CHAPTER 8

Stop and Search: Past Problems, Current Concerns

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Introduction

Powers to stop and search remain one of the most contentious of all police powers. Statistics repeatedly show that people from black and other minority ethnic communities[1] are disproportionately represented in the figures raising questions on its use – in particular, whether stop and search is used unfairly and discriminately. This criticism is not new. One of the contributing factors to the Brixton Riots in 1981 was the misuse of stop and search powers on black people (Scarman 1981). Almost two decades later, the inquiry into the murder of Stephen Lawrence found that the disparities in stop and search were a result of racist stereotyping by individual police officers (Macpherson 1999). The 2011 riots across England further highlighted the difficulties in the relationship between the police and ethnic minorities with stop and search identified as one of the key reasons behind the discontent (Riots Communities

[1] There are problems in using the terms 'ethnic minority communities' or 'ethnic minority people', which assume that the experience of all ethnic minority people is the same. However, as there is no consensus on the appropriate terminology, these terms are used with caution in this chapter.

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and Victims Panel 2012). A 2017 review into race and the criminal justice system also found that the disproportionate use of stop and search 'continues to drain [the] trust' of ethnic minorities in the entire criminal justice system (Lammy 2017: 20). Recently, a number of high-profile incidents, for example the vehicle stop of MP Dawn Butler and the stop and search of athletes Bianca Williams and Ricardo dos Santos have once again pushed the issue to the centre of public debate. Both cases were viewed by those involved as being triggered by racial profiling (Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) 2021).

The power to stop and search is recognised as a useful tool in policing, specifically in the prevention and detection of crime. Its purpose is to allow police officers to 'allay or confirm their suspicions about individuals without exercising their power of arrest' (Home Office 2014: para. 1.4). These powers broadly fall into two types: powers to stop and search where there are reasonable grounds of suspicion for the search, and powers to stop and search without reasonable grounds of suspicion. The latter requires pre-authorisation of a senior officer. Despite their importance, these powers give rise to tensions between the need to provide police officers with the tools to do their jobs and the impact the powers have on people subjected to the intrusions. The persistent disproportionality in the use of stop and search causes considerable and long-lasting damage. It can draw ethnic minority people into the criminal justice system unnecessarily, thereby disrupting lives. It can spark distrust and alienation amongst ethnic minority people, sometimes leading to public disorder. It can also lead to a perception that crime is more prevalent amongst certain groups of people, thus fuelling prejudices. These consequences harm police–community relations and raise questions on the legitimacy of the police.

There have been several reforms to stop and search powers over the years; however, these reforms have failed to address the actual or perceived racial bias surrounding their use. A recent review by HMICFRS (2021) on the disproportionate use of stop and search also found worrying evidence of the police not following the guidelines set out in the law. This chapter will examine the racial disparities behind the use of stop and search, focusing on the current legal provisions and police practice. Although disproportionate use does not necessarily mean discriminatory use, there is evidence to suggest that two are linked. Much of the debate in this area has focused on the police decision making process and the impact this has on the disproportionality rate. The findings suggest that police practice is at odds with the legal provisions.

Stop and Search Powers: A Brief History

The police have a range of legislative stop and search powers available to them. Early stop and search laws contained in the Vagrancy Act 1894 gave wide-ranging powers enabling the police to arrest anyone they suspected of

frequenting or loitering in a public place with the intent to commit an arrestable offence (section 4).[2] These powers, known as the 'sus laws', were highly controversial. Historically, they were used in London and other large cities that had a high number of ethnic minority populations, particularly immigrants from the West Indies (Bowling & Phillips 2002; Bridges 2015). Allegations that the laws were being implemented in a disproportionate and discriminate manner were commonplace, particularly in the 1960s and 1970s. According to Yesufu (2013: 281), this 'was an era most Black people would prefer not to talk about because of the oppressive encounters they experienced with the police'. Although the 'sus laws' were eventually abolished by the Criminal Attempts Act 1981, tensions between the police and the black population remained high. Shortly before the Criminal Attempts Act came into force, in April 1981, large-scale riots erupted on the streets on Brixton. The riots were triggered by a heavy-handed approach to policing in the area (Bowling & Phillips 2002). In an operation called Swamp 81, more than 120 officers were deployed to patrol the area with an instruction to stop and search anyone that looked suspicious. Over four days, 943 people were stopped and 118 were arrested, more than half of whom were black. A total of 75 people were charged (ibid.). In the Scarman Report (1981: para. 3.110) that followed, it was acknowledged that the disturbances were 'essentially an outburst of anger and resentment by young black people against the police' and that the mass stop searches were a contributory factor to this. However, the Metropolitan Police Force was not deemed to be institutionally racist, although the report did acknowledge that some police officers, particularly those at the lower level of policing, were guilty of racial prejudice.

