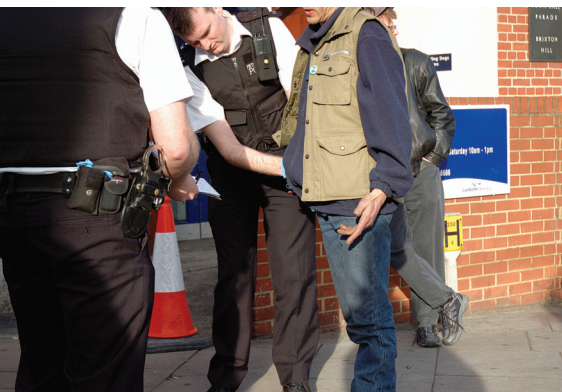


The briefing

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Stop and search

This Police Foundation Briefing looks at the changing legislation on stop and search and identifies some of the key issues that arise from its use.

Introduction

Historically, the power to stop and search, which has been a prominent policing tool since the Vagrancy Act of 1824, has attracted both praise and controversy. Modern stop and search powers enable the police to allay or confirm suspicions about individuals and detect, for example, those suspected of carrying weapons, stolen goods or going equipped for stealing. However, along with increasing rates of use, concerns remain about fairness and effectiveness. This Briefing will give a short historical overview, consider the law on stop and search, assess its effectiveness and discuss some of the key concerns.

A brief history

Prior to the introduction of the Police and Criminal Evidence Act (PACE) 1984, the police stopped and searched individuals under what were known as 'sus' laws, so called because they only required 'suspicion' on the part of the police officer. Although officers in London and other urban centres were given local powers, the only national stop and search legislation was for the pursuit of drugs and firearms. The 'sus' provisions were eventually repealed following the Brixton riots in 1981, principally due to concerns about their negative impact on the relationship between the police and the public, particularly

members of ethnic minorities.⁽¹⁾ Lord Scarman's Inquiry into the Brixton riots⁽²⁾ acknowledged that stop and search was necessary to combat street crime but expressed concerns over the extent to which the 'sus' laws were used. He recommended, among other things, the improvement of community consultation through statutory liaison committees and the replacing of the 'sus' laws with national, safeguarded stop and search legislation.⁽³⁾

In 1999, the use of stop and search again attracted controversy following the murder of Stephen Lawrence. Another Inquiry, this time led by Lord Macpherson, revealed the disproportionate use of stop and search among members of black and Asian communities, which led to accusations of police discrimination and heightened distrust of the police within these communities. Lord Macpherson went on to recommend that stops, whether or not they resulted in a search,⁽⁴⁾ should be recorded, publicised and monitored so that officers could be better held to account for their use.⁽⁵⁾ (The issue of recording practices and disproportionality are discussed in more detail below).

In 2007 Lord Carlile, the independent reviewer of terrorism legislation, raised concerns about the use of stop and search under Section 44 of the Terrorism Act 2000. He suggested that Section 44 should only be used sparingly (i.e. where there is no other alternative) and emphasised that it should not be invoked for non-terrorist related investigations.⁽⁶⁾ Three years later, the European Court of Human Rights (ECHR) held that Section 44 breached Article 8 of the European Convention on Human rights (the right to privacy and family life). The Home Secretary subsequently issued stricter guidelines for Section 44, the most significant of which was that officers were no longer authorised to use Section 44 to search individuals.⁽⁷⁾ Within a year, the number of searches under Section 44 dropped by 91 per cent.⁽⁸⁾

The Home Secretary's review of counter-terrorism powers, published in 2011, found that the absence of the need to show 'reasonable suspicion' in blanket searches was unlawful, but noted that removing all powers of stop and search without demonstrable suspicion left police with an 'operational gap'. It concluded that a tightly circumscribed stop and search power, still without reasonable suspicion, was operationally justified in exceptional circumstances.⁽⁹⁾ As a consequence, the Protection of Freedoms Bill, currently before Parliament, will introduce greater safeguards on the use of stop and search in relation to the threat of terrorism, including shorter authorisation periods, tighter geographical restrictions and more robust statutory guidance. A remedial order that replaces Sections 44 to 47 of the Terrorism Act 2000 has been put in place in the interim to ensure that senior officers can only authorise blanket stops and searches where there is a reasonable suspicion that an act of terrorism will take place and that the authorisation is necessary to prevent such an act.⁽¹⁰⁾

