

Stop and search – renewed powers, less accountability?

Rebekah Delsol detects worrying trends

This year marks the thirtieth anniversary of the Brixton ‘riots’: a clear demonstration of how the abuse of police powers can contribute to the breakdown of community trust and confidence. In 1981, anger over ‘Swamp 81’ – a massive stop and search operation – erupted in urban unrest in Brixton. Similar tactics used in other cities led to further outbreaks of public anger in Manchester, Liverpool and the West Midlands. Today, stop and searches remain among the most common and controversial interactions between the police and the public.

The *Police and Criminal Evidence Act (PACE)* was introduced in 1984 in the wake of ongoing concerns about the use of police powers. PACE introduced a national stop and search power, ending the ‘postcode lottery’ that saw wildly varied powers and recording standards used by different forces. The safeguard of reasonable suspicion was introduced alongside minimum recording standards. The process of recording stop and search was designed to make officers consider carefully their grounds for stopping people and to inhibit them from stopping people in an arbitrary fashion. Recording also allowed for the monitoring and publication of search statistics and provided a management tool for supervisors to identify where officers might be incorrectly using their powers.

Over two million stops (or ‘stop and accounts’) and one million searches took place in 2008/2009 (Ministry of Justice, 2010). National statistics show that black people are stopped and searched by the police at seven times and Asians at more than twice the rate of whites (ibid.).

We have become inured to the headlines generated by such numbers and forget that stop and search represents a deprivation of people’s liberty and right to walk the streets unfettered by police intrusion. For the individual stopped and detained the experience, sometimes of frequent repeat encounters with the police, can be frightening and humiliating. Disproportionate stops and searches of ethnic minorities serve to stigmatise whole groups and continue to drive mistrust between communities and the police.

Without reasonable suspicion

‘Reasonable suspicion’ should require officers to have objective and individual grounds for conducting a stop and search, rather than generalisations or stereotypical images of certain groups or categories of people as more likely to be involved in criminal activity. ‘The provision is a rare example of the law attempting to take into account the social reality of policing on the streets’ (Sanders and Young, 2000). Yet an increasing number of powers allow people to be searched without this fundamental safeguard.

Section 44 of the *Terrorism Act 2000*, was one such example. It allowed police officers to stop and search vehicles and pedestrians within authorised areas for articles that could be used for terrorism even without reasonable suspicion that such articles were present or that

STOP AND SEARCH CARD

I pledge to waste your time if you decide to waste mine

Let your legal representatives know your wishes and keep this card with you at all times

In the event of a stop and search being intrusive, unlawful or malicious I pledge to issue a formal complaint to the relevant Police Professional Standards Department.

As these complaints are investigated by fellow police officers redress is unlikely to be forthcoming. I therefore pledge to pursue the issue through the IPCC and if the situation permits to issue civil proceedings against the chief constable or commissioner of the relevant police force, seeking an admission of liability and damages.

Regardless of the outcome, you will have your time wasted for wasting mine.

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those stopped were terrorists. Huge geographical areas, such as the whole of London, were continuously defined in secret as stop and search

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zones by the police, subject only to the Home Secretary’s approval (which was never refused). A majority of those stopped under section 44 were ethnic minorities. Although it did not lead to the apprehension of a single terrorist, it came to be seen

by the police in the affected areas as entitling them to stop and search at will and was used against peace protesters, journalists, tourists and school children. Following a series of domestic court decisions upholding this pattern of use, in 2010 the European Court of Human Rights, in the case of *Gillan* (European Court of Human Rights, 2010), struck down section 44 as being ‘neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse’.

Another such power is section 60 of the *Criminal Justice and Public Order Act 1994*, originally introduced to tackle the threat of serious impending violence around specific events such as public order and football hooliganism. Section 60

allows local Inspectors, without external checks to designate an area in which people can be stopped and searched without individual suspicion 'in anticipation of violence' for 24 hours. As with section 44, the use of repeat authorisations has led to whole inner city areas being continuously subject to section 60 stops and searches. Since its introduction, there has been a sharp increase in the use of the power, from just 8,000 section 60 stops and searches in 1997/1998 to 150,000 in 2008/2009.

Unsurprisingly, granting such broad discretion – allowing officers to fall back on generalisations and stereotypes about who is involved in crime – has meant that the power has been used extensively against black and Asian communities. Between 2005/2006 and 2008/2009 the number of section 60 searches of black people rose by more than 650 per cent. In 2008/2009, black people were stopped at 27 times and Asian people at six times the rate for whites under section 60 powers (Ministry of Justice, 2010).

Prior to the 2010 General Election, the Conservatives favoured the removal of the requirement of reasonable suspicion from all stops and searches and, despite the Coalition government's pledge to 'restore civil liberties', little has been done to assuage concerns about such stop and search powers (HRJC, 2011). A new section 47a – a terrorism stop and search power, brought in by remedial order while legislation is going through parliament – does little to curb the broad discretion condemned by the European Court of Human Rights. It requires senior officers to have only a 'reasonable basis' for their belief (as opposed to suspicion) as to the necessity of authorising a stop and search zone. Although a new code of practice indicates that repeat authorisations will be discouraged and only allowed with new or re-evaluated intelligence, this will depend on the Home Secretary having the political will to refuse such police request rather than, for example, requiring them to be

placed before an independent judge. Equally, the government failed to use the recent review of PACE to introduce any safeguards on the use of section 60, even though it is equally likely following the *Gillan* judgment to fall foul of the European Convention on Human Rights.

Reduced accountability

Instead, in March 2011, government amendments to PACE eroded long-fought for mechanisms of accountability. Police forces have been given the discretion to choose whether to record stops not leading to searches (referred to as 'stops and accounts') and to reduce the recording of stop and search. Police forces can decide, without public consultation, to abolish recording stop and accounts altogether. Yet without recording, local communities will never be able to demonstrate the level of public concern that might lead police forces to reinstate recording.

In terms of stop and search, the changes remove the requirement to record the name and address of the person stopped; the outcome of the stop (arrest, fixed penalty notice, etc.); and any injury caused. This undermines the applicability of the *Equalities Act 2010*, making it impossible for individuals to prove a pattern of discrimination through being repeatedly stopped and searched. It will also make it more difficult for individuals to substantiate complaints or civil claims for damages for injuries caused during stops and searches. For police forces, it makes it impossible for them to show that they are targeting their stop and searches on the right people (arrest rates following stop and search range from around 12% for those based on reasonable suspicion, down to as low as 2% for section 60 and just 0.57% for section 44 stops and searches).

Ostensibly designed to reduce bureaucracy, the changes to recording represent a reduction in police accountability. They will promote neither efficiency nor safety, and certainly not fairness or equality. The changes represent a reintroduction of the postcode lottery of different standards of police service in different parts of the country. As the government provides more information about crime patterns through online local crime maps, it is essential that communities

have sufficient information to be able to judge police performance in response to that crime and to provide rigorous scrutiny of the use of police powers.

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Thirty years ago, Lord Scarman described the Brixton uprising as 'essentially an outburst of anger and resentment by young black people against the police' (Scarman, 1981). In the current climate of deep public spending cuts, nobody, least of all the government, can afford to be complacent about trust and confidence in the police. What is required is more, not less, public accountability and a real commitment to once and for all eradicate racial disproportionality in stop and search. ■

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