

CONSULTATION RESPONSE

TO	Police and Crime Committee, London Assembly
FROM	The Independent Police Complaints Commission (IPCC)
REGARDING	Investigation into 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.

Our response

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. 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.

Our work

8. 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.
9. 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.
10. 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. Providing an informed explanation is a basic but critical step in helping to improve the quality of the encounter and ensure that it does not lead to reduced confidence or a feeling of unfairness.
11. A full version of our stop and search position can be found on our website at www.ipcc.gov.uk.
12. 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 to drive improvement in practice. Examples of past activity have included:
 - Involvement in the external reference group supporting the recent HMIC thematic inspection on stop and search;
 - 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 within a number of London Boroughs;
 - Engagement with representatives from StopWatch and a variety of other groups who campaign for 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

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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 through input into community meetings and community-led monitoring groups to understand their experiences and raise awareness of the complaints system.
13. Our engagement work has been driven by a desire to gain a deeper understanding of public perceptions around the use of stop and search powers. During engagement stakeholders have suggested 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;
 - 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 is 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.

The Complaints System

14. 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

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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).

15. 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;
- 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.

16. 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;

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- 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.

Other issues

17. Although it is not directly within the scope of this investigation, we remain concerned about how MPS officers are using powers under Schedule 7 of the Terrorism Act 2000 at the UK's ports and borders.
18. 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.
19. From 01 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 should be investigated. We are currently undertaking supervised investigations into all of the cases received since this date. They include allegations that powers have been used unlawfully, and we are currently supervising 18 investigations arising from complaints relating to the use of these powers by MPS officers.
20. The IPCC remains disappointed that the MPS has refused to comply with the terms of reference we have set for investigations into complaints about the use of Schedule 7 powers, namely to investigate the rationale for stopping and questioning the individuals involved. The service has failed to provide evidence that it has properly investigated these matters as we have required, despite the threat of legal action. The IPCC will continue to use its powers, and pursue legal action to ensure that these matters are properly investigated.

Independent Police Complaints Commission

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