

CONSULTATION RESPONSE

TO	Police Transparency Unit, Home Office
FROM	The Independent Police Complaints Commission (IPCC)
REGARDING	Consultation on police powers of stop and search

The IPCC and its remit

1. The IPCC's primary statutory purpose is to secure and maintain public confidence in the police complaints system in England and Wales. We are independent, and make decisions independently of the police and Government. We investigate the most serious complaints and incidents involving the police, as well as handling certain appeals from people who are not satisfied with the way police have dealt with their complaint.
2. The IPCC was established by the Police Reform Act 2002 and became operational in April 2004. Since that time our remit has been extended to include:
 - Police and Crime Commissioners and their deputies
 - the London Mayor's Office for Policing and Crime and his deputy
 - the Serious Organised Crime Agency (SOCA)
 - The National Crime Agency (once operational)
 - Her Majesty's Revenue and Customs (HMRC)
 - Staff who carry out border and immigration functions who now work within the UK Border Force and the Home Office.
 - certain non Home Office police forces (including the British Transport Police and the Ministry of Defence Police)
3. The majority of complaints against the police are dealt with by the relevant police force without IPCC involvement. However, certain types of complaints and incidents must be referred by the police to the IPCC, including when someone has died or been seriously injured following direct or indirect contact with police. We then decide what level of involvement we should have in any investigation of the matter. We may choose to conduct our own independent investigation, manage or supervise a police investigation, or decide that the matter can be dealt with locally by the police without IPCC oversight.
4. In 2009 we launched a position statement, developed in partnership with stakeholders, setting out how we expect forces to use stop and search powers.

Stop and Search: Our experience

5. Concerns about how stop and search powers are used have shaped and often undermined the relationship between the police and the communities they serve, particularly BME communities. Despite considerable work in recent years significant concerns remain about whether powers are being used in a way that is lawful, fair, effective or carries public confidence.
6. Stop and search has always been an area of concern for the IPCC and this response is based on our experience of handling complaints and conduct matters arising from the use of stop and search powers, and from evidence obtained during engagement with the communities most affected.
7. Over the past ten years, we have identified a number of themes in relation to the use of stop and search:

The complaints system

Members of the Public who are dissatisfied with their encounters with the police can use the Police Complaints System. Our experience demonstrates that:

- the number of complaints made about stop and search is not a good indicator of how fairly or how effectively stop and search powers are being used. Despite the low number of complaints there is considerable anecdotal evidence to suggest that stop and search is one of the major causes of tension between the police and young people as well as men from BME communities.
- members of the public who appear to have negative experiences of stop and search tend to be the people who already have the lowest confidence in both the police and the police complaints system, so are unlikely to use the formal complaints system. This includes people from BME communities, particularly young people who feel that they are unfairly targeted in the exercise of these powers. In our 2011 public confidence survey 40% of BME respondents and 26% of young people aged 16-24 were worried about being harassed by the police if they made a complaint. This also mirrors evidence from our engagement with other groups, including young BME people we met through contact with Newham Monitoring Project.
- where complaints about stop and search are made, they rarely meet the threshold for referral to the IPCC (which is defined by legislation).

As part of a recent review looking at how the Metropolitan Police Service deals with complaints involving allegations of racism we examined 511 cases which had been received by the MPS. Approximately 10% (53) of these cases arose from stop and search encounters. As part of this work we found that:

- the majority of the cases were usually investigated locally at borough command level, and only come to us if the complainant appeals against the local decision;
- many cases often end up being unsubstantiated because of conflicting evidence given by the complainant and the officer(s) involved;
- officers appear to have a lack of understanding of forms of racism other than the overt use of racist language;

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- officers only tend to be dismissed for racist conduct when there is overt racism supported by independent evidence;
- local resolution is not being used as an effective tool to deal with complaints at a local level.

