. and Burton, M. (2010) *Criminal Justice*, fourth edition, Oxford: Oxford University Press.

⁸² Home Office, (2013) Police powers

⁸³ Her Majesty's Inspector of Constabulary (2013), *Stop and search Powers: Are the police using them effectively and fairly?* London: HMIC.

outcome. Not all of those arrested as a result of stop and search result in the identification and sanction of an offender. There is no systematic measure of arrest outcomes; however previous studies have demonstrated that between half⁸⁴ and two thirds⁸⁵ of arrests actually result in a caution, charge or conviction.

There is little research considering the effectiveness of stop and search. The overall effectiveness of stop and search was most recently assessed by a Home Office review of the research evidence. The review concluded that stop search has 'only a minor role in detecting offenders for the range of all crimes that they address, and a relatively small role in detecting offenders for such crimes that come to the attention of police.' The study found that stop and search has 'only a limited disruptive impact on crime by intercepting those going out to commit offences:' it was estimated that stop and search reduced the number of 'disruptable' crimes by 0.2 per cent. Broadening their analysis to look at the overall impact of the use of the power, Miller *at al.* concluded that there is little evidence that stop and search plays a significant role in controlling crime or in maintaining public order.⁸⁶

The low arrest and charge rates resulting from stop and search raises questions about how well stop and search is being targeted at both institutional and officer level and whether the power is being used lawfully. The rate of arrests resulting from PACE 'reasonable suspicion' searches provides us with a measure of how reasonable officers' determination of suspicion is. The evidence demonstrates that around 90 out of 100 recorded searches based on suspicion are unsuccessful; in that they do not result in an arrest for the behaviour suspected or any other reason. This was confirmed by the HMIC study that found that 27 per cent of the stop forms that they reviewed did not record reasonable grounds for suspicion.⁸⁷ We can extrapolate from these findings that as many as 300,000 stop and searches each year may be conducted without officers recording or being able to record reasonable grounds for suspicion, rendering them unlawful.

A 2012 Home Office review of the role that intelligence played in stop and search found that officers place value on intelligence but that there was little evidence that quality intelligence, as opposed to previous knowledge or low grade information, was being utilised effectively. The study also showed varying searches rates across study sites that could not be explained by underlying crime rates, and no consistent relationships in the study sites between the

⁸⁴ FitzGerald, M. (1999). Searches in London, Under s1 of the Police and Criminal Evidence Act 1984. London, Metropolitan Police Service (MPS).

⁸⁵ Phillips, C. and Brown, D. (1998) *Entry into the Criminal Justice System: A Survey of Police Arrests and their Outcomes. Home Office Research Study 185.* London: Home Office.

⁸⁶ Miller, J., Bland, N., Quinton, P. (2000) *The Impact of Stops and Searches on Crime and the Community,* Police Research Series Paper 127, London: Home Office.

⁸⁷ Her Majesty's Inspector of Constabulary (2013), *Stop and search Powers: Are the police using them effectively and fairly?* London: HMIC.

ethnic profile of the suspect descriptions reported by victims and witnesses, and the profile of those searched by the police.⁸⁸ The HMIC research found substantial differences in officers' understandings of what constitutes reasonable suspicion this supports the findings of previous research studies.⁸⁹ The evidence suggests that the targeting of the power is woefully inaccurate and the basis for reasonable suspicion often turns out to be absent. Bowling argues: "there appears to be limits to the skill of the police officer in distinguishing the person who is actually involved in crime from those for whom a generalized suspicion exists in the police lexicon – urban males wearing hooded sweatshirts, for example."⁹⁰

Home Office data allows us to see where stop and searches are being targeted. Half of all stop and searches carried out in England and Wales are for drugs.⁹¹ This ranges from 14 per cent in one force to 68 per cent in another force. 21 per cent of searches are conducted for stolen property, 13 per cent for going equipped and only one in ten searches are for offensive weapons and one in 100 for firearms or criminal damage. The actual crimes uncovered through searches are not the most serious ones. The majority of arrests resulting from stops and searches in 2011/12 were for drugs (39,741) and stolen property (28,424), which represented almost two thirds of all arrests made as a result of searches under section 1 of PACE.⁹² In order to determine that the police were making effective use of searches for serious drugs crime and related activities, searches would need to focus on dealing rather than possession and be focused on those drugs more likely to be linked to drug-related crimes, such as heroin or crack cocaine. There is little evidence to suggest that stop and searches are being targeted on serious drug offensives. HMIC found that the majority of searches were for low-level possession. This supports previous research findings that examined searches and arrests within the Metropolitan Police and found that most searches were for possession rather than dealing and that over three quarters of arrests were for cannabis.⁹³ In 2000, Miller *et al.* found that it is 'unlikely that searches make a substantial contribution to undermining drug markets or drug-related crime'.

Leadership and supervision

The effective use of stop and search powers relies on police leaders setting the tone and style of policing, and directing or influencing how officers use the powers, with a willingness

⁸⁸ Chainey, S. and Macdonald, I. (2012), *Stop and search, the use of intelligence and geographic targeting*, National Police Improvement Agency.

⁸⁹ Her Majesty's Inspector of Constabulary (2013), *Stop and search Powers: Are the police using them effectively and fairly?* London: HMIC; Quinton, P., N. Bland, et al. (2000), *Police Stops, Decision-making and Practice*, London, Home Office.

⁹⁰ Bowling, B. (2007) "Fair and effective Policing Methods: Towards 'Good Enough' Policing," *Journal of Scandinavian Studies in Criminology and Crime Prevention*, 8, 17 – 32, at 26.

⁹¹ Home Office (2013), *Police Powers and Procedures England and Wales 2011.12*, London: Home Office.

⁹² Home Office (2013), *Police Powers and Procedures England and Wales 2011.12*, London: Home Office.

⁹³ Her Majesty's Inspector of Constabulary (2013), *Stop and search Powers: Are the police using them effectively and fairly?* London: HMIC; FitzGerald, M. (1999). Searches in London, Under s1 of the Police and Criminal Evidence Act 1984. London, Metropolitan Police Service (MPS).

to intervene when things are not done correctly. HMIC found vastly different levels of attention given to stop and search powers by chief police officers.⁹⁴ Most did not consider that stop and search was a high priority, by reason of overall high levels of public satisfaction with the police, and low levels of stop and search-related complaints. This misses two crucial facts that very few people who are unhappy about their stop and search experiences complain and those who respond to satisfaction surveys are highly unlikely to be those who are stopped. There has been a noticeable slippage in the level of attention given to the leadership and supervision of stop and search powers by senior officers since the publication of the Stephen Lawrence Inquiry Report in 1999. The result is a lack of clear leadership on stop and search for front line officers, as evidenced by the lack of specific stop and search policies and clear messages. The result is a lack of focus on fairness and effectiveness in stop and search use and a waste of police resources.

HMIC have previously highlighted the widespread fundamental skills gaps at frontline sergeant level.⁹⁵ Five years on, their recent inspection identified that this had not changed in relation to the exercise of stop and search powers. The Code of Practice places a specific obligation on supervisors to monitor the use of stop and search in order to prevent its misuse. However, there were disturbingly low levels of supervision of officers' conduct of stop and search encounters, and of how they recorded them. They found inconsistencies in the recording of searches, evidence that people searched were not always provided with the information required by the Code of Practice, and that they were not always fairly treated. An alarming 27 per cent (2,338) of stop and search records examined by HMIC did not contain reasonable grounds to search people, even though many of these records had been endorsed by supervisors.⁹⁶ They were not fulfilling their duties according to the Code of Practice. In addition, HMIC suggests that police forces may not be fully complying with the requirements of the public sector equality duty, which requires them to have due regard to the need to eliminate unlawful discrimination and promote equality of opportunity, foster good relations and to that end, ensure that they are adequately collecting, analysing and publishing data to demonstrate that they have sufficient information to understand the effect of their work. This demonstrates a worrying deficiency in frontline supervision of stop and search powers.

⁹⁴ Her Majesty's Inspector of Constabulary (2013), *Stop and search Powers: Are the police using them effectively and fairly?* London: HMIC.

⁹⁵ Her Majesty's Inspectorate of Constabulary (2008) *Leading From the Front-line: Thematic Inspection of frontline supervision and leadership, at the rank of sergeant in the Police Service of England and Wales*, London: HMIC.

⁹⁶ Her Majesty's Inspector of Constabulary (2013), *Stop and search Powers: Are the police using them effectively and fairly?* London: HMIC.

