

Note on Use of "Stop and Account" and Stop and Search in the West Midlands

It is important to distinguish between a 'stop and account' (also sometimes known as "stop and encounter") and a 'stop and search', whether or not the latter actually results in a search.

BOX 1

What is a Stop and Account?

Stop and Account is different from Stop and Search and is when an officer stops you and asks you:

- what you are doing;
- why you are in an area or where you are going; or
- what you are carrying.

A police officer or police community support officer (PCSO) does not have the power to force you to stay with them if you are stopped and asked for your actions.

Source: West Midlands Police website

As the West Midlands Police website (see Box 1 above) makes clear, a 'stop and account' is entirely separate from a 'stop and search'. It involves a police officer (or a police community support officer) stopping someone and "requesting" that they account for what they are doing, their presence in an area or where they are going, or something they are carrying. Crucially, the officer has no power to force any persons on foot to stop or to account for themselves.¹ On the other hand, there is no guidance governing the circumstances in which an officer should or should not "request" a person to "stop and account"; rather it is left entirely to the discretion of individual officers as to when and in relation to whom they choose to employ this procedure. Nor is there any requirement, beyond identifying his or herself as a police officer, to inform the persons stopped of the reason why they are being asked to account for themselves or that they are free to continue on their way without answering any questions.

By contrast, a "stop and search" involves the exercise of a statutory power and is therefore subject to certain limitations, whether set out in the primary legislation or in the relevant Codes of Practice. The officer must either have, prior to the stop, reasonable grounds of suspicion that the person stopped is carrying a prohibited item (e.g. an offensive weapon, illegal drugs or stolen goods) or to have been temporarily authorised under special powers to stop

¹ There is a power under the Road Traffic Act for the police to stop a vehicle or pedal cycle on a public highway.

and search without such reasonable suspicion.² Stopping someone and questioning them in order to discover grounds of reasonable suspicion where none existed beforehand is specifically barred under the relevant Code of Practice (see Box 2 below). The officer must immediately identify him or herself as a police officer and inform the person stopped that they are being detained (which means that reasonable force can be used to prevent them from leaving the scene or to conduct a subsequent search). These requirements apply even where a person is subject to a statutory stop but no search is subsequently conducted. If the officer is able to dispel his or her reasonable suspicion through questioning the person stopped, no search may be conducted, and the officer is required to inform that person that they are no longer being detained (see Box 2 below).

Box 2

2.10 If, as a result of questioning before a search, or other circumstances which come to the attention of the officer, there cease to be reasonable grounds for suspecting that an article is being carried of a kind for which there is a power to stop and search, no search may take place. In the absence of any other lawful power to detain, the person is free to leave at will and must be so informed.

2.11 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.

Police and Criminal Evidence Act Code of Practice A

Further limitations apply to the actual conduct of searches under stop and search powers, including most crucially the requirement to make a record of the encounter and to make it available to the person who has been searched. Previously, there was a requirement under the relevant Code of Practice to record 'stops and account' and statutory stops not resulting in searches. This requirement was introduced as part of the implementation of the Macpherson Report following the murder of Stephen Lawrence (see Box 3 below). This requirement was withdrawn following changes introduced to the Code of Practice in 2011, although it was left to the discretion of each police force to retain "stop and account" and statutory stop recording, especially where there were community concerns over their disproportionate use in respect of certain sections of the public. Despite this, the West Midlands Police and most other

² The main provisions for stops and searches without reasonable suspicion are under section 60 of the Criminal Justice and Public Order Act 1994, where an authorisation can last for 24 hours, and section 47A of the Terrorism Act 2000, where an authorisation can extend to 14 days.

major urban police forces outside London decided to cease recording stops, both voluntary and statutory, that do not result in a search.

Box 3

That the Home Secretary, in consultation with Police Services, should ensure that a record is made by police officers of all "stops" and "stops and searches" made under any legislative provision (not just the Police and Criminal Evidence Act). Non-statutory or so-called "voluntary" stops must also be recorded.

The Stephen Lawrence Inquiry, Recommendation 61.

It is arguable, however, that without recording at least all statutory stops police forces render themselves incapable of fulfilling their duties under the PACE Code of Practice to monitor and supervise the use of stop and search powers (see Box 4 below). There is nothing in the Code of Practice to indicate that these requirements do not apply to statutory stops, where the person concerned is detained (and therefore potentially subject to the use of reasonable force), even though no search subsequently takes place.

Box 4

5 Monitoring and supervising the use of stop and search powers

5.1 Supervising officers must monitor the use of stop and search powers and should consider in particular whether there is any evidence that they are being exercised on the basis of stereotyped images or inappropriate generalisations. Supervising officers should satisfy themselves that the practice of officers under their supervision in stopping, searching and recording is fully in accordance with this Code. Supervisors must also examine whether the records reveal any trends or patterns which give cause for concern, and if so take appropriate action to address this

5.2 Senior officers with area or force-wide responsibilities must also monitor the broader use of stop and search powers and, where necessary, take action at the relevant level.

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

5.4 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.

Source: PACE Code of Practice A

It will be seen from the above that the use of "stop and account" lacks both **transparency** (because the person stopped is not required to be told that the stop is voluntary) and **accountability** (because of the lack of guidance on when officers may or may not be justified in employing the procedure and the lack of records on its use). Given the importance of both transparency and accountability in contributing to the public's trust and confidence in the police, the widespread use of "stop and account" as currently practiced must be a matter of serious concern.

This is particularly so given the policy of the West Midlands Police that, even where grounds for conducting a statutory search exist, officers should normally use a "stop and account" instead (see Box 5 below). It may be that the intention behind this policy is to promote the use of informal interactions between officers and the public, rather than using formal legal powers. However, it can also be seen as a "police ploy" to circumvent some of the legal limitations (and protections for the public) attached to the use of statutory stops, such as the bar on detaining a person and questioning them in order to discover grounds of reasonable suspicion to justify a search.

Box 5

West Midlands Stop and Search Policy

It is the position of West Midlands Police that **where grounds to search already exist** officers should prefer a Stop and Account in the first instance, as the encounter may in itself, satisfy the officer that the need to conduct a search has ceased to exist. This will be less likely to inconvenience the member of the public.

Ops 15, paragraph 7.4

In order to avoid such an impression and the potentially damaging impact of "stop and account" on public trust and confidence in the police, it is recommended this procedure should be subject to clearer guidelines as to when it is appropriate to use it and in particular that officers should be required to inform those stopped in this way of the voluntary nature of the encounter. A form of words to be used is set out in Box 6.

Box 6

Proposed introduction to a "stop and account"

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.

It is also important that the West Midlands Police should reverse their policy

as set out in Box 5 above, so that officers are required, where they do they have reasonable suspicion (or are otherwise temporarily authorised to conduct stops and searches without it), they should use a statutory stop rather than an informal "stops and account". It is wrong to imply, as the current West Midlands Police policy does, that having recourse to the use of statutory stops will cause greater inconvenience to the member of the public than being stopped under a "stop and account" or that it will necessitate the conduct of a search in every case. As shown in Box 2 above, the Code of Practice clearly allows that where a person is subject to a statutory stop, it is open to the officer to question them in order to dispel his or her reasonable suspicions and if this is done to tell the person that they are free to go. On the other hand, transparency demands that the person who is under suspicion is aware from the outset that they are being detained and are at risk of the use of reasonable force by the police in order to prevent them from leaving. A proposed revised policy statement, incorporating a form of words to be used in initiating statutory stops, is set out in Box 7.

Box 7

Proposed Revision of West Midlands Police Stop and Search Policy

It is the position of West Midlands Police that **where grounds to search already exist** officers should use their statutory powers to stop and search, rather than 'stops and account'. However, wherever appropriate, officers should, prior to conducting a search, seek to question the person stopped in order to allay their suspicions or other reasons for the stop and, if successful, inform the person that they are no longer being detained and are free to go. Officers should therefore initiate such stops with the following words:

"I am stopping you under powers available to me as a police officer to detain members of the public for the purposes of searching them. However, I would like first to ask you some questions. You are not obliged to answer them, but if you do so, it may mean that it will not be necessary to search you and you will be free to go on your way."

Finally, it remains the position of StopWatch that all stops, whether under "stop and account" or statutory powers, should be recorded, including the ethnic identity of the person stopped. As indicated, the Code of Practice requirements for monitoring and supervising the use of stop and search powers would appear to demand, at a minimum, that all statutory stops, including those not resulting in a search, should be recorded. It is also important, in order to monitor and supervise officers' conduct in relation to stop and search, to know how frequently statutory stops do and do not result in a search. Electronic recording systems should therefore be adapted to enable officers to easily record (i) 'stops and accounts' (ii) statutory stops not resulting in a search and (iii) statutory stops resulting in a search.

Lee Bridges,
Professor Emeritus, School of Law, University of Warwick
on behalf of StopWatch