Two further powers will also be subject to greater restrictions. The first is Schedule 7 of the Terrorism Act 2000, which allows officers to stop and search suspects at airports and ports without reasonable suspicion, detain a suspect for up to nine hours and take DNA and fingerprints. The second is Section 60 of the Criminal Justice and Public Order Act 1994, which allows officers to authorise the blanket use of stop and search to prevent serious incidents of violence, such as gang fights or football hooliganism.⁽¹¹⁾ The latter is likely to fall foul of the European Convention on Human Rights, as Section 44 did in 2010.⁽¹²⁾

Current powers

The underpinning principles of stop and search are intended to promote its use in a fair and

effective manner. An officer may not search a person where there is no legal basis to do so, even with an individual's consent. Where an officer is lawfully entitled to search a person or vehicle, it must be done in a courteous and respectful manner⁽¹³⁾ and the length of detainment must be kept to a minimum. The search can include an inspection of a person's outer garments, including pockets, collars, socks and shoes.⁽¹⁴⁾ Forcible searches must only be used if a person is unwilling to co-operate. Additionally, if during a search an officer deems it necessary for an individual to remove an article of clothing, they must move the person to a more discrete location, for example a police van or station.⁽¹⁵⁾

It is important to distinguish between stop and search and what is often termed 'stop and account'. A police officer may stop an individual and request that they 'account' for themselves. This can include questions about where they have been, why they are in an area or what they are doing. A conversation between

an individual and an officer does not necessarily define the interaction as a 'stop and account'.⁽¹⁶⁾ For example, an officer may question a person if they think they have witnessed a crime.

The police can stop and search an individual under a range of legislation. The Police and Criminal Evidence Act (PACE) 1984 Code A provides statutory guidance on how and when an officer may search a person or a vehicle prior to arrest. In most cases an officer must have 'reasonable suspicion' based on facts, information and/or current intelligence, which are relevant to the likelihood that a person possesses a prohibited article, is about to commit, or has committed a crime. These powers are summarised in Table 1.

In certain circumstances, searches can be authorised without a requirement of 'reasonable suspicion'. Section 163 of the Road Traffic Act 1988 allows a uniformed constable to stop a vehicle or bicycle without any requirement of

Table 1 – Main powers requiring 'reasonable suspicion'

Power	Extent of search	Where exercisable	Object of search
Firearms Act 1968, s47	Searches of persons and vehicles.	In a public place, or anywhere in the case of reasonable suspicion of offences of carrying firearms with criminal intent or trespassing with firearms.	For firearms.
Misuse of Drugs Act 1971, s23	Searches of persons and vehicles.	Anywhere.	For controlled drugs.
Police and Criminal Evidence Act 1984, s1	Searches of persons and vehicles.	In a public place.	For stolen goods, offensive weapons, articles intended for destroying or damaging property.
Terrorism Act 2000, s43	Searches of persons.	Anywhere.	For anything which may constitute evidence that the person is a terrorist.

Adapted from PACE 1984: Code A

Table 2 – Main powers not requiring ‘reasonable suspicion’

Power	Extent of search	Where exercisable	Object of search
Criminal Justice and Public Order Act 1994, s60	Persons and vehicles.	Anywhere within a locality authorised by an officer of the rank of inspector or above for a period of 24 hours.	For offensive weapons or dangerous instruments, to prevent incidents of serious violence or to deal with the carrying of such items or find such items which have been used in incidents of serious violence.
Terrorism Act 2000, s47a (replacing s44)	Persons and vehicles.	Anywhere within a locality authorised by an officer of ACPO rank (and approved by the Home Secretary) who reasonably suspects that an act of terrorism will take place and considers that the powers are necessary to prevent such an act. ⁽¹⁷⁾	Evidence of terrorism.
Paragraphs 7 and 8 of Schedule 7 to the Terrorism Act 2000	Persons, vehicles, vessels, etc.	Ports and airports.	Anything relevant to determining if a person being examined falls within Section 40(1)(b) (definition of a terrorist).