Clarifications to the Code A of PACE

We are concerned about a number of stop and search practices that are not recognised or addressed in the Code A of PACE. These include the right not to identify yourself, collection and review of electronic data and the rights of people to observe stop and search. Section 50 of the Police Reform Act 2002 gives a constable in uniform who reasonably believes that someone has been, or is acting anti-socially (within the meaning of section 1 of the Crime and Disorder Act 1998), can require that person to provide their name and address and a failure to do so constitutes an offence. The breadth of the interpretation of “anti-social behaviour” (conduct likely to cause harassment, alarm or distress) means that it is now relatively easy for the police to insist that “troublesome people they “consensually encounter” provide them with at least some information. A simple refusal to answer any questions is no longer a lawful option and this provides the police with a legal wedge to open the door to a more prolonged conversation. The potential for abuse by officers repeatedly harassing groups of youth is obvious.⁹⁷ We are concerned that the right to refuse to give your name and address during a stop and search is being undermined through officers using Section 50 to compel people to identify themselves thus undermining the safeguard.

Code A of PACE fails to provide clear guidance around the rights of those stopped and searched and of observers to record stop and searches, including on mobile phones. Police officers are often unaware of what is lawful and forbid those stopped or observing from recording the encounter. This can result in confrontation. The Code fails to give guidelines around when police officers can request and search electronic data on mobile phones and laptops during a stop and search. Without proper safeguards people’s privacy is regularly being breached as officers are looking at electronic data when it is not related to the offence that is being investigated.

Recommendations

- Chief Constables should set the ‘tone and style’ of policing and guide their officers to use the power lawfully, fairly and effectively. They should ensure that first line officers use stop and search fairly and effectively and that supervisors monitor stop and search practice to ensure it is compliant with the law.
- Stop and search should remain tightly defined as an investigative power. Neither its application nor justification should be extended by reference to generalist aims of ‘general deterrence’ of crime or anti-social behaviour, nor for the purpose of ‘intelligence gathering’. There is simply no evidence that stop and search can have a positive effect in these areas.

⁹⁷ Sanders, A., Young, R. and Burton, M. (2010) *Criminal Justice*, fourth edition, Oxford: Oxford University Press.

- The numbers of stop and search encounters are excessive and cannot be linked to the rate of crime. Numbers of stop and searches should be reduced.
- Stop and search should be focused on the most serious crimes and its use in targeting minor drug possession should be discouraged.
- Stop and search for drugs should be deprioritised. It is clear from the data that a large proportion of drug stop and searches are for minor possession and the majority result in no drugs being detected.
- Ethnic disproportionality should be drastically reduced or eliminated entirely.
- Action should be taken to ensure that police officers, police forces and Police and Crime Commissioners are compliant with the Equality Act.
- Code A of PACE should contain specific guidance on how to treat children during stop and search encounters.
- The numbers of stop and searches leading to charge *and* conviction should be routinely measured and form part of the PACE monitoring framework. Data should also be collected on whether any arrests, charges or convictions have been related to the initial purpose of the search or have arisen from other circumstances. For example, where a stop and search is carried out pursuant to Section 1 PACE, the rate of recovery of stolen or prohibited items should be documented and analysed. Similarly, the rate of recovery of controlled drugs should be recorded in relation to drugs searches.
- Sanctioned detections for cannabis should be abolished or weighted to represent the complexity and seriousness. Those caught in possession of cannabis for personal use should be dealt with in accordance with the 2009 ACPO guidance.
- Clear guidance should be provided on charging standards for drug possession offences. The lack of uniformity in charging practices demonstrates the need: for higher thresholds implemented for charging in relation to drug possession; and increased supervision and monitoring of police and CPS decision making in relation to charging decisions.
- Research should be commissioned on the effectiveness of stop and search. This should include random controlled trials varying the level and focus of the power to determine if stop and search is effective, at what levels and for what crimes.
- Research should develop a more robust measure of effectiveness that includes the experience and impact of the use of the powers by those individuals and communities most affected.
- Research should develop less intrusive alternatives to stop and search which achieve the stated crime fighting goals without the significant costs.
- PACE Code of Practice should be amended to provide more guidance on reasonable suspicion, including practical examples. As the grounds for legitimately conducting a

stop and search are in law the same as for making an arrest (i.e. reasonable suspicion), officers should be reminded that they should only initiate a stop and search where they already have cause to make an arrest and that its use should primarily be limited to avoiding unnecessary arrests through conducting on-the-spot searches in order to confirm or allay the officers' initial suspicions.

- Front-line officers should be trained on what constitutes 'reasonable grounds for suspicion' and an emphasis should be placed on the importance of recording the grounds at the time of the search. Officers should also be reminded that targeting 'crime hotspots' or similar areas or particular individuals for stop and search does not in itself constitute grounds of reasonable suspicion and that the power can only be used in relation to individuals who are actually, on the basis of objective indicators, suspected of involvement in relevant criminality at the time of the stop.
- Where officers persistently fail to record reasonable grounds for conducting a search, or exercise these powers in a discriminatory or ethnically disproportionate manner, they should be subject to disciplinary action, with a possible sanction of removing their power to carry out stops and searches for a period until they have undergone thorough retraining.
- There should be an accreditation system for officers deployed to use stop and search. Accreditation should be based on training and satisfactory performance and could then be revoked if there is a pattern of unlawful or discriminatory use.
- Sergeants should be trained on what constitutes 'reasonable grounds for suspicion' and supervising their officers' use of stop and search in line with Code A of PACE. Sergeants should be reminded that failure to comply with these requirements is a breach of the public sector equality duty.
- Where sergeants persistently fail to supervise their officer's use of stop and search and endorse records that do not record reasonable grounds for conducting a search or fail to challenge the exercise these powers in a discriminatory or ethnically disproportionate manner, they should be subject to disciplinary action, with a possible sanction of removing their supervisory responsibilities for a period until they have undergone thorough retraining.
- Code A of PACE should be amended to give clear guidance around the right of the person stopped and searched not to give their name and address and when officers can use Section 50 of the Police Reform Act to compel people to do so. Officers using Section 50 should be required in all cases to provide an explanation as to the reasons why they consider the person stopped has engaged in "anti-social behaviour" likely to cause 'harassment, alarm or distress to others.' Otherwise, officers should be required to tell people at the beginning of the encounter that they do not need to give their name and address.

- The Code of Practice should be amended to give clear guidance around the right of those stopped and of observers to record stop and searches, including on mobile phones.
- The Code of Practice should be amended to give clear guidelines around when police officers can request and search electronic data on mobile phones and laptops. This should be restricted to incidents when the suspicion is related to theft of such articles and clear guidance should be provided on what they should be looking for.

Section 60 of the Criminal Justice and Public Order Act 1994

Section 60 of the Criminal Justice and Public Order Act 1994, allows an Inspector or higher ranked officer who reasonably fears serious violence or the carrying of weapons in a particular locality to authorise uniformed officers to search any person or vehicle in that locality for weapons for a period of 24 hours.⁹⁸ Although the legislation limits stops and searches to a specific time and place, individual officers are not required to have any basis of reasonable suspicion. While these powers were introduced in the context of policing potential violence associated with specific public events, such as football hooliganism and was later extended to 'raves' and trespassory assemblies, there is evidence that have been used in routine policing.⁹⁹ While suspicion-based searches are intended to investigate crime, searches without reasonable suspicion create a new legal justification of prevention or deterrence.

The police recorded 46,961 Section 60 searches in 2011-12.¹⁰⁰ The number of section 60 searches has grown hugely since the amendments introduced by the Knives Act 1997 and the Crime and Disorder Act 1998: between 1999/2000 and 2008/09 the number of such searches increased 20 fold or by 2000 per cent. Even allowing for recent reductions, the use of section 60 powers remains much higher than at any other time prior to 2008/9. Almost all police forces in England and Wales make use of the stop and search powers available to them under section 60, although the majority of searches under this power take place in London, Greater Manchester, West Midlands and Merseyside.

The increased use of section 60 searches has been particularly marked among black and minority ethnic groups. Disproportionality ratios are significantly higher for section 60 searches than for suspicion based searches and have increased sharply in recent years. In 2010-11, Black people were stopped at a rate of 37 times that of white people. Asian people

⁹⁸ Section 60 of the Criminal Justice and Public Order Act 1994 as amended by Section 8 of the Knives Act Subsection 3 allows a superintendent to extend this authorization for a further 24 hours.