Although the Scarman Report did not propose any changes to stop and search powers, continued public concern and the work of campaigning groups led to the acknowledgement that use of these (and other) police powers lacked accountability, and therefore regulation was necessary (Bowling & Phillips 2002; Bridges 2015). In 1984, the Police and Criminal Evidence Act (PACE) was passed to provide a balance between the powers of the police, including stop and search, and the rights of the public. The new legislation, however, did little to calm the tension surrounding the use of stop and search. Statistics continued to show that black people were still being stopped and searched at a disproportionate rate, suggesting that the regulation was ineffective at curbing potential abuses of power (Miller 2010).

Almost two decades after the Scarman Report, the use of stop and search was once again the subject of scrutiny. In 1997, an inquiry was ordered to examine the Metropolitan Police's handling of the murder investigation of Stephen Lawrence, a black teenager who was stabbed to death in 1993. The Macpherson Report (1999: para. 4.61) concluded that the murder investigation had been 'marred by a combination of professional incompetence, institutional

[2] In additional to the Vagrancy Act 1894, other national and local laws also gave the police powers to stop and search. See Delsol & Shiner, 2016.

racism and a failure of leadership'. Institutional racism was not limited to the Metropolitan Police Force but extended to all police forces. Institutional racism was defied as:

> The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people. (ibid.: para. 6.34)

The Macpherson Report identified the use of stop and search as a prime example of institutional racism in policing. Interestingly, this was attributed to racist stereotyping by individual police officers, rather than the unintentional factors included in the definition of institutional racism. Despite this acknowledgement, the report supported the use of stop and search as a necessary tool in preventing and detecting crime. However, it was suggested that procedures should be in place that would record and monitor stop and search practices as a way of holding individual police officers to account (recommendations 60–63).

Notwithstanding the reforms, the controversy surrounding stop and search persists. The use of stop and search was identified as one of the contributing factors that led to the 2011 riots which took place following the shooting of Mark Duggan by Metropolitan police officers in August 2011. Two days after his death, a peaceful protest against the police turned into widespread disorder. Over five days, thousands of people rioted across towns in England, engaging in acts of violence, looting and arson. Five people lost their lives, and many more lost their businesses. An investigation into the riots noted that the use of stop and search powers was a key factor in the strained relationship between ethnic minority people and the police (Riots Communities and Victims Panel 2012). Following the riots, an examination of the use of stop and search was undertaken by Her Majesty's Inspectorate of Constabulary (HMIC) (now the HMICFRS). It found worrying evidence of non-compliance with the statutory requirements set out in PACE and its associated Codes of Practice (HMIC 2013).

Stop and Search: Reasonable Suspicion

PACE is the most significant piece of legislation which codifies and regulates police powers. Section 1 gives police officers a general power to stop and search any person or vehicle where they have a reasonable suspicion that stolen or prohibited articles, such as offensive weapons, will be found. Other stop and search powers based on reasonable suspicion exist for possession of drugs (section 23, Misuse of Drugs Act 1971) or firearms (section 47, Firearms Act 1968)

and persons suspected of terrorist activities (section 43, Terrorism Act 2000).[3] Police can also stop vehicles without reasonable suspicion under section 163 of the Road Traffic Act 1988, although any search must be justified under one of the established stop and search powers.[4]

The accompanying Code of Practice to PACE, Code A (Home Office 2014) provides additional guidance on the exercise of stop and search under the most common powers.[5] It has undergone several revisions since it was first drafted, partly in response to concerns that these powers were continuing to be used disproportionally against minority groups (Bridges 2015; Welsh, Skinns & Sanders 2021). The Code sets out the legal test for reasonable suspicion which first states that the police officer must have a *genuine suspicion* that the stolen or prohibited object will be found, and second, that the suspicion must be *reasonable*. This means that there must be an *objective* basis for the search which is founded on facts, information and/or intelligence, or on the specific behaviour of the person concerned (Code A, paras. 2.2 and 2.6).

Recognising the risk that stop and search powers could be misused, Code A states that these powers must operate fairly and without discrimination. The Code further instructs that personal factors such as age, race, religion or sex (and any of the other relevant protected characteristics set out in the Equality Act 2010) should not form the basis of reasonable suspicion, nor should there be generalisations or stereotypical images about certain groups or people's involvement in criminal activity (para. 2.2B). Welsh, Skinns & Sanders (2021: 66) have noted that 'it is remarkable that a legislative code of practice directs, in effect, that people should not be stopped just because they are black or Muslim, and is a rare example of the law attempting to take into account the social reality of policing on the streets'.