Quality of the encounter

Most of the complaints the IPCC receives in relation to the use of stop and search powers focus on the quality of the encounter and the rationale behind the stop. Our experience demonstrates that:

- public perception about how officers treat individuals during stop and search encounters will affect the way that members of the public respond to the use of stop and search powers. Stories of negative encounters will have significant resonance in the community and further perpetuate the public perception that these powers are used unfairly;
- we receive a number of complaints where members of the public have alleged that officers have used racist or negative words/names during the stop and search. In these cases the complainant's focus appears to be on the use of these words and the alleged failure by the police officer(s) to treat them with courtesy, dignity and respect during the encounter;
- where the IPCC has found in favour of a complainant on appeal, it has sometimes been because officers have used powers incorrectly, due to lack of experience or knowledge. In 2013 HMIC's report, 'Stop and Search Powers: Are the police using them effectively and fairly?' showed that only 21 forces provided officers with any form of refresher training around stop and search which could account for this problem;
- repeated unlawful use can often go unnoticed because supervisors do not examine the content of stop and search records, or challenge officers on any issues identified. This was highlighted in the recent HMIC inspection.
- with changes to recording practice some forces are losing the ability spot whether individuals are being repeatedly stopped and search, without just cause;

Public perceptions

Since the launch of our stop and search position we have engaged with community groups, individuals, schools and colleges and stakeholder organisations to gain a deeper understanding of public perceptions around the use of stop and search powers. Our experience has demonstrated that:

- a large number of people believe that, because of their ethnicity and age, being stopped and searched on a regular basis is an inevitable and unchallengeable part of their day to day life. We have heard vigorous representations from young people particularly young men from Black and Asian communities who feel that they are unfairly targeted by the police. Our understanding is that this is probably the leading cause of tension between young people and the police and has a significant impact on the potential for young people to engage positively in the policing of their communities;

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- when people are stopped and searched and have a bad experience, this impacts on their confidence in the police but it also has a wider impact on the people close to them – their friends, family members and the wider community;
- members of the public have different levels of awareness about their rights and responsibilities when being stopped and searched, and how these might differ depending on the power being used.
- where police forces have proactively engaged with communities to explain how powers are being used, to involve them in decision making or in reviewing stop and search records, or to keep them informed of outcomes, seek their feedback on use, or involving them in reviewing complaints, this has helped to improve both the relationship with the community and the way that powers are used;
- members of the public recognise that stop and search can be an important tool to fight crime, if used properly;
- members of the public are confused about the difference between stop and search and stop and account.

Geographical Variances

The IPCC covers forces across England and Wales. Although a significant amount of our engagement with stakeholders takes place in London, our position statement has been developed based on feedback and consultation across England and Wales. In developing a national perspective our experience has demonstrated that:

- when talking about how stop and search powers are used it is important to avoid London-centricity. Police forces use of powers varies depending on the area they operate in, the policing challenges they face, and the communities they police. Communities are also affected differently as a result of their historic relationships with the police and the way that their interactions with the police have been shaped by experiences of stop and search. As people who handle complaints or who develop policy we need to be aware of these differences, and recognise the impact they have, to avoid making generalisations and to produce solutions which work for the communities involved.

Comments on the consultation document

Fairness

8. We believe that it is not enough for the exercise of stop and search powers to simply be within the law. Where stop and search powers are used by the police, they should be used in a way that is fair, effective and carries public confidence.
9. We also believe that stop and search powers should only be used by officers who have been trained to use them, and who have demonstrated that they understand how to use them effectively, lawfully and fairly.
10. Officers have access to a range of powers which enable them to stop and search individuals in a range of situations, either with or without reasonable suspicion.
11. In a position statement, developed in partnership with stakeholders, which was issued in June 2009 we set out some basic principles to help improve the way police use stop and search powers.

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12. In our position we say that every officer who uses stop and search powers – should be able to answer the question: “Why did you stop me?” It is not enough to say “Because I can”, or “I don’t have to give a reason”. The officer should be able to respond by explaining the reasons, which could include citing the intelligence available.
13. Our position applies equally to powers that currently do not require officers to have reasonable suspicion before stopping someone, such as Section 60 or Schedule 7.
14. Providing an explanation to the person being stopped is a basic but critical step to help improve the quality of the encounter. It can also help to counter any risk of unfairness, discrimination, or loss of confidence.
15. A full version of our stop and search position can be found on our website at www.ipcc.gov.uk.