⁹⁹ Rowe, M. (2004), ?; Independent Police Complaints Commission (2007) *Report into West Midlands Police Misuse of Section 60 Powers*; Delsol, R. (2010) 'Section 60 Stop and Search Powers', in K.P. Sveinsson, (ed) *Ethnic Profiling: The Use of 'Race' in UK Law Enforcement*, London: Runnymede; Sanders, A., Young, R. and Burton, M. (2010) *Criminal Justice*, fourth edition, Oxford: Oxford University Press;

¹⁰⁰ Home Office (2013), *Police Powers and Procedures England and Wales 2011.12*, London: Home Office.

were stopped at a rate of nine times that of white people.¹⁰¹ It is clear that wherever officers have the broadest discretion is where you find the greatest disproportionality and discrimination. Under Section 60, police have wider discretion than they do with section 1 stop and search as they do not have to develop reasonable grounds of suspicion to stop and search an individual. This means that they can fall back on their own beliefs, generalisations and stereotypes about who is worth stopping and searching. Thus a power that was intended to respond to exceptional outbreaks of violence is being routinely and extensively used against black and Asian communities.

In 2011-12, only 2.8 per cent of section 60 searches lead to an arrest and only 0.4 per cent of those arrests were for possession of an offensive weapon, the avowed purpose of the power. The low arrest rate resulting from section 60 stop and searches is sometimes cited as evidence that searches are effective in deterring crime. According to this argument, potential offenders are afraid of getting caught so have stopped carrying weapons. Such claims are implausible and are inconsistent with the evidence. If the rate at which weapons were discovered and arrests were made fell sharply after a large number of arrests had been made then this might be indicative of an effective deterrent, but no such pattern is evident. At no point in its history has there been a large number of arrests resulting from Section 60. In fact, as the number of section 60 searches increased over the last decade, the numbers of resulting arrests declined; from a high point of 6.9 per cent in 2000/01 to a low of 2.4 per cent in 2009/10. The arrest rates show little reason to suppose that Section 60 has had deterrent impact on crime.

There is limited research into the effectiveness of stop and search powers that do not have reasonable suspicion. Two Home Offices studies that focused on knife crime initiatives have concluded that there was little evidence to suggest that section 60 was having an impact on the carrying of knives.¹⁰² A focus on the experience of London indicates that section 60 searches have had little, if any, positive impact on the incidence of knife crime. Comparison between London boroughs has found there to be no direct relationship between use of section 60 searches and the extent of police recorded knife crime (Fitzgerald, 2010). Among the eleven boroughs with the highest knife crime figures, the biggest fall of 25 per cent between 2008/09 and 2009/10 was in Islington, which had the second fewest section 60 searches. Southwark, by contrast, experienced an 8.6 per cent rise in knife crime despite

¹⁰¹ Equality and Human Rights Commission (2012), *Race disproportionality in stops and searches under Section 60 of the Criminal Justice and Public Order Act 1994*, London: EHRC.

¹⁰² Ward, L., Nicholas, S., and Willoughby, M. (2011) *An Assessment of the Tackling Knives and Serious Youth Violence Action Programme (TKAP) – Phase II*, Research Report 53, London: Home Office; Ward, L., Nicholas, S., and Willoughby, M. (2011) *An Assessment of the Tackling Knives and Serious Youth Violence Action Programme (TKAP) – Phase II*, Research Report 53, London: Home Office.

having the second highest use of Section 60 searches.¹⁰³ This is supported by recent falls in the numbers of section 60s searches across London, due to the Stop It initiative. Section 60 stop and searches have fallen by 90 per cent with no impact on levels of violence.

Recommendations:

- Section 60 should be repealed.
- Stop and search should only ever be conducted without reasonable suspicion in the most narrowly defined and tightly circumscribed situations (such as boarding an aircraft). Nobody should ever be subject to a search in the public street when there is no suspicion of involvement in crime. Where a police officer has reasonable grounds to suspect that a person is in possession of a weapon or other dangerous article, they should use s1 PACE.
- If the Government decides to retain Section 60, power to authorise its use should be vested in ACPO level officers, with clear guidance as to what should constitute legitimate grounds for such authorisations, the evidence/intelligence required to support those grounds, and strict limits on the geographical areas to which an authorisation can apply. Any renewal of such authorisations beyond an initial 24 hours should require authorisation beyond the police force concerned, for example by the relevant Police and Crime Commissioner, or the Home Secretary for authorisations extending beyond 72 hours.

Schedule 7 Terrorism Act 2000

Schedule 7 is a highly intrusive stop power which does not require any reasonable suspicion and operates outside of the regulatory framework that covers other police powers of stop and search. Individuals stopped under the power are not under arrest but may be examined for up to 9 hours wherein they may be questioned, searched (as well as their belongings), strip-searched and have samples of their biometric data including DNA & fingerprints taken from them regardless of the outcome of the encounter and in the absence of a lawyer. People stopped under it are obliged to cooperate or face an arrest, a period of imprisonment and/or fine. In addition, there is no right to compensation or assistance in rearranging any flights missed or other transportation as a result of a Schedule 7 examination or detention.

In 2012–13, the police recorded 61,145 stops carried out under Schedule 7, of which 2,277 lasted over an hour. This represented a thirty per cent reduction.¹⁰⁴ However, these figures

¹⁰³ Fitzgerald, M. (2010) *Background Note: Analyses of MPS Knife Crime Data and the Use of s60 searches*, Unpublished briefing note.

do not reflect the substantial number of people who are asked “screening questions,” (previously referred to as “short stops,” that are not recorded. One per cent of those examined had their biometric samples taken.

Black and minority ethnic groups make up the majority of those subject to Schedule 7 stops (58 per cent) even though they account for approximately 14 per cent of the national population.¹⁰⁵ Asians accounted for 22 per cent of Schedule 7 stops in 2012/13 (and 7.5 per cent of the national population), blacks accounted for 8 per cent of stops (and 3.3 per cent of the population), people from mixed backgrounds accounted for 11 per cent of stops (2.2 per cent of the population) and people from other ethnic groups (including Chinese and ‘other’) accounted for 17 per cent of stops (but only 1 per cent of the population). The targeting of black and minority ethnic groups continues to be even more marked when we consider the most intensive Schedule 7 stops. Of those stops which lasted *over an hour*, 33 per cent were of Asians, 14 per cent were of blacks, 25 per cent were of people from mixed backgrounds and 25 per cent were of ‘other’ ethnic groups. Fewer than 12 per cent of stops over an hour were of whites. Black and minority ethnic groups account for 91 per cent of those who had biometric samples taken.

Only 670 (less than 1 per cent) of these stops resulted in a detention in 2012/13. Although no information has been provided on the *number of people* convicted and on what charges.¹⁰⁶ In 2011/12, there was 27 terrorism related – only 0.3 per cent of those stopped under Schedule 7. David Anderson, the Independent Reviewer of Terrorism, has found that the majority of examinations which have led to convictions were intelligence-led rather than based simply on risk factors, intuition or the “copper’s nose”. He concluded:

“Despite having made the necessary enquiries, I have not been able to identify from the police a case of Schedule 7 examination leading directly to arrest followed by conviction in which the initial stop was not prompted by intelligence of some kind.”¹⁰⁷

This highlights the importance of reasonable suspicion as a safeguard against the arbitrary and discriminatory use of stop and search powers.

¹⁰⁴ Anderson, D. (2013) *The Terrorism Acts in 2012, Report of the Independent Reviewer on the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006*, London: The Stationary Office.

¹⁰⁵ Anderson, D. (2013) *The Terrorism Acts in 2012, Report of the Independent Reviewer on the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006*, London: The Stationary Office.

¹⁰⁶ Anderson, D. (2013) *The Terrorism Acts in 2012, Report of the Independent Reviewer on the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006*, London: The Stationary Office.

¹⁰⁷ Anderson, D. (2013) *The Terrorism Acts in 2012, Report of the Independent Reviewer on the Operation of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006*, London: The Stationary Office.

The recent high profile case of the Schedule 7 stop on David Miranda, the partner of a Guardian journalist writing about information leaked on US and UK government mass digital surveillance programme, suggest that Schedule 7 is being used for other purposes beyond its legal purpose of determining whether the detained person is a terrorist.¹⁰⁸

In 2012, the Home Office conducted a review of Schedule 7. Although a welcome development, the consultation document failed to incorporate a number of key issues that had been raised by David Anderson and other concerned groups. These include: whether there is a need for a power to examine people in ports and airports without reasonable suspicion, should it remain a criminal offense to refuse to answer questions during examinations and should search powers extend to the copying of mobile phone records. Sixty-four per cent of respondents to the consultation stated that Schedule 7 powers were unfair, too wide-ranging and should be curtailed. As a result of this review, changes were proposed to the use of the power under Section 124 and Schedule 6 to the Anti-Social Behaviour, Crime and Police Bill, which is currently being debated in parliament. The changes reduce the detention time to 6 hours and require a periodic review of the detention by an independent senior officer at regular periods, require that strip searches can only be conducted if the person is reasonably suspected of concealing an item and extend the right to legal advice. StopWatch welcomes the proposed reforms under the Bill but they do not go far enough to ensure that this power will be used proportionately, effectively and with greater transparency.