Despite the attempt to root out racial and other discrimination, in practice, applying the concept of reasonable suspicion is problematic. Even though the number of stop and searches have decreased over the last 10 years for every ethnic group, overall, people from ethnic minority communities continue to be disproportionately subjected to these powers. Between April 2019 and March 2020, there were six stop and searches for every 1,000 white people, 54 for every 1,000 black people, 15 for every 1,000 Asian people, 16 for every 1,000 mixed ethnicity and 18 for every 1,000 'other' (Home Office 2021). This means that people from ethnic minority groups are four times more likely to stopped and searched compared to white people, and black people specifically are nine times more likely (HMICFRS 2021). Most stop and searches are conducted to

[3] This is not an exhaustive list of police stop and search powers. For a more comprehensive list, see Annex A of Code A, Home Office, 2014.

[4] For an analysis of the link between vehicle stop checks and stop search powers, see Pearson & Rowe 2023.

[5] A separate code exists for those people stopped and searched under the terrorism legislation. See Home Office 2012.

find drugs. The HMICFRS (2001) reports that drug searches contribute significantly to the ethnic disproportionality rate even though there is no evidence of a link between ethnicity and drug use. The grounds of suspicion for searching black people for drugs were also weaker than comparable searches on white people, and fewer drugs were found during searches on black people. This not only questions the effectiveness of the use of stop and search, but such practices also risk alienating black people and damaging police-community relations.

Although Code A states that that the most effective searches are those that are based on accurate and current intelligence or information, the HMICFRS (2021) review shows that most searches are self-generated by the police based on what they have heard or seen (55%), rather than on third party information (37%) or intelligence (9%). Moreover, black and Asian people are subjected to police-generated stop and searches more than white people. The review also notes that from the cases that were analysed, 14% had recorded no reasonable grounds of suspicion, 33% had weak grounds of suspicion, 42% had moderate grounds of suspicion and 21% had strong grounds of suspicion. Weaker grounds of suspicion are linked to lower find rates, which shows that these powers are more effective when the basis of the stop and search is lawful and fair (ibid.).

Focusing solely on the figures, however, only provides a partial picture. Statistics inform us of the number of people that have been stopped and searched according to their ethnicity, but they do not give us any insight into the decisions behind the use of these powers and whether they are in fact being used discriminately. Searches initiated by the police, whether rightly or wrongly, affect public trust and confidence in the police. It is therefore important to explore the extent to which police officer decision making contributes to the disproportionality rate and whether the process is shaped by racial prejudices.

Disproportionality and Police Decision Making

As noted, while racial disparities in stop and search practices do not necessarily mean that there is discrimination, without explanations for the differences, these powers will continue to be perceived as operating unfairly and unlawfully. Even in the absence of any concrete evidence of discrimination, disproportionality is still a problem not least because it can bring people into unnecessary and invasive contact with the police which in turn affects the legitimacy of the police (Quinton 2015). Advocates for stop and search would, however, argue that it is a vital tool in preventing and detecting crime and keeping the public safe, which outweighs any intrusions on the liberty of the person (see Bradford & Matteo 2019).

Disproportionality can only be understood in the wider context in which the police function. Street level policing involves a high level of discretion. For example, police officers must decide the areas they patrol and what incidents

they become involved with. These decisions are often based on subjective generalisations which are defined as 'broad understandings that officers have about people, places, or situations that are more likely to be associated with offending' (Quinton, Bland & Miller 2010: 35). Although such generalisations are necessary for effective police work, this can cause tension with the requirement for stop and search to be based on objective criteria as outlined in Code A.

Psychological research on unconscious or implicit bias[6] offers further insight into the police decision making process and the disproportionality in stop and search. Unconscious or implicit bias refers to the beliefs that we hold that sit outside our conscious awareness, over which we have no control, but which influence our attitudes and behaviour (James 2018). It is a process where our brains automatically make 'quick judgments and assessments of people and situations, influenced by our background, cultural environment and personal experiences' (Equality Challenge Unit 2013: 1). Whether we recognise these biases or not, these judgments are difficult to detect and control because they are entrenched deep in our thinking. These biases or beliefs, however, could 'unintentionally favour or disadvantage people who are seen to belong to particular social groups' (Quinton & Packham 2016: 14). Research shows that there are various types of implicit racial biases prevalent in society which can influence people's actions (Holroyd 2015).

The occupational culture of the police, sometimes referred to as cop culture or canteen culture, is also relevant to understanding the police decision making process. Occupational culture is not a static term and different understandings exist (see Westmarland 2008; Loftus 2010; and Holdaway 2013). Reiner (2000: 87) defines it as 'the values, norms, perspectives and craft rules that inform police conduct'. These informal rules, often passed down from experienced colleagues, shape the way police officers make decisions and carry out their everyday role. In this way, practices that are wrong can become normalised or systematic across police teams or entire forces, resulting in some people receiving different treatment to others. One of the core characteristics of occupational culture identified by Reiner (2000) is racial prejudice. The Macpherson Report (1999) also identified racism as a systematic problem in the police force, although this was mostly attributed to unwitting institutional behaviour rather than deliberate behaviour. Disproportionate stop and searches, however, were singled out as being a result of racist stereotyping by individual police officers. Even though the reforms that were proposed in the Scarman (1982) and Macpherson (1999) Reports were aimed at reducing prejudice in the police force, the impact that these reforms have had is questionable.