Effectiveness

16. We agree that stop and search can be an important tool for preventing and detecting crime and anti-social behaviour.
17. The following could be used to measure whether stop and search powers are being used effectively:
 - evidence that the power is being used in a way that is lawful and in accordance with Codes of Practice;
 - feedback from people being stopped;
 - evidence that the object of the search has been found (in 2013 the report published by HMIC, ‘Stop and Search Powers: Are the police using them effectively and fairly?’ showed that only seven of 43 forces record this);
 - evidence of cautions, arrests, charges, prosecutions and convictions resulting from use of powers;
 - evidence of impact on crime figures;
 - feedback from the local community/reference groups;
 - complaints.
18. We recognise that the number of complaints made about stop and search is not a good indicator of how well or how effectively stop and search powers are being used. Forces also need to look at other ways of collecting feedback from people being stopped. Some alternatives which we have come across include:
 - developing an app which gives people more information about their rights and allows them to provide feedback on their encounter;
 - giving people a QR code at the end of a stop which they can then scan with their smartphone and be directed to more information about stop and search, and download a copy of their stop and search record;
 - using Airwave or mobile technology to enable people to provide instant feedback on their encounter;

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- conducting online or telephone surveys of people who are stopped;
 - setting up community reference groups or arranging community meetings (in 2013 the report published by HMIC, 'Stop and Search Powers: Are the police using them effectively and fairly?' showed that almost half of all forces did nothing to understand the impact of stop and search encounters upon communities and only a very small number proactively sought the views of the people and communities most affected);
 - conducting surveys to better understand communities' experiences of stop and search.
19. A number of forces have also developed information which they give to people at the end of the encounter which provides details about the power being used, information about rights, and details of how to provide feedback or make a complaint.
20. We believe that there are a number of steps that forces can take to improve the way they ensure powers are used effectively. These include:
- introducing a designated individual who takes corporate responsibility for the force's use of stop and search powers, and for work with communities;
 - more proactive monitoring of stop and search records to check whether appropriate grounds are being given and whether correct powers are being used, and to identify opportunities for intervention;
 - monitoring complaints and feedback to identify patterns in individual misuse and opportunities for intervention or organisational learning;
 - developing mechanisms to enable them to identify any disproportionality in the way that stop and search powers are being used against certain sections of the community in light of recent work by the Equality and Human Rights Commission (EHRC);
 - engagement with communities leading up to and following the use of blanket powers such as section 60, to identify ways of improving public confidence and future practice;
 - improving the visibility of data relating to the use of stop and search powers and outcomes, and also complaints received, to enable greater scrutiny by members of the community and other agencies;
 - work with community led groups to introduce independent scrutiny of stop and search records – for example Suffolk Constabulary's work with Ipswich and Suffolk Council for Racial Equality;
 - engagement with community led groups to raise awareness about how powers are being used, to discuss how their use could be improved, and to address community concerns – for example the Metropolitan Police Service's work with the Hackney Young People's Stop and Search Monitoring Group;
 - ensuring that all officers using stop and search powers receive basic training on stop and search, together with regular refresher training, which includes information about any changes in the law as well as input focused on helping officers to improve the quality of encounters, and to avoid using powers in a way

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that is discriminatory – this could also include input from people who have been stopped and searched;

- ensuring that mechanisms are in place to enable forces to identify good practice and organisational learning from other forces, or work undertaken by other agencies such as HMIC, the EHRC and others;
21. A number of forces, such as Greater Manchester Police, are using Airwave technology to record stop and search encounters. We recently visited GMP to find out more about how their new system works, and how it has helped them to improve the quality of encounters by enabling supervisors to identify potential misuse of powers while the stop is in progress. There is clearly a financial cost to introducing similar systems, but initial feedback appears to suggest that they have the potential to avoid some of the problems attached to paper based recording, while also enabling forces to map, analyse and monitor stops being undertaken.
22. At a local level Police and Crime Commissioners and Police and Crime Panels have the greatest potential to improve the way forces use stop and search. They have a key role in providing scrutiny to ensure that powers are used in a way that is lawful and non-discriminatory, and in a way that is effective and carries public confidence. They also play a key role in ensuring that stop and search complaints and appeals dealt with locally are handled in a robust and customer-focused way that supports the principles of fairness, effectiveness, and public confidence which are central to the IPCC's position on stop and search. A number of PCCs have already taken steps to facilitate independent scrutiny of stop and search data, and others have launched local initiatives to enable them to understand how their local communities are affected, and how officers can improve the way powers are used.