Recommendations:

- Schedule 7 powers should be repealed.
- If the Government decides to retain Schedule 7 powers, stops should only be conducted where there is reasonable suspicion that the person stopped is involved in terrorism. Reasonable suspicion should be based upon objective facts, information, and/or specific intelligence so as to minimise the risk of arbitrary or discriminatory application of stop and search powers.
- The legal maximum period of detention for Schedule 7 stop should be reduced to one hour at which point the person should either be released or arrested.
- The power to take non-intimate biometric data (fingerprints and non-intimate sample) should be repealed. Biometric data of any type should only be taken after arrest.
- All interviews conducted during Schedule 7 stops should be recorded.

¹⁰⁸ C. Falconer (2013) 'The detention of David Miranda was an unlawful use of the Terrorism Act' *The Guardian*, 21 August.

- There should be no compulsion for a person stopped under Schedule 7 to answer questions. Instead if someone stopped is subsequently arrested, the current rules of drawing inference from silence should apply.
- The copying and retention of electronic data belonging to people stopped under Schedule 7 should only take place after arrest, and should be limited to purposes related to the exercise of that power.
- Assistance should be provided to people who miss their flights or other transportation as a result of an examination or detention.
- Officer training to use Schedule 7 should be developed in consultation with a range of legal, academic and equality and community groups and also subject to independent and public evaluation.
- Restrictions should be placed on the scope of questioning that can legitimately be undertaken under Schedule 7 to ensure that those stopped are not required to answer questions about their religious or political beliefs; involvement in legitimate political, social and community activities;
- Code A of PACE, which governs other stop and search powers, should be extended to cover stop and searches conducted under Schedule 7 of the Terrorism Act 2000. This would require Schedule 7 stops to be monitored under the same recording framework as all other stop and search powers and that data be shared with community and monitoring groups. This should include information on arrests and convictions and complaints.
- HMIC should be required to inspect the use of Schedule 7 stops at ports and borders.

Strip-Searches

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. Code A PACE 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.¹⁰⁹ 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.

¹⁰⁹ Police and Criminal Evidence Act Code A, para. 3.6

- An ‘intimate search’ involving exposure of intimate parts of the body:
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).¹¹⁰ There are more detailed provisions relating to the conduct of such a search which go further than those for more thorough searches.¹¹¹

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. It is therefore extremely concerning that neither PACE nor its Codes imposes any recording obligations in relation to these searches were carried out in the course of a stop and search; effectively rendering these searches invisible and making it impossible to monitor police practices.

Surprisingly, Code A paragraph 3.7 specifically excludes the safeguards ordinarily applicable to such searches of persons detained at police stations (other than those contained in Code C, Annex A, paragraph 11) where the search is carried out in the exercise of stop and search powers. The rationale for this is most unclear, and, in the view of Stopwatch, gives rise to a clear risk of abuse. In addition, Stopwatch is gravely concerned that these safeguards remain inapplicable even where the individual being searched is a minor or otherwise vulnerable.

There is a lack of clarity regarding when these searches will be warranted. Paragraph 3.6 of Code A of PACE refers only very generally to a standard of “on reasonable grounds it being considered necessary to” carry out a more thorough search, without any further guidance being provided. Even less direction is given in relation to intimate searches, with paragraph 3.7 of Code A of PACE simply asserting that “[s]earches involving exposure of intimate parts of the body must not be conducted as a routine extension of a less thorough search, simply because nothing is found in the course of the initial search”.¹¹²

The absence of any further guidance and the seemingly low threshold is extremely worrying, and gives rise to a grave risk of abuse. The intrusive and degrading nature of these searches clearly requires that they should only be used in very restricted circumstances, and circumstances 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

¹¹⁰ PACE Code A, paragraph 3.7

¹¹¹ PACE Code C, Annex A, paragraph 11

¹¹² It is of note that the threshold for such searches as specified in Code C, Annex A, paragraph 11 is specifically excluded where the search takes place in the context of a stop and search (Code A, paragraph 3.7)

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,¹¹³ 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 in England by Newburn, Shiner and Hayman in a police station in North London.¹¹⁴ 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”. The authors comment that the data on strip searches are not subject to some of the shortcomings of stop and search data. In particular, there is no question that those passing through the custody suite represent the entire “available population” for strip search and therefore “any disproportionality uncovered cannot be explained away in that manner”. The authors concluded that the data suggest that “there are policing practices and powers beyond stop and search that may be equally, if not more, revealing of the ways in which policing is unequally experienced”.¹¹⁵

Release and Stopwatch recently submitted FOI requests about the numbers of people being subject to ‘strip-searches’ outside of custody and arrest. Of the 43 police forces contacted not one force was able to provide the data requested as records of strip searches as part of a stop and search are not centrally recorded. Only 16 forces provided partial responses, with all forces citing they were unable to provide the data on excessive costs grounds (s12 Freedom of Information Act 2001). As one force stated: “There is no ‘flag’ to distinguish a more thorough or more intimate stop-search from a standard stop-search on systems currently in use, and as such there is no automatic way to retrieve relevant records.” Strip searches are an intrusive police power and the use of this power must be limited in its application. The decision to strip search someone as part of a stop and search should form part of the PACE recording framework.

Recommendations:

- A further consultation be carried out, in order to consider the use of strip-searches.
- Clear and rigorous regulations/guidelines be drafted, ensuring that more thorough searches are only used in clearly defined and restricted circumstances.
- Strip-search should only take place after an arrest.

¹¹³ See, for example, <http://www.fishermeredith.co.uk/legal-advice/casestudies/police-admit-liability-for-unlawful-strip-search-and-pay-damages#>

¹¹⁴ 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

¹¹⁵ *ibid*

- More thorough searches or intimate searches of minors and other vulnerable people be prohibited in the absence of consent from an appropriate independent adult.
- Where an officer is found to have conducted strip-search inappropriately, immediate intervention should result in the form of disciplinary action.
- Police forces be required to collate data regarding the use of strip-search and submit this to HMIC and IPCC for review.
- Officers be trained on the appropriate use of strip-searches, the intrusive nature of the use of this power, and the need for it to be applied in only very restricted circumstances.
- HMIC include the use of strip-searches in the remit of its next inspection into stop and search, referenced in its 2013 report.

Impact of stop and search

The disproportionate use of stop and search and stop and account has consequences for individuals, communities and wider society. The level of public debate over stops and stop and searches over the last 30 plus years means that it is both widely known and experienced on a personal level by many British people, particularly those from ethnic minority backgrounds. For the individuals experiencing often repeated stops and/or stop and search encounters, it can be a frightening, embarrassing and humiliating experience. Stop and search and stop and account activity undermines their sense of belonging to the wider society that the police represent. The arrest rate resulting from stop and search activity is similar for all ethnic groups, meaning in practice seven times as many innocent black people and twice as many innocent Asian people are searched in comparison to their white counterparts.¹¹⁶ This results in significant proportions of ethnic minority communities coming into contact with the police as suspects.

Stop and search activity can also trigger more concrete processes of social exclusion, as those on the receiving end of stop and search run higher risks of being dragged into the criminal justice system, with negative implications in terms of deviancy amplification, deepening entry into the system, and consequent reduction in life chances.¹¹⁷ The unfair targeting of minority groups for stop and search means that they are more likely to come to the attention of the police. In comparison to their white counterparts, “black people are almost twice as likely to enter the criminal justice process as a result of being stopped and

¹¹⁶ Bowling, B. (2007) “Fair and effective Policing Methods: Towards ‘Good Enough’ Policing,” *Journal of Scandinavian Studies in Criminology and Crime Prevention*, 8, 17 – 32, at 26.

¹¹⁷ Bradford, B. (2011), *Assessing the impact of police-initiated stop powers on individuals and communities: the UK picture*, conference paper, Roundtable on Current Debates, Research Agendas and Strategies to Address Racial Disparities in Police-initiated Stops in the UK and USA , 10th – 11th August 2011, John Jay College of Criminal Justice, New York, NY.

searched by the police.”¹¹⁸ A recent study found that “a considerably higher proportion of arrests of Asian, black and mixed race teenagers originate from proactive work than arrests for other groups.”¹¹⁹ Once arrested, mixed race defendants were found to be more likely to be charged than their white counterparts, while black and mixed race defendants were more likely to be remanded in custody.