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[6] Although unconscious or implicit bias are broadly similar terms and are often used interchangeably, for some, implicit bias questions the extent to which these biases are unconscious, particularly in a world where we are now more aware of discrimination and prejudices. See Equality Challenge Unit 2013.

The culture within the police force has come under fresh scrutiny recently, particularly following the high-profile abduction, rape and murder of Sarah Everard in March 2021 by a serving Metropolitan Police Office, Wayne Couzens, under the pretence of a lawful arrest (Fulford LJ 2021). The investigation into the circumstances of her death revealed that Couzens had exchanged racist and misogynistic messages with fellow officers which were grossly offensive. There had also been allegations of sexual misconduct against Couzens which had not been investigated or adequately dealt with (Dodd, Topping & Haroon 2021). The case has sparked a wider debate about the attitudes and conduct of police officers, with recognition that behavioural problems in the police force are not just a case of a few bad apples (Syal 2022). In February 2022, an investigation by the Independent Office for Police Conduct (IOPC) found evidence of bullying, misogyny and racism amongst a number of police officers predominately based at Charing Cross police station (IOPC 2022). Following this, in March 2023, Baroness Casey's review into the standards of behaviour and internal culture of the Metropolitan Police Service found the largest police force in the country to be institutionally racist, misogynist and homophobic (Casey 2023). In relation to stop and search, the report found that black Londoners 'are more likely to be stopped and searched, handcuffed, batoned and tasered, are overrepresented in many serious crimes' (ibid.: 17) and that 'enough evidence and analysis exists to confidently label stop and search as a racialised tool' (ibid.: 317).

Researching the extent to which racial bias plays a part in police decisions to stop and search is difficult because of its implicit nature and the awareness amongst police officers of allegations of discrimination, particularly in the aftermath of the Macpherson Report. There is evidence to suggest that overt racism, such as the direct use of racist language, is not as prevalent or accepted as it once was (Quinton 2011, 2015; Pearson & Rowe 2020). However, indirect discrimination could help explain the disproportionality rate. Quinton's (2011) research into the formation of suspicions found that police officers take a variety of factors into account when deciding who to stop. Factors could include being known to the police, staring, avoiding eye contact, walking around aimlessly, wearing sports clothing, driving too fast or too slowly, or hanging around a certain area. Police officers often struggled to express why they were suspicious, but indicated it was down to hunches and just knowing (ibid.).

These hunches could be linked to implicit racial biases or occupational practices which see people from certain groups as more hostile than others. For example, research on racial biases shows that black people are more likely to be associated with committing a crime, carrying a weapon or being bad (Glaser, Spencer & Charbonneau 2014). This view may help explain why force is 5.7 times more likely to be used on black people than on white people (HMICFRS 2021). Black people are also nine times more likely to have Tasers drawn on them and eight times more likely be handcuffed when being compliant than white people (ibid).

Loftus' (2009: 144) research on police culture also found that the 'stereotyping of black and minority ethnic men as inherently criminal was evident' on occasions, although the response of the police to these biases varied. In some circumstances, proactive encounters with ethnic minority people were avoided out of the police's fear of accusations of racism. On other occasions, discriminatory stereotyping could result in more stop and searches on ethnic minority people. Similarly, Quinton (2015) found that police officers continue to negatively stereotype people from ethnic minority groups and that forming suspicions based on stereotypes was a likely cause of disproportionality in stop and searches.

There have been several high-profile cases recently which suggest that racial profiling continues to be an influencing factor in decisions to stop and search. In July 2020, Bianca Williams, a British athlete and her partner, Ricardo dos Santos, a Portuguese sprinter, were stopped by the police whilst travelling in a Mercedes car with their three-month old baby. They were handcuffed and searched for drugs and weapons, and their baby's details were added to the MERLIN database (IOPC 2020b).[7] Following the incident, an investigation was opened by the IOPC to investigate whether the stop and search was appropriate and proportionate, and whether racial profiling or discrimination played a part in the decision to stop their car (IOPC 2020a). The investigation concluded in February 2022 with a recommendation that the five officers involved in the incident should face gross misconduct proceedings (IOPC 2022a).

As well as adults, children can be also stereotyped as criminal. In December 2020, a 15-year-old black girl (Child Q) was strip searched at school by two female police officers who knew she was menstruating. The search took place after teachers wrongly suspected that she was carrying cannabis and called the police. