

CONSULTATION RESPONSE

TO:	OSCT BORDERS AND AVIATION SECURITY TEAM Home Office
FROM:	THE INDEPENDENT POLICE COMPLAINTS COMMISSION (IPCC) 90 High Holborn, London. WC1V 6BH
REGARDING:	Review of the operation of Schedule 7

Summary:

The IPCC welcomes the Home Office's review into the operation of Schedule 7 as it provides an important opportunity for us to share emerging issues from our supervision of complaints and conduct matters arising from the use of Schedule 7 powers since 1 July 2012:

- Stakeholders remain concerned that Schedule 7 is having a disproportionate negative impact on ethnic minorities, in particular British Muslims, entering or leaving the UK.
- People stopped under Schedule 7 who complained to the IPCC are often unhappy with the explanations they were given about why they were stopped, the way they were treated by officers conducting the stop, and the disruption caused to their onward travel and lives.
- Despite concerns which are voiced during engagement with the IPCC, the number of formal complaints received to date about the use of Schedule 7 remains low.

Introduction to the IPCC and its remit

1. The IPCC is independent and makes its decisions independently of the police, Government and interest groups. It was established by the Police Reform Act 2002 (PRA) and became operational in April 2004. Its primary statutory function is to secure and maintain public confidence in the police complaints system in England and Wales. It acts as an appeal body for some locally handled complaints and issues statutory guidance on complaints handling to police forces. It undertakes independent investigations into the most serious cases of police misconduct, deaths and serious injuries and other human rights breaches; and has the power to manage or supervise police investigations. Its statutory role also involves an obligation to measure, monitor and where necessary, seek to improve the current system.
2. The IPCC was created following both public and political concern about the lack of an independent system to deal with complaints and conduct matters within the police service. Since 2004, the organisation's remit has been extended to include serious complaints and conduct matters relating to staff at the Serious Organised Crime Agency (SOCA), Her Majesty's Revenue and Customs (HMRC) and the UK Border Agency (UKBA).

3. The Police Reform and Social Responsibility Act 2011 has extended the IPCC's remit further. Since January 2012, the IPCC has been responsible for deciding whether any criminal allegations relating to the occupant of the Mayor's Office for Policing and Crime (MOPAC) or his Deputy should be investigated. The IPCC will have a similar remit over Police and Crime Commissioners (PCC) and their deputies following their election in November.
4. The IPCC is run by a Chair, Deputy Chair and 9 Commissioners. Together they make up the Commission. Commissioners (other than the two non-executive Commissioners and the Chair) have an operational role and also have responsibility for oversight of the organisation as a whole. Commissioners are appointed by the Home Secretary and by law they must never have served as a police officer. The Commission is supported by a Chief Executive and a small management team.
5. In 2011/12 the IPCC received a delegated budget of £34.3m. It has approximately 370 staff with around 115 of these responsible for investigations and 115 responsible for dealing with direct complaints and appeals. Staff come from a range of backgrounds, including a minority from a police officer background (approximately 11% of staff overall and 33% of investigators are former police officers). The Commission values both the technical and forensic skills that these staff bring to the organisation. They work alongside colleagues from a non-police background, so that investigation teams are balanced and equipped to deal with the array of challenges which arise in an independent investigation. In 2011, the Commission established a training scheme to help candidates from a range of backgrounds become IPCC investigators. Five trainee investigators were initially recruited and the scheme has recently been extended further.
6. The IPCC's current powers include:
 - **Investigative powers:** forces are required by law to refer certain incidents to the IPCC – they include deaths or serious injuries following police contact as well as other categories such as serious sexual assault or corruption. The IPCC then makes a mode of investigation decision and has the power to independently investigate cases, manage or supervise police investigation of cases, or decide cases can be investigated locally by the police without oversight.
 - **An appeal function:** complainants who are unhappy with how the police dealt with their complaint may submit an appeal to the IPCC.
 - **A guardianship function:** the IPCC has a duty to improve public confidence and oversee the performance of the complaints system. The IPCC carries out its guardianship role alongside key stakeholders and in relation to priority areas to seek to ensure that improvements are delivered across the system.
7. In March 2010 the IPCC launched a formal position setting out how we expect the police service to use stop and search powers in a way that that is fair, effective, and carries public confidence. One of the key elements of this position is our belief that whenever an individual is stopped, irrespective of the power being used, they should be given a reason for why they were stopped. A copy of our position, which we have also applied to our work around Schedule 7 is available online at http://www.ipcc.gov.uk/Documents/stop_and_search_policy_position.pdf.

Our experience of Schedule 7

8. In 2010 the IPCC became concerned about how police officers in England and Wales were using Schedule 7 powers after we were approached by a number of stakeholders who expressed concern that powers were being used in a way that was having a disproportionate negative impact on ethnic minorities, and in particular British Muslims, who were entering or leaving the UK.

9. Schedule 7 gives officers operating at the UK's ports and borders the power to stop, search, question and detain a person travelling through a port, airport or border area for the purpose of determining whether they are or have been involved in the commission, preparation or instigation of acts of terrorism. Despite being one of the widest ranging stop and search powers it remains one of the few which can be used without suspicion.
10. Our contact with stakeholders has shown us that Schedule 7 impacts on public confidence in a similar way to other stop and search powers. Many of those stopped under Schedule 7 are likely to have been stopped under other powers by officers outside of the port and border environment, and undoubtedly these experiences will shape their interactions with ports officers using Schedule 7. Similarly, experiences linked to Schedule 7 will also undoubtedly impact on future interactions with the police outside the port and border environment and will impact on public perceptions of counter-terrorist activity.
11. The IPCC heard directly from a number of stakeholders who had been stopped by officers using Schedule 7 powers, who expressed concerns about the lawfulness of the stop (in particular the lack of information they were given about why they were stopped), the questions they were being asked, the conduct of the officers stopping them, and the overall effectiveness of the power in preventing or deterring acts of terrorism. Specific concerns included the belief that:
 - Officers only stop people based on their appearance and perceived ethnicity, rather than because of intelligence.
 - Schedule 7 is being used by officers to gather intelligence, rather than directly to prevent acts of terrorism.
 - Some people are repeatedly stopped despite no evidence having been found, leading to feelings of victimisation and discrimination.
12. To identify whether improvements could be made to policy governing the use of the power, or practice on the ground, the IPCC decided to use its call-in power and ask forces to refer all complaints and conduct matters arising from the use of the power with effect from 1 July 2011. A decision was then taken to supervise these matters to enable it fully to discharge our oversight responsibilities.
13. To date 24 cases have been referred. Although the number received is relatively low this is not an accurate measure of dissatisfaction, but could be due to a number of factors:
 - Low levels of confidence in the complaints system among the groups and individuals being stopped.
 - Low levels of awareness about the complaints system, specifically about how to make a complaint, and how this will be dealt with.
 - An unwillingness to continue any further contact with the officers involved in the stop.
 - The stigma of being stopped under schedule 7, and the implication that the individual could have some involvement in terrorist activity.
 - The fact that many of the people are about to embark on journeys, or are entering the country after journeys, and are often tired, and just want to get on with their holidays, their journeys or their lives.
14. We hope that ACPO, and individual forces can work with us to raise awareness of the complaints system for people being stopped under Schedule 7. Given the low number of complaints we also feel that it is essential that forces explore how they can capture feedback on peoples' experience of Schedule 7 in other ways, for example through feedback surveys or other research.

15. The IPCC's efforts to conclude its supervision of cases received to date have been affected by the reluctance of some forces to share information to enable the IPCC to understand why individuals have been stopped, and to ascertain whether relevant guidance in the code of practice was followed. Inevitably the IPCC cannot fully discharge its oversight responsibilities and agree that investigations have met the terms of reference until this issue has been overcome. We are continuing to work with the forces concerned to try to find a solution to this issue.
16. From our experience to date, people's perceptions of how they were treated when they were stopped for the purposes of initial screening often play an important part in setting the tone of the encounter, their cooperation with the officers involved, and determining whether or not they go on to complain about the treatment they have received. From the cases we have seen to date we have been able to identify a number of recurring issues:
- Complaints about the behaviour/conduct of officers during the initial interaction with the person being stopped – with officers being described as being aggressive, threatening and intimidating.
 - Unhappiness about the way that the initial encounter often takes place in public view, leaving the person stopped feeling humiliated and embarrassed.
 - Failure of the officers carrying out the stop to provide information about why they were stopping the person, the power being used, the person's rights, and the next stages in the process.
 - Failure or refusal of officers to identify themselves, to provide their names, or show identification.
 - Seizure or confiscation of money which individuals are carrying to give to friends or family overseas, but which officers claim is being used to fund terrorism.
17. Once initial screening or examination is underway those being stopped have complained about the probing or personal nature of questions and their perceived relevance in helping to prevent acts of terrorism.

After the examination has ended some people have been unhappy, and subsequently complained about the fact that officers have failed to provide them with a written record of the stop or with assistance with their ongoing journey, for example if questioning leads to them missing flights.

Response to consultation questions

18. Our response to the consultation focuses on the themes raised in the consultation questions which we feel relate to the issues arising from our work to date.

Maximum period of examination

19. The IPCC has no specific view on whether the maximum period of examination should be changed. We believe that examinations should be stopped at the earliest possible opportunity to minimise disruption to the person who has been stopped if no evidence to justify ongoing examination has been found.

Reviewing the examination

20. To help ensure that the examination continues for no longer than is necessary, we suggest that it would be useful for a supervisor to review the case where an examination reaches the one hour point. We feel that this would be a suitable point for review as the majority of examinations conducted between 1 January 2009 and 31 March 2012 only lasted for an hour.
21. Before the examination is allowed to continue the examining officer should be required to justify why the examination needs to continue. The consultation paper provides some examples which

include carrying out a search, taking fingerprints and/or DNA evidence, or allowing an individual access to an interpreter or legal adviser. Other reasons may also be valid, but these should be considered by the supervisor on a case by case basis, and their validity determined at the supervisor's discretion. To date the IPCC has not seen any evidence of an examination being continued where inappropriate grounds have been provided.

22. A supervisor should conduct a further review at the end of every additional hour that the examination continues or if a decision is taken to detain the person.

Examination, detention and legal rights

23. Where a person is stopped under Schedule 7, this can result in him or her missing flights, being divided from travelling companions, or cause worry and anxiety for people waiting to meet the person at the end of the journey and for the person being stopped.
24. The IPCC believes that any individual being stopped under Schedule 7 could be given some additional legal rights at the start of the encounter which could help to address some of the issues that we have identified in our work to date.
25. Where the encounter (initial screening plus examination) lasts beyond 15 minutes, we believe that a person being examined, irrespective of whether or not they have been detained, should be given the right to request that a friend, relative or someone known to them, be informed that they are being questioned and of where the examination is taking place.
26. When the examining officer makes a decision to conduct questioning beyond initial screening they are in essence "detaining" that individual for the purposes of further questioning. Where the individual refuses to cooperate or insists on trying to leave they can then be detained in the sense in which it is applied to Schedule 7. The IPCC believes that it may be in the best interests of the person being examined for them to be formally detained if the decision is made to continue the examination beyond initial screening so that they can take advantage of the legal benefits that this brings, should they wish to do so. For example, access to legal advice, even if this extends the period of examination within the legal timeframe. This would provide an additional safeguard to ensure that person being examined is fully aware of their rights during the examination.

Recording examinations

27. To enable more effective scrutiny of examinations which have been carried out, and to bring this more in line with a more traditional approach to a police interview, we feel that it would be beneficial for all examinations to be recorded, irrespective of whether or not the person is being detained.
28. The ideal situation would be for all examinations to be carried out in interview rooms where there are facilities to record video and audio of the examination. Greater effort should be made to ensure that suitable facilities are available at locations where Schedule 7 stops are frequently carried out.
29. Where installation of this type of equipment is not practical because of the location or the cost, forces should explore use of alternatives. In the context of stop and search more generally, a number of forces are experimenting with technologies such as Airwave and Body worn cameras to record encounters. It may be useful to consider whether a similar approach could be used for Schedule 7.
30. Where interview facilities with suitable recording equipment exist, these should always be used even if doing so causes delay to the examination.

Training and accreditation of officers

31. The IPCC welcomes the proposal for officers to be trained and accredited before using Schedule 7 powers to help improve the quality and consistency of encounters. To be effective training should:
- Draw on lessons learnt from complaints and conduct matters
 - Draw on other feedback from those being stopped and officers using the power
 - Teach officers how to initiate and manage encounters in a way that encourages cooperation rather than hostility and confrontation
32. Officers should receive training on any changes to the law, and should receive regular refresher training to ensure that their skills and knowledge remain up to date.
33. Although our preference would be that only trained and accredited officer's use Schedule 7 powers we recognise that in exceptional circumstances it may be necessary for other officers to use the power in order to prevent or deter acts of terrorism. In such circumstances senior officers must ensure that officers being called upon to use the power are provided with some form of briefing which is sufficient to enable them to understand how the power should be used. Officers inexperienced in using the power should either be paired with an officer who is trained and accredited, and who takes the lead in examinations, or else be under the close supervision of a trained officer.

Use of strip search

34. The IPCC is concerned about the frequency with which strip search is used in the context of stop and search activity more generally, and the way that strip searches are undertaken.
35. In the context of Schedule 7, limiting the use of strip search to when there is reasonable suspicion that the individual is involved in terrorism, or that they are concealing an item that may be used to cause harm, would go some way to ensuring that the power is not overused.
36. Where a strip search is viewed as necessary it should only be undertaken by trained officers who should make all reasonable efforts to ensure that the person being searched understands why the search is being undertaken, and that the search is conducted out of public view, in accordance with relevant guidance.
37. Where officers feel that they have reasonable suspicion which merits the use of strip search, the introduction of a requirement for a supervising officer to authorise the strip search would provide an additional safeguard to ensure that the power is only used where appropriate.
38. Where a strip search is undertaken this needs to be documented, and evidence of any items found needs to be documented. Supervisors should take steps to monitor the use of strip search to ensure that powers are not abused, and that opportunities to improve individual practice can be identified.

Taking of intimate biometric samples

39. We feel that the power to acquire intimate biometric samples should be removed as the consultation document already acknowledges that taking such samples is highly intrusive and that intimate biometric samples provide few advantages over other samples and that the power could be removed without compromising operational effectiveness.
40. Separately the IPCC has concerns regarding the retention of biometric data, and welcomes proposals introduced by the Protection of Freedoms Act 2012 for biometrics to be deleted after 6 months unless an independent reviewer agrees that it is necessary to keep them for longer. To help maintain public confidence we feel that the person from whom biometrics have been collected should be notified when data relating to them has been deleted, or else notified that a decision has been made to continue holding it. Where a decision has been made to retain the

data, a clear explanation of the reasons should be given. We feel that these measures will go some way to help provide confidence that powers are being used properly.

Enabling effective scrutiny

41. We believe that whenever an individual is stopped, irrespective of the power being used, they should be given a reason for why they were stopped.
42. In order to harness greater public understanding, efforts should be made to ensure that Schedule 7 activity is consistent with the terrorist threat and commensurate with the existing threat level at the time of its use.
43. Given the limited number of complaints received, and what we know about people's willingness to complain, we do not feel that the evidence which exists to date provides a true indicator of satisfaction with how Schedule 7 powers are being used. In light of this we feel that it is vital for forces to ensure that they have other mechanisms in place to monitor how powers are being used, to examine the impact of powers on public confidence, and to identify any potential misuse.
44. In the absence of complaints, use of feedback surveys could provide a useful indicator of satisfaction.
45. We feel that it is also essential to ensure that mechanisms are in place which enable forces to spot any potential misuse of powers by officers, including any disproportionality in use against certain communities, and to identify any areas for improvement. Some work nationally would also be beneficial to understand how use of powers varies by, for example, port and force area.
46. Ensuring that all examinations are consistently recorded, irrespective of their length, would also go some way to helping ensure that sufficient data is available to enable effective analysis.
47. The IPCC actively supports initiatives such as the ACPO-led National Schedule 7 Accountability Board which provides a vital opportunity for public scrutiny of how Schedule 7 powers are used. We hope that this forum continues, and that ACPO are able to share more information with the group to enable them to carry out more effective scrutiny of how the power is used.

Independent Police Complaints Commission (IPCC)

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