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.¹²⁰ Research demonstrates that levels of support and trust in the police are lower in people who have recently been stopped and searched.¹²¹ People who have negative recent experiences of stop and search tend to have significantly lower levels of trust in the police. The data also show that positive stop and search experiences do little to improve trust and confidence in the police.¹²² For the police the message is clear: the negative effect of stop and search on public trust cannot be reduced by improving the quality of the encounters alone. Only through a reduction in the absolute numbers of stops and searches can the damage to trust and confidence be improved.

Many young men, particularly those from black and Asian communities, feel they are being stopped and/or searched simply because they fit a general stereotype, and this is fuelling anger and alienation amongst some communities and jeopardising their support of the police and the use of their powers.¹²³ Ethnic disproportionality fundamentally undermines public assessments of the fairness and legitimacy of the police and the wider criminal justice system.¹²⁴ When members of the public are treated rudely and unfairly, trust and confidence in the police suffers. When members of the public are treated fairly and with respect, they are more supportive of the police and more respectful of the law.¹²⁵ Ultimately, police officers rely on legitimacy, cooperation and compliance with the law to be able to undertake policing

¹¹⁸ Bowling (2007), at 26.

¹¹⁹ May, T., Gyateng, T. and Hough, M. (2010). *Differential Treatment in the Youth Justice System*. Equality and Human Rights Commission Research Report 50, at 34.

¹²⁰ 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.

¹²¹ Stone, V. and Pettigrew, N. (2000), *The Views of the Public on Stops and Searches*, Police Research Series. Paper 129, Home Office: London.

¹²² 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*.

¹²³ Sharp, D., and Atherton, S. (2007) ‘To Serve and Protect? The Experiences of Policing in the Community of Young People from Black and Other Ethnic Minority Groups’, *British Journal of Criminology*, 47(5): 746-763; StopWatch and Open Society Justice Initiative (2013), *Viewed With Suspicion: The Human Cost of Stop and Search in England and Wales*, New York: OSF.

¹²⁴ 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: 375-40.

¹²⁵ 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.

functions and uphold the law. When the police lose their legitimacy in the eyes of the policed they lose their claim to the monopoly of the use of force and disorder can arise, as was the case most recently in the riots August 2011.¹²⁶

A number of communities in the UK are affected by the use of Schedule 7 although most research and media reports focus, in particular, on the impact of these powers on people from Muslim backgrounds. The Equality and Human Rights Commission (EHRC) found that Schedule 7 out of all policing activities was having “*the single most negative impact*” on Muslim communities, finding that:

*“[f]or some Muslims, these stops have become a routine part of their travel experience” and that “—this power is silently eroding Muslim communities’ trust and confidence in policing.”*¹²⁷

In particular, the taking of people's DNA and fingerprint information has caused the greatest discontent amongst those subject to the power. Not only has this made people feel criminalised but it has significantly undermined faith in counter-terrorism measures and perceptions of fairness.¹²⁸

Quality of the encounter

People care deeply about how they are treated when stopped by police. The quality of stops and stop and searches affect people’s attitudes towards stop and search and towards the police more broadly. Research consistently finds that people care most about how fairly police treat them, and that fair treatment is linked to trust, legitimacy, cooperation and compliance with the law.¹²⁹ The HMIC survey of people who had been stopped and searched found that:

- 44 per cent said the police did not act reasonably

¹²⁶ Bradford, B. and Jackson, Jonathan (2011) “When Trust is Lost: The British and their Police after the Tottenham Riots,” *Books and Ideas.Net*, The Guardian and London School of Economics (2011) *Reading the Riots: Investigating England’s Summer of Disorder*, London: The Guardian.

¹²⁷ Choudhury, T. & Fenwick, H. (2011) *The Impact of Counter-Terrorism Measures on Muslim Communities*. London: The Equalities and Human Rights Commission.

¹²⁸ Hopkins, N. (2011) Dual Identities and Their Recognition: Minority Group Members’ Perspectives. *Political Psychology* 32(2) pp.181–367; Blackwood, L., Hopkins, N. & Reicher, S. (2012a): 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](https://doi.org/10.1080/01419870.2011.645845); “They asked me where Bin Laden was, then they took my DNA,” *The Independent*, 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>; MPA (2011) *Protecting the Innocent: The London Experience of DNA and the National DNA Database*. Report by the MPA Civil Liberties Panel. London: The Metropolitan Police Authority. June 2011.

¹²⁹ Tyler, T. R. (2006b), *Why People Obey the Law*. New Haven: Yale University Press; Myhill, A. and Quinton, P. (2011), *It’s a fair cop? Police legitimacy, public cooperation, and crime reduction*, National Police Improvement Agency.

- 42 per cent said that they did not understand why they were stopped and searched
- 47 per cent felt that they were not treated with respect
- 37 per cent said that they were not told the reason why they were stopped and searched.

This survey data points to a very significant mismatch between police practice and public perceptions of the use of the police power. Reasonableness, good grounds and respect form the bedrock of the practice of stop and search; yet, between one third and one half of the people stopped and searched said that these fundamentals were absent. This is consistent with the fact that no grounds were cited on one quarter of the stop forms analysed by HMIC and with the view that police officers are using their powers unnecessarily and arbitrarily.

Code A of PACE provides statutory safeguards for stop-and-search powers. Before searching a person or vehicle or detaining a person or vehicle for the purposes of a search, the officer must take reasonable steps to bring to the person's attention:

- the officer's name;
- the name of the police station to which the officer is attached;
- the objective of the search; and
- the grounds for making the search.

The person must also be informed that he is entitled to a record of the search and to which police station he should apply to obtain the record. The mnemonic GO WISELY is taught to remind officers of these responsibilities:

[G]rounds for the search

[O]bject of the search

[W]arrant card must be produced if in plain clothes

[I]dentify: the PC must inform the suspect of his name

[S]tation: the police station at which the constable works.

[E]ntitlement to a copy of the search record

[L]egal power being used for detention.

[Y]ou are being detained for the purpose of a search: the suspect must be told he is being detained.

Although a useful mnemonic, surveys of those stopped and searched suggest that it is not being followed and does not go far enough to ensure transparency and respect in the encounter. There are specific concerns that those stopped and searched are not told that they do not have to give their name and address.

There are examples of innovative ways to improve the quality of the encounter. The Suffolk Constabulary include quality questions on their stop forms. At the end of a stop and search, officers are required to ask the person stopped:

“Thinking about the experience of being stopped by your local police on this occasion, which of the following do you agree with:

- I understand the reason I was stopped. Yes/No
 - During the stop, I was treated professionally, respectfully and with dignity. Yes/No
- Please sign.”

When “no” is ticked for either question or the form has not been signed, the police send a letter to the person who was stopped and searched, asking him about the quality of the interaction and giving him the contact information of an independent reporting centre where they can make a complaint if dissatisfied with the encounter. Introducing the questions on the stop form means that the officer is aware that he will have to ask about the quality of the encounter, creating a focus on more professional conduct. The questions are also intended to empower the public and reinforce the notion of policing as a public service. The requirement that officers ask members of the public to rate their satisfaction with the stop has changed officers’ thinking and behaviour. It also provides supervisors with further means to monitor officers’ stops, including completion rates of the forms.

Over the past two decades, various police forces have experimented with various ways of training police officers to speak to members of the public – whether as witnesses, victims or suspected offenders – with courtesy and respect. Examples include ‘conversation management’, ‘investigative interviewing’ and the ‘PEACE’ programme (based on the mnemonic – Prepare, Engage and Explain, Account, Close, Evaluate). It is unclear how far contemporary police training and practice focuses the quality of police conversation and interviewing skills. Another example, is the *Critical Encounters* project developed by the youth arts organisation Second Wave in Southeast London in 2005.¹³⁰ The project sought to improve relationships between local young people and the police by bringing both together in a safe and creative workshop setting to build mutual trust and respect, share experiences, and learn from one another. Through an ongoing round of workshops, *Critical Encounters* explores the dynamics of stop and search, with the aim of challenging the stereotypes and preconceptions of both young people and police officers about what it means to be a part of the other group. A final example, is the *Key Encounter Training*, that was developed and

¹³⁰ Baugh, C. (2011) Working Across Boundaries with Young People and the Police: An Evaluation of “Critical Encounters”, A Project Developed by Second Wave Youth Arts, London: Open Society Foundations.

delivered by the MPS in 2006-08 that brought in members of the public to share with officers their experiences of stop and search and other police activity.

Recommendations:

- Code A of PACE should be amended to require officers to provide the following information: That the person stopped and/or stopped and searched does not have to give their name and address.
- All stop and search forms should include questions about the quality of the encounter. Data from these questions should be monitored and where forms show negative experiences or failure to answer the questions, the person should be contacted by an independent third party to ask whether they want to make a complaint.
- Officers should receive training on the impact of stop and search, how to use these powers with respect and dignity, and how to communicate with members of the public, especially young people. Local community groups and youth workers should be involved in all training to ensure it is relevant and meaningful. Community engagement should be undertaken by *all* officers carrying out stop and search.
- Supervising officers should be required to observe their officers conducting stop and search and receive training in ensuring their officers are using their powers with respect and dignity.
- An independent stop and search monitoring scheme should be developed based on the Home Office funded Independent Custody Visiting Scheme that supports volunteers to go on patrol with officers and monitor their use of stop and search to ensure it is lawful and respectful.
- Research should be conducted into the impact of body-worn cameras on officers' conduct during stop and search and whether it provides a mechanism for improving the quality of the encounter.

Recording and accountability

The recording of stop and search was introduced in the Police and Criminal Evidence Act 1984 on the back of long standing anxieties about the unfair use of these powers. The "sus" laws (the informal name for a stop and search law that permitted a police officer to act on suspicion, or 'sus', alone) contributed to the Brixton riots in 1981 and provided a clear demonstration of how unfair policing can contribute to the breakdown of community trust and confidence. PACE covered the country as a whole and was partly introduced to end the "postcode lottery" that saw wildly varied powers and recording standards used by different forces. The safeguard of reasonable suspicion was introduced along with minimum recording

standards to provide a basic guarantee to all, regardless of where in the country they lived. The process of recording stop and search was designed to make officers consider carefully their grounds for stopping people and to inhibit them from stopping people in an arbitrary fashion. Recording also allowed for the monitoring and publication of search statistics and provided a management tool for supervisors to identify where officers might be incorrectly using their powers. The recording of stops and stop and search is essential to allow police forces to identify racial disparities and to determine the impact of policies undertaken to address them.

The Home Office consultation documents links the recording of stop and search to “unnecessary bureaucracy.”¹³¹ This misrepresents a vital form of accountability. Democratic policing should seek to limit intrusion into peoples’ lives to that which is absolutely necessary and should, as a matter of routine, justify and explain any such incursions. This insistence that the recording of stop and account is an unnecessary form of bureaucracy, which prevents the police from getting on with the ‘real’ job of fighting crime simply does not stand up to scrutiny. Establishing positive community relations, building trust and confidence, promoting democratic accountability and establishing legitimacy is real police work. Stop and search and stop and account remain a major source of concern, particularly, but not exclusively, to ethnic minority communities across the UK. There is nothing “irrelevant” about recording stops to ensure they are used fairly and effectively. Police legitimacy is built on perceptions and demonstrations of fairness, accountability and effectiveness, which are not served by cutting recording and reducing accountability. A certain amount of bureaucracy is necessary to ensure that the police are accountable, effective and transparent. In reality stop forms take only a few minutes to complete - and less with new technology - so arguments about bureaucracy have been fuelled by political point-scoring rather than a realistic desire to save police time.

In April 2011, the Government reduced the recording of stop and search (through the Crime and Security Act 2010) so that the following were recorded:

- Ethnicity
- Object of search
- Identity of the officer carrying out the stop and search
- Date
- Time
- Place

¹³¹ Home Office (2013), *A Consultation on police powers of stop and search*, pg.5. Available at: <https://www.gov.uk/government/consultations/stop-and-search>

Prior to the introduction of the amendments, the recording requirements also included:

- The name and address of the person, or a description if declined (there was no obligation to provide name or address)
- Whether a stolen or prohibited item was found
- Any injury or damage caused as a result of the search.

StopWatch warned at the time that these changes would undermine accountability and the ability to measure the effectiveness of stop and search use.¹³² This has been proven correct. The recent HMIC report concluded that “too few forces were collecting and considering the information that would allow them to understand fully how effectively and fairly stop and search powers were being used.”¹³³ By failing to record whether any injury or damage was caused as a result of the search it is impossible to measure any misuse of force and leaves the police open to complaints about use of force or malicious damage that cannot be substantiated. By not recording the consequence of the search it is impossible to measure the effectiveness of stop and search use and to validate whether the original grounds for suspicion were correct. The HMIC found that only nine forces collect enough information to map the locations of stop and searches against recorded crime or to link those encounters to prosecutions and convictions.¹³⁴

Removing the requirement to record the name of the person stopped (when they give it) makes it impossible to measure repeat stops and harassment. There are long standing concerns about the use of stop and search to target certain individuals or communities, without collecting name data it will be difficult to assess the validity of these concerns. This undermines the applicability of the Equalities Act to stop and search as outlined in the PACE revisions as individuals will not be able to prove that they have been repeatedly stopped. For police forces, it makes it impossible for them to determine whether they are targeting their stop and searches on the right people. In reality these changes, however, restrict only the level of information recorded on the stop form that can be used for internal and external monitoring - not what police collect. Police officers will often continue to check the Police National Computer (PNC) to identify the person. These PNC checks are recorded and officers will often make a record in their notebooks and in “intelligence logs.” Hence, the police will frequently still record the personal data of the person concerned. The difference is that this recording is not available to that person nor for the purposes of supervision and external monitoring. In such cases there will be little, if any, reduction in the time spent by police officers in dealing with the individual they have stopped, which undermines the very basis for the changing recording requirements.

¹³² StopWatch (2011), *Carry on Recording: Why Police Stops Should Still be Recorded*, London: StopWatch. Available at: <http://www.stop-watch.org/uploads/documents/WhyRecordingIsStillImportantBriefing.pdf>

¹³³ Her Majesty’s Inspector of Constabulary (2013), *Stop and search Powers: Are the police using them effectively and fairly?* London: HMIC.

¹³⁴ Her Majesty’s Inspector of Constabulary (2013), *Stop and search Powers: Are the police using them effectively and fairly?* London: HMIC.

In April 2011, the Government removed the national requirement to record stop and account. Code A of PACE notes that police forces may maintain or subsequently reinstate the recording of stop and account when there are local concerns about disproportionality. A new note for guidance in Code A of PACE states (emphasis added):

Where there are concerns which make it necessary to monitor any local disproportionality, forces have discretion to direct officers to record the self-defined ethnicity of persons they request to account for themselves in a public place or who they detain with a view to searching but do no search. Guidance should be provided locally and efforts made to minimise the bureaucracy involved. Records should be closely monitored and supervised in line with paragraphs 5.1 to 5.4 and forces can suspend or re-instate recording of these encounters as appropriate. (para. 22A)

Code A of PACE is confusing and does not provide a mechanism for how forces will decide whether there are concerns about disproportionality. Without stops being recorded, communities do not have the means to prove that there is a problem or demonstrate concern around the disproportionate use of stop and account that would require police forces to reinstate recording. This provision has resulted in a post-code lottery, with different levels of service to communities in different policing areas. The Metropolitan Police, for example, continues to record stop and account after a public consultation found widespread concern about disproportionality and considerable support for continuing recording.¹³⁵ The overriding concern is that the removal of the monitoring requirement in relation to stop and account “may not only encourage racial and ethnic stereotyping by police officers but may also encourage impunity and fail to promote accountability in the police service for possible abuses”¹³⁶ – the conclusion reached by the United Nations Committee on the Elimination of Racial Discrimination in its recent report on the United Kingdom’s compliance with the UN Treaty on the on the Elimination of Racial Discrimination. The removal of stop and account recording removed a vital form of redress for individuals who feel they are been unfairly or inappropriately stopped.

Code A of PACE requires that forces collect and share statistical stop and search data with the public. It states:

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

¹³⁵ Metropolitan Police Authority and Metropolitan Police Service press release, “MPA Consultation: Recording ‘Stop and Account’ to be kept in London,” 26th September 2011.

¹³⁶ Concluding Observations of the Committee on the Elimination of Racial Discrimination, United Kingdom of Great Britain and Northern Ireland, 14th September 2011, at para. 18.

officers or in relation to specific sections of the community should be identified and investigated. (para 5.3)

In practice, HMIC found patchy implementation of this provision. Thirty-four forces have specific policies on stop and search and only twenty-two forces publish data about their use of stop and search powers on their website. This is limited to statistical data rather than information about the purpose and impact of stop and search in the local area.¹³⁷ Forces should be required to publish stop and search data on their websites for each quarter. This should include data disaggregated by ethnicity, age, area and power used. It should also display clearly the outcomes of stop and search. This should also be collated and published by the Home Office on a quarterly basis to allow national comparison and scrutiny.

Recording stop and account or stop and search takes on average two to five minutes to complete. The estimations of the amount of police time saved by reducing some of the details recorded are widely exaggerated.¹³⁸ Real time savings can also be made by ensuring fewer, but more effective, stops. Recording can be made more efficient by embracing electronic recording, as many forces have, using Airwaves, Smartphones, body-worn cameras or other handheld devices. In this way the paperwork associated with stop forms can be cut without undermining accountability. Furthermore our research with young people indicates they are frequently told police officers have “run out” of slips, so the stop cannot be recorded. Electronic recording reduces this possibility. Electronic recording also allows for more accurate recording of where stops are taking place using GPS technology. This can allow forces to map their use of stop and search and compare this to crime maps. This information should be shared publically to allow external scrutiny.

Community monitoring of stop and search is vital. Internal police safeguards are necessary but insufficient to ensure effective regulation. External scrutiny reminds the police that they are accountable to the public and encourages them to take account of community experiences and local priorities. Code A of PACE requires:

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 to explain the use of the powers at a local level. (para 5.4)

¹³⁷ Her Majesty's Inspector of Constabulary (2013), *Stop and search Powers: Are the police using them effectively and fairly?* London: HMIC.

¹³⁸ Refs: Nick Herbert in Westminster debate and Theresa May's announcement.

Too often this requirement for public scrutiny of stop and search has been ignored. The HMIC found that only 19 forces had mechanisms for public scrutiny and most often this was conducted through Independent Advisory Groups checking statistics.¹³⁹ In practice, scrutiny mechanisms that have developed around stop and search require the police to give account for their practices but provide no legal requirement for the police to take account of public responses. In many cases, the mechanisms have turned into “talking shops” failing to engage members of the community and in particular those who have experienced stop and search.

Code A of PACE has not been revised since the introduction of Police and Crime Commissioners. While we would assume that the statutory requirement for Police Authorities to promote confidence and ensure public scrutiny in stop and search moved over to PCCs, very few have taken any account of stop and search. StopWatch has conducted an analysis of all forty-two policing plans to see how PCCs are addressing stop and search.¹⁴⁰ Thirty-six PCCs do not mention stop and search in their policing plans. This includes twenty-five PCCs in policing areas with stop and search disproportionality rates ranging between 1.5 and 5 for various BME groups. The eight PCC policing plans that mention stop and search make vague comments about ensuring that stop and search is used fairly and effectively but nowhere have they translated these words into a practical strategy or outlined mechanisms for promoting confidence and ensuring scrutiny of stop and search use.

In 2008, The Association of Police Authorities produced a booklet, *Know Your Rights* booklet endorsed by the Home Office and ACPO. This document sets out very clearly what rights and expectations members of the public have when approached by the police. This explains that “a ‘stop’ is when a police officer stops you and asks you: what you are doing; why you are in a certain area or where you are going; or what you are carrying.” The booklet implies that as a matter of policy following the Code A of PACE, police officers will first stop and question a person to help confirm or allay a police officer’s initial suspicions before conducting a search.

The booklet goes on to say that the police can also search “when a police officer thinks” a person is in possession of drugs or a weapon. It states that before you are searched, “the police officer must tell you and make sure you understand: why you must be stopped and searched, that you must wait to be searched; what law they are using and your rights; their name; the station they work at; why they stopped you; what they are looking for; and [inform you of] your right to a form”.

¹³⁹ Her Majesty’s Inspector of Constabulary (2013), *Stop and search Powers: Are the police using them effectively and fairly?* London: HMIC.

¹⁴⁰ de Vries, T. (2013), *Police and Crime Commissioners Out of Touch on Stop and Search* <http://www.stop-watch.org/news-comment/story/police-and-crime-commissioners-out-of-touch-on-stop-and-search>

Know Your Rights has had wide distribution in schools and colleges and an “easy read version” has been made available online. It has been used extensively in schools citizenship education and in police youth engagement strategies. A version of the document is available on many police and government websites. The Government in their submission to the Home Affairs Committee cited this document as part of their drive to ensure that the power is used fairly and effectively.

There is anecdotal evidence that when police officers encounter young people who have been taught to ‘Know Your Rights’, questioning the police officers’ grounds for deciding to search, asking for details of their name and police station, have the perverse effect of contributing to the officers’ perception of them as a suspicious and obstructive person.

A StopWatch mapping study of existing Know Your Rights material found that that much of the training provided by Police forces across the country gives inaccurate information on young people’s rights and does not frame the encounter objectively; it focuses on the importance of public compliance rather than obligations of police officers and as such prioritises the rights of police over those of young people. They provide very little information on grounds for complaint and the complaints procedure.¹⁴¹ Although a range of Know Your Rights material exists, it fails to reach and successfully engage with young people. Stop and search education is not resulting in improved interactions with the police. StopWatch and Release are currently conducting consultations with young people to find out what information they feel is necessary to empower them during interactions. Over a 12-month period, we are developing training and materials to help them deal with stop and search encounters so they do not escalate or lead to arrest or injury – it is essentially a harm reduction approach to the policing of young people. The aim of this project is to ensure that young people are given the tools to interact with the police in as safe a manner as possible, equipping them with the skills and knowledge to handle situations where they are stopped and searched.¹⁴²

Innovative forms of external monitoring which empower local communities to monitor the use of the powers are required. Examples from the West Yorkshire Police and the Suffolk Constabulary highlight good practice in monitoring stop and search. The West Yorkshire Police were the first force in the country to develop scrutiny panels that examine both the investigation of hate crime and the use of stop and search in each district. Panels meet monthly and consist of 10 to 20 members from other public agencies and local communities, with at least one police officer of Chief Inspector rank. Each panel meeting examines at least ten stop and stop and search forms;

¹⁴¹ StopWatch (2012), *Know Your Rights on Stop and Search: A Mapping of Rights Information for Young People*.

¹⁴² For more information about the Street Law project, please see: <http://www.release.org.uk/stop-and-search-project-young-people>

five of ethnic minorities and five selected from all available forms. Forms are randomly selected by community members in advance with all personal information removed. The officers who conducted the stops are asked to supply a photocopy of their pocket book or supplemental report giving fuller information about the circumstances around each interaction. Panel members examine the data, ask questions, determine whether the forms have been completed correctly, and whether the grounds for the stop were adequate and consistent with PACE.

In 2008, the Suffolk Constabulary formed a stop and search reference panel. This resulted from research conducted by the Ipswich and Suffolk Council for Racial Equality, which found that in Suffolk black people were stopped at nine times the rate for white people and in some rural parts of the county this increased to rates as high as 22 to 1.¹⁴³ The research prompted the development of a stop and search scrutiny panel organised by the Equality Council, which sits outside the police. The group scrutinises district-wide performance, looking at all stops and searches of people from black and minority ethnic backgrounds. Forms are reviewed in advance of each monthly meeting by the Equality Council and a number are brought forward to the police for discussion at the meeting. The Police provide information on the stops to the group which is then discussed. The panel also discusses stop and search complaints brought to their attention via third party reporting, monitors the impact of the use of stop and search in the community and contributes to the forces' stop and search policy, procedures and training. The Suffolk scrutiny panel has wide community participation. The independence of the Equality Council promotes transparency and meaningful scrutiny, while also encouraging trust and diverse community participation. Meetings are challenging and provide a real opportunity to hold officers to account for their actions as the community members have a good understanding of the law and context surrounding stop and search practice. The police are currently exploring how to share quantitative stop and search data with the group and feed discussions into operational decision-making.

Recommendations:

- All stops (including stop and accounts and stops conducted under the Section 163 Road Traffic Act 1988) and stop and search should be recorded and monitored and a receipt of the encounter given to the person stopped.
- There should be one national standardised stop form (paper or electronic) that records all of the following:
 - Ethnicity
 - Which stop and search power was used
 - Grounds for and object of search (i.e. what type of stolen or prohibited item is suspected of being carried)

¹⁴³ Ipswich and Suffolk Council for Racial Equality (2008) *Stop and Search in Ipswich*, Suffolk: ISCRE.

- Identity of the officer carrying out the stop and search
- Date
- Time
- Place
- The name and address of the person stopped (if the person has given it)
- Outcomes of the stop
 - (i.e. whether or not a search was conducted and, if so, what type of search (non-intimate search of person, more thorough search or intimate body search, search of vehicle)
 - Whether and what types of stolen or prohibited item was found
 - Whether the person was arrested or subject to other forms of sanction and the grounds for the arrest/sanction
 - Any injury or damage caused as a result of the search
- In the case of drugs stop and searches the recording should distinguish between what class of drugs the stop and search was aimed at and whether the officer suspected possession or dealing – so that there is accurate data for making assessments of effectiveness.
- Care should be taken to ensure that searches that result in arrest are fully recorded and the person detained still given a full record.
- All strip-searches including more thorough searches and searches involving exposure of intimate parts of the body should be recorded as such together with appropriate justifications and outcomes.
- Searches that are conducted under the Misuse of Drugs Act 1971 should indicate whether the suspicion was focused around possession or dealing and which type of drug was suspected and found.
- Failure to record a stop or stop and search should be a disciplinary offense.
- Stop and search forms should include a section in which person stopped is able to indicate whether or not s/he was satisfied with the stop and search, and make note of any concerns.
- Forces should be required to publish stop and search data on their websites for each quarter (with no more than a one quarter lag in time for compiling and sharing it). This should include numbers disaggregated by ethnicity, age, area and power used. It should also display clearly the outcomes of stop and search.
- The Home Office should publish all forces stop and search data every three months to allow for national comparison and scrutiny.
- Investment should be made in electronic recording systems that support increased accountability while reducing bureaucracy.
- Police.uk should include mapping stop and search to allow comparison with crime and anti-social behaviour to street level. Care should be taken to make this data accurate and meaningful.
- Code A of PACE should be amended to place statutory responsibility on Police and Crime Commissioners for promoting confidence in the police use of stop and search

and developing mechanisms for the scrutiny of stop and search policies, records and statistics.

- Scrutiny mechanisms must take care to ensure that all parts of the community are involved, particularly young people and those that have experienced stop and search. Police and PCCs should develop a combination of mechanisms to obtain a broader picture of the issues and develop appropriate tools to encourage the engagement of different groups. Local community monitoring groups should be accessible and well publicised to impacted communities. Separate youth monitoring groups should be established to facilitate engagement with young people locally. Accountability structures should ensure that the police take into account public concerns.
- Scrutiny mechanisms, such as community reference groups must be funded to ensure independence and meaningful scrutiny.
- Police and PCCs should fund high quality independent Know Your Rights information and training. This should be specifically adapted to meet the needs of different groups and age ranges and use a range of tools to disseminate it widely.
- Training in stop and search should be developed to enable police officers to respond appropriately to young people who have been taught to “know your rights” and to exercise them.

Complaints Procedure

As the mechanism through which members of the public seek accountability from the police in their actions, it is fundamentally important that the complaints procedure ensures that concerns surrounding stop and search are dealt with effectively and impartially. The benefits of a thorough complaints procedure regarding stop and search include the development of public confidence in the complaints procedure generally and trust in the lawful use of stop and search powers, improved scrutiny and accountability for officers and a mechanism for providing some form of redress for individuals who feel they may have been abused by the unlawful use of a stop and search power. However, in practice the complaints process falls short of providing these benefits.

The HMIC survey of those stopped and search and our experience suggests that the complaints system is rarely engaged with regarding issues around stop and search and that only 16 per cent of people who are unhappy about a stop and search actually make a

complaint.¹⁴⁴ This is symptomatic of a wider problem with the complaints system and reveals the lack of confidence members of the public have in it. We are concerned that there appears to be such a gap between such an intrusive power in terms of personal freedom and the very people it concerns the most who end up feeling they have no mechanism for redress when their rights are abused. Further, there is a lack of consistency between forces in the use of the complaints process.

The majority of complaints relating to stop and search are automatically dealt with by way of local resolution by officers of the same force. Many individuals who feel aggrieved following a stop and search will not complain about the incident for fear that the complaint will not be dealt with independently and/or, even worse, that they will be targeted by the same officers that they have complained about as a result of having complained. Due to the lack of confidence in the police complaints system they often feel that there is little chance of their complaint being adequately addressed. When individuals do complain, the lack of action following local resolution further decreases public confidence in the complaints system and discredits the effectiveness of the complaints process as a useful mechanism for addressing concerns relating to stop and search.

We are concerned that the lack of serious and independent oversight of stop and search related complaints will not only deter people from complaining about minor incidents of incivility or rudeness by the police but also from reporting serious incidents of abuse and discrimination. Such incidents risk going unnoticed and unresolved if people feel they cannot complain about them. If officers are not held accountable for minor incidents this may lead to the feeling that they will not be held accountable for more serious incidents. We are particularly concerned that, following changes to the Police Reform Act, the decision to investigate a stop and search related complaint by way of local resolution and not by the IPCC can happen without the consent of the individual concerned. This will only serve to weaken the complaints system and decrease the public's confidence in its effectiveness.

Complaints relating to discrimination or the vulnerability or age of the complainant are not adequately addressed by the complaint process. There are numerous concerns regarding discrimination in the use of stop and search, and in particular with regard to racial discrimination and stereotyping. Investigating officers should be alert to these concerns and treat them with the appropriate degree of seriousness. Cases are more than likely to be referred by way of local resolution and therefore conditions should be put in place to indicate where this is not suitable. If a complaint raises issues of discrimination on grounds of race

¹⁴⁴ Her Majesty's Inspector of Constabulary (2013), *Stop and search Powers: Are the police using them effectively and fairly?* London: HMIC.

etc. it should be said that it is automatically unsuitable for local resolution and it should certainly require the complainant's consent.

We are concerned about the lack of an adequate system for recording complaints relating to stop and search and that different forces have different mechanisms for recording/monitoring the use of stop and search. Complaints arising out of the use of stop and search powers are not recorded distinctly as such and are therefore not monitored as part of the PACE regulatory framework.

Recommendations:

- Complaints relating to stop and search should not be automatically dealt with by local resolution.
- Cases involving allegations of serious abuse of stop and search powers, such as cases involving discrimination, strip-search or the stop and search of children or vulnerable adults should automatically be referred to the Independent Police Complaints Commission.
- The investigation of stop and search complaints should involve external experts and members of the local community.
- Local resolution should offer complainants the opportunity to engage in mediation with the officers involved, facilitated by independent mediators.
- A systematic process of recording allegations relating to the use of stop and search powers should be implemented across all professional Standards Departments. Police forces should record stop and search related complaints separately. The specifics and the nature of the complaint – for example, whether there have been allegations of discrimination or relating to the age or vulnerability of those involved – should also be recorded distinctly, to ensure cases of a more severe nature are dealt with separately and at the appropriate level.
- Complaints raising allegations of discrimination or stop and search of minors and vulnerable adults should be separately recorded and monitored. Investigating officers should be adequately trained to recognise whether complaints raise discrimination related issues or allegations of stereotyping.
- Senior officers should ensure full compliance with the requirements of Code A of PACE and that the appropriate measures are taken to address repetitive occurrences of abuse regarding stop and search within a police force. This will also ensure that complaints involving the same officers or police stations can be picked up and appropriate action taken. If the same officer is the subject of repetitive complaints

relating to stop and search, appropriate action should be taken, including training on the requirements of a lawful stop and search.

- Records of stop and search related complaints should be reviewed/audited by the HMIC during their inspections visits to forces.

Third party/independent monitoring of the complaints procedure should also be put in place to ensure confidence, transparency and accountability within the process.

For further information about the issues raised in this submission, please see:

- Stopwatch statement on stop and account, December 2011, available at: [http://www.stop-watch.org/uploads/documents/StopWatch_Statement_on_Police_Stop_and_Account_-_21Dec11-FINAL_\(2\).pdf](http://www.stop-watch.org/uploads/documents/StopWatch_Statement_on_Police_Stop_and_Account_-_21Dec11-FINAL_(2).pdf)
- Stopwatch note on the use of stop and account in the West Midlands, Available at: http://www.stop-watch.org/uploads/documents/stop_and_account_in_West_Midlands.pdf
- StopWatch Factsheet: Stop and Account, available at: <http://www.stop-watch.org/get-informed/factsheet/stop-and-account>
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- [StopWatch](#), Submission to the UK Home Office's Public Review of Schedule 7 of the Terrorism Act 2000, December 2012, Available at: http://www.stop-watch.org/uploads/documents/StopWatch_Submission_to_Home_Office_Review_of_Schedule_7_FINAL.pdf
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