Bureaucracy in policing

23. We believe that it is vital that forces continue to keep records of stop and search encounters so that there can be effective scrutiny of how powers are being used. Separately, we remain concerned that a number of forces have chosen to no longer record stop and account, a practice which has an equally significant impact on the individuals being stopped, and the communities affected.
24. We support the need for a national standard for the information that should be recorded in relation to stop and search, to allow effective scrutiny and comparisons to be made.
25. In light of our experience, where forces do not record the name of the person being stopped, consideration should be given to how else they can keep track of whether specific individuals are being repeatedly stopped without any appropriate outcome.

Other comments

Our work

26. Since the launch of our stop and search position we have undertaken a variety of work to contribute to national debates around stop and search and t in practice. Examples of past activity have included:
- Involvement in the external reference group supporting the recent HMIC thematic inspection on stop and search;

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- Engagement with the College of Policing to help shape the development of Authorised Professional Practice (APP) around stop and search;
- Input into officer training, in particular for officers based in a number of London boroughs;
- Engagement with representatives from StopWatch and a variety of other groups seeking changes in the way that stop and search powers are used;
- Involvement in the ACPO-led Police Public Encounters Board (a forum which provides an important opportunity for community groups and other non-police organisations to come together with representatives from the police service to share their experiences of stop and search, to scrutinise current use, and to contribute ideas to improve future practice).
- Engagement with young people affected by stop and search, through sessions at schools, involvement in initiatives like Takeover Day, and input into community meetings and community-led monitoring groups to understand their experiences and raise awareness of the complaints system.

Development of Authorised Professional Practice

27. We welcome the opportunity to contribute to the further development of Authorised Professional Practice around stop and search which is being developed by the College of Policing to help ensure that the police service is able to learn from the lessons arising from our work.
28. We think that an important part of this is developing the awareness and understanding of officers about engaging with BME communities and young people. This can only be developed through effective engagement with these groups to ensure that there is an understanding of what causes the most concern in the exercise of stop and search powers in the community.

Provision of information

29. In our experience, there remains confusion within the police service about whether the GOWISELY mnemonic which has been previously taught to officers to help them remember the information they should provide during a stop and search encounter remains valid in light of recent court judgements, or whether its use would make stops unlawful. The IPCC suggests that the Home Office, the Association of Chief Police Officers or the College of Policing may wish to provide clarity on this issue.

Schedule 7

30. We remain concerned about how officers are using powers under Schedule 7 of the Terrorism Act 2000 at the UK's ports and borders.
31. Although it is suggested in some quarters that Schedule 7 is not a stop and search power, we recognise both from our handling of complaints and our engagement with community groups that in the eyes of the public it is certainly seen as such. No distinction is drawn by those who are the subject of this power or other stop and search powers on the streets.
32. From 1 July 2011 all Chief Officers have been required to refer all complaints and conduct matters arising from the use of Schedule 7 to us, for us to determine how they

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should be investigated. We are currently undertaking supervised investigations into all of the cases where people have alleged that powers have been used unlawfully, which have been received since this date.

33. We have fed emerging findings from our work into the recent Home Office consultation on Schedule 7 and to the ACPO National Coordinator for Protect and Prepare to help improve practice, and have engaged with a number of stakeholders to raise awareness of our work in this area.
34. Prior to its closure we sat on the ACPO-led National Schedule 7 Accountability Board which provided an important platform for a variety of non-policing stakeholders to come together to scrutinise and challenge the way that stop and search powers have been used.
35. It is vital that forces continue to engage with their local communities to understand the impact of Schedule 7. We also hope that ACPO and other bodies take steps to draw together findings from local engagement activity to help identify any emerging issues, share good practice, and generally contribute to an improvement in the way powers are used.

Independent Police Complaints Commission

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