Adapted from PACE 1984: Code A

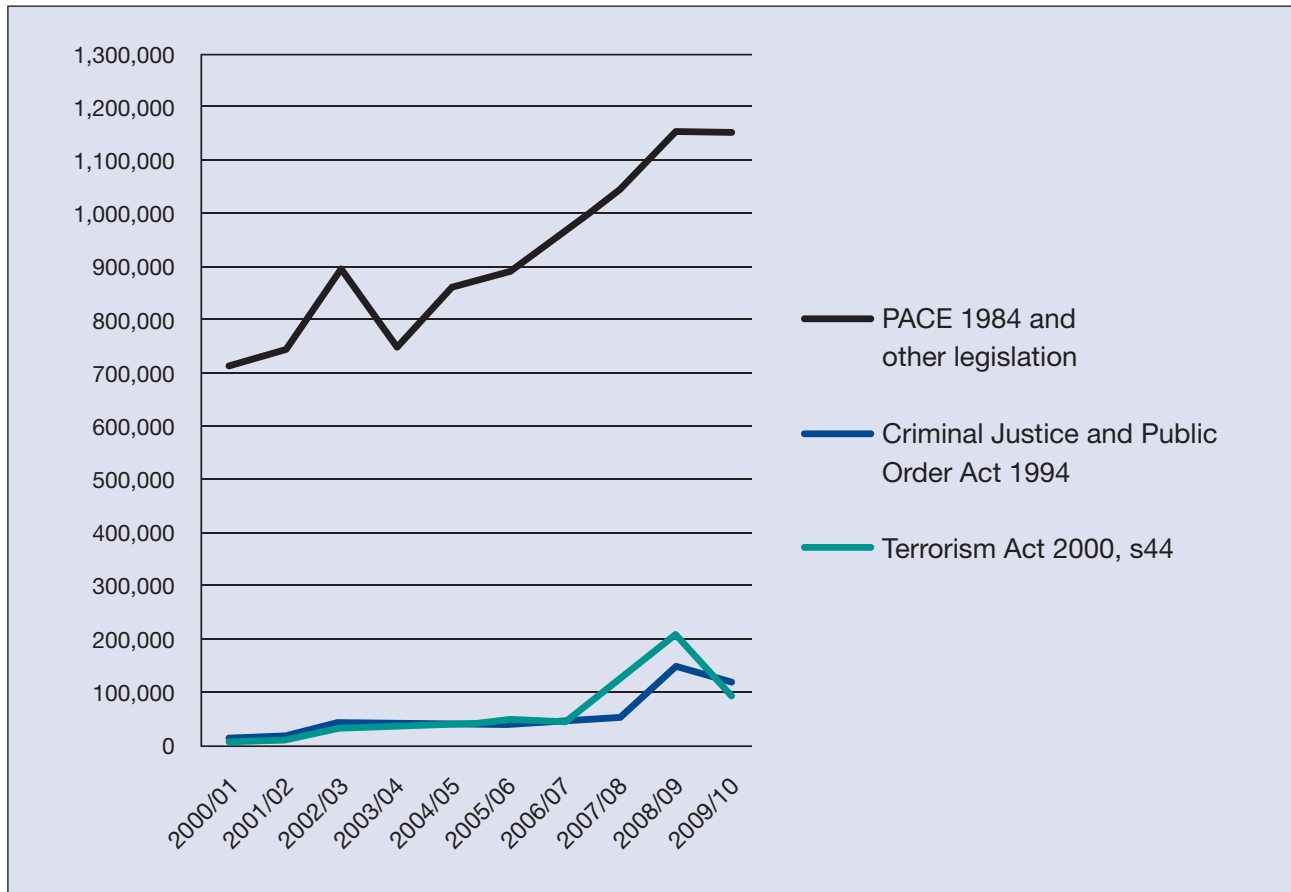
suspicion and Section 4 of PACE 1984 allows the police to search a vehicle where there is reasonable suspicion that the vehicle is carrying a person that has committed, or is about to commit, an offence. Section 44 of the Terrorism Act 2000 empowers senior officers to authorise specific areas in which persons and vehicles could be searched for articles linked to terrorism without the requirement of ‘reasonable suspicion’ (subject to confirmation by the Home Secretary), although this is now subject to a remedial order which requires an officer to reasonably suspect that an act of terrorism will occur. In theory, Section 44 authorisations can run for up to 28 days, although in practice areas such as London

have been subject to rolling authorisations. As mentioned above, some of these powers, which are set out in Table 2, have been subject to new restrictions and/or are under review.

To what extent is stop and search used and how effective is it?

Today, stop and search continues to be widely used. Fig. 1. shows its use in England and Wales in the last decade.⁽¹⁸⁾ The use of stop and search varies among forces for a variety of reasons, such as patterns of crime, force priorities and the individual preferences

Fig. 1. Number of Stops and Searches in England and Wales: 2000/01 – 2009/10 ⁽¹⁹⁾



of Chief Constables. There were over one million searches conducted in 2009/10. This accounts for a substantial amount of police time and resources. With a history of controversy, concerns persist about the fairness, tactical value and disproportionate use of stop and search. Given a steady increase in its use, it is important to consider its effectiveness in detecting and preventing crime.

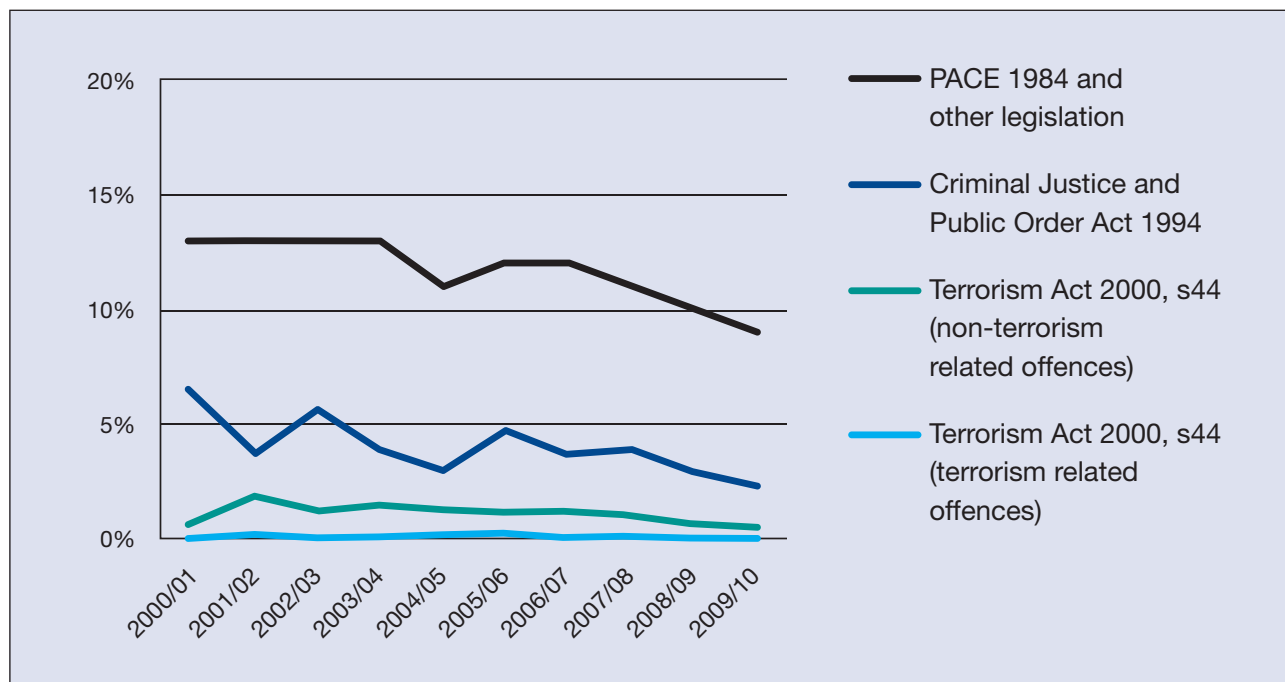
At the end of 2011, the Home Secretary asked the Association of Chief Police Officers (ACPO) to look at best practice on stop and search. This was rapidly followed a month later by an announcement by the Commissioner of the Metropolitan Police Service that his force would be substantially reducing the use of stop and search in order to improve relations with

black and ethnic minority communities. The Commissioner has stated his intent to issue new guidance, improve officer training and halve the number of random drug stops. He also intends to reduce substantially the use of Section 60, which will be used for smaller, high crime areas rather than whole Boroughs. At six per cent, the proportion of stops and searches that result in an arrest is lower in London than any other major UK city leading the Commissioner to set a new target of 20 per cent.

Crime detection

Officers are required to execute searches based on fact, information and/or intelligence. ⁽²⁰⁾ It could be argued that a reasonable proportion of searches should therefore result in arrest or

Fig. 2. Percentage of searches resulting in arrest by statutory power, England and Wales: 2000/01 – 2009/10 ⁽²¹⁾



an out of court disposal such as a caution or a fixed penalty notice. Some research shows that stop and search has a small impact on crime detection⁽²²⁾ but there is no agreement on what constitutes an ‘acceptable’ level of detection and only a small minority of searches result in an arrest. In 2009/10, nine per cent of searches under PACE 1984 and other legislation resulted in an arrest (see Fig. 2), four per cent lower than ten years ago.⁽²³⁾ In practice, the proportion of arrests following a stop and search depends largely on the reason for the stop. In 2009/10, for example, 211,200 searches were made under the suspicion of possessing stolen property with 12 per cent resulting in arrest whereas 550,500 searches were made under the suspicion of carrying drugs with only seven per cent resulting in arrest, primarily for cannabis possession. The latter is important since nearly half of all searches under PACE 1984 and other legislation were drug-related,⁽²⁴⁾ with these arrests constituting a third of all arrests for drug-related crime.

The National Policing Improvement Agency (NPIA) suggests that greater attention should be placed on maximising the quality of arrests derived from searches to improve productivity. Searches should therefore focus on prolific offenders rather than cannabis possession if they are to deliver the most effective use of resources. ⁽²⁵⁾

Crime prevention

A low detection rate alone does not necessarily undermine the use of stop and search powers. Proponents of the power, especially under terrorism legislation, argue that its use disrupts and deters criminal activity rather than simply detecting it.⁽²⁶⁾ A Home Office report, which acknowledged the difficulty of measuring deterrence, estimated that searches reduce the number of ‘disruptable crimes’ by just 0.2 per cent and questioned its use in disrupting drug-markets since it is targeted primarily on users

rather than dealers. It did however suggest that searches may be effective as a deterrent when used intensively in a particular location.⁽²⁷⁾

Gathering intelligence

An officer cannot stop and search a suspect for the purposes of gathering intelligence about a future crime, although they may use information obtained in a legitimate search to inform future crime detection or prevention. This may include the appearance of an individual, possession of drug paraphernalia or names, addresses and phone numbers.

Key issues

Recording practices

Since the introduction of PACE in 1984, officers are required to make a record of all searches. The importance of recording was underlined by Lord Macpherson's Inquiry, which recommended that police stops, whether or not they resulted in a search, should be recorded. Until recently, an individual who is stopped (but not searched) was entitled to a copy of the record, or written instructions on how to retrieve one, in order to ensure that the police are held to account for their actions. Sir Ronnie Flanagan's Review of Policing however, recommended the removal of the recording requirement on the grounds that it was time consuming and bureaucratic.

The requirement to record searches remains, but the number of fields an officer must fill out has now been reduced from twelve to seven.⁽²⁸⁾ The following are mandatory: ethnicity, objective of search, grounds for search, identity of the officer carrying out the search, date, time and place. The Crime and Security Act 2010, of March 2011, does however allow police forces to cease the recording of Stop and Account, although it can be retained by forces to address local concerns about disproportionate use of the power. As of October 2011, 31 out of 43

police forces in England and Wales had ceased recording stops.⁽²⁹⁾

In a survey conducted by the Metropolitan Police Service and the Metropolitan Police Authority, 95 per cent of 200 young people surveyed wanted to retain the recording of stop and account.⁽³⁰⁾

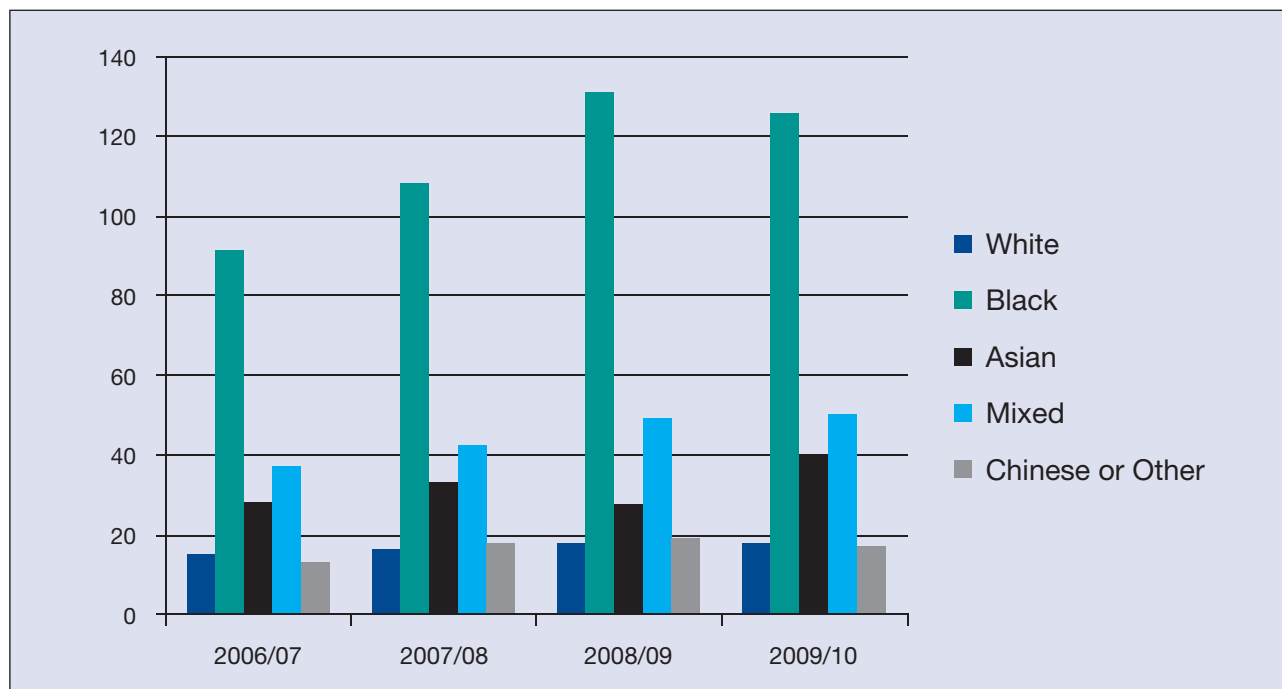
The reduction of recording has raised concerns.⁽³¹⁾ In addition to no longer being required to record a person's name and address, officers are not required to record the outcome of the search. Without this information, it is more difficult to monitor repeat searches, to measure the effectiveness of the power⁽³²⁾ and to hold officers to account for how it is used.

The use of technology, such as Airwave, can reduce bureaucracy while still satisfying the recording requirement⁽³³⁾ and some forces use Personal Data Assistants to reduce the use of paper stop and search forms. With the facility to automatically record fields such as time and date, handheld devices save time and enable accurate recording. The NPJA and Kent Police are piloting an initiative to record stops and searches using voice input.

Community impact

In 1983, just two years after the Brixton Riots, the Home Office acknowledged the importance of community support in the effective use of stop and search powers.⁽³⁴⁾ The public must perceive searches to be fair and just if the police are to exercise their authority legitimately.⁽³⁵⁾ The greater their legitimacy, the more likely the public will comply with their requests for cooperation and assistance. Given the number of public encounters that occur through stops and searches, the experience of individuals during searches can have a profound effect on their attitude towards the police: officers who treat an individual fairly and with respect inspire greater confidence and trust. Positive interactions are crucial as the effects of

Fig. 3. Searches under PACE 1984 and other legislation per 1,000 population, by self identified ethnicity, England and Wales: 2006/07 – 2009/10 ⁽³⁶⁾



a stop can go beyond the individual; a single negative interaction can reverberate across the wider community. ⁽³⁷⁾ Particularly important is whether a person felt that a good reason had been given for the stop. ⁽³⁸⁾

The importance of procedural justice can be seen clearly in the follow-up to the August 2011 riots that started in London but spread across the country. While the instigating factors for the riots are numerous and contested, research suggests that public discontent over the way in which stop and search is carried out played a significant role. The UK riots panel noted that “...concern was widely felt by young Black and Asian men who felt [stop and search] was not always carried out with appropriate respect.” ⁽³⁹⁾

Individual forces are encouraged to take note of any legitimate stop and search complaints they receive and use this information to inform training and improve operational

practice. ⁽⁴⁰⁾ The Independent Police Complaints Commission (IPCC) policy on stop and search ⁽⁴¹⁾ states that local police commanders should inform communities about how stop and search is being used and give the public the opportunity to raise concerns about the tactic.

Disproportionality

Historically, the most controversial aspect of stop and search has been the disproportionate targeting of ethnic minorities. Both Lord Scarman and Lord Macpherson identified the destructive consequences of marginalising a community through heavy policing tactics, including stop and search. Despite efforts to increase accountability through robust monitoring and awareness, disproportionality persists. ⁽⁴²⁾ In 2004, the Metropolitan Police Authority, giving evidence to the Parliamentary Home Affairs Committee, reported that the misuse of these powers had worsened racial and

ethnic tensions, increased the level of distrust of the police and cut off valuable sources of community information and intelligence. ⁽⁴³⁾

In 2009/10, under PACE 1984 and other legislation, black people were seven times more likely to be stopped and searched than white people, and Asian people 2.2 (twice as likely) to be searched than white people. ⁽⁴⁴⁾ Research conducted by the London School of Economics on disproportionality under Section 60 searches has shown that in 2009/10 black people were nearly 30 times more likely to be stopped and searched than white people. ⁽⁴⁵⁾

As the level of disproportionality varies across forces throughout England and Wales, it is difficult to attribute the differences to a single cause but the Association of Chief Police Officers/Home Office Stop and Search Manual notes that in forces with lower levels of disproportionality, force policy explicitly states that an officer's performance will not be assessed on the number of stops and searches they performed, but on the outcomes and quality of their searches. ⁽⁴⁶⁾

Stop and search statistics need to be interpreted with caution ⁽⁴⁷⁾ and whether this level of disproportionality amounts to racial discrimination is open to question. In 2000, a Home Office research report identified three possible explanations for the disproportion use of stop and search: an ethnic bias on the part of officers; the available population for searching contains a greater proportion of ethnic minorities, who spend more time in public spaces; and searches occur in geographic areas with a greater concentration of ethnic minorities. ⁽⁴⁸⁾ Factors such as age, employment and exclusion from school also affect the likelihood of being stopped and searched. Nevertheless, it is indisputable that the disproportionate use of stop and search on black and ethnic minority communities is perceived by them as racially motivated and

therefore needs to be taken seriously whether or not there is any racist intent.

Conclusion

The Government's recent changes to Section 44 of the Terrorism Act 2000 are to be welcomed. Here, the government has acknowledged the need to support police legitimacy by ensuring police powers are used as they were intended. But this is not always the case. In contrast, the government's demands for greater police accountability sit uncomfortably alongside its equally vociferous demands for reductions in bureaucracy. With a greater emphasis on local accountability, the introduction of elected Police and Crime Commissioners presents a real opportunity for forces to make decisions based on local concerns. Where these relate to the use of stop and search there is every chance such concerns will be addressed. However, this objective requires more, rather than fewer forces to collect the information to properly monitor how – and how often – stop and search is being used. It is only then that forces can address community concerns and identify any shortcomings in its use.

Tragedies such as the murder of Stephen Lawrence or events such as the August 2011 riots bring stop and search into the media spotlight, leading to much discussion and debate about its effectiveness, its appropriateness and its legitimacy. Since the introduction of stop and search, the power has remained consistently challenging and controversial. The disproportionate use of stop and search among certain sections of society remains a significant issue and efforts to address this should remain a priority. However research suggests that the public does not wholly object to the use of stop and search provided it is used fairly and properly – regardless of age, gender or ethnicity. ⁽⁴⁹⁾ If the power to stop and search is used in this way, it can only improve police effectiveness without compromising police legitimacy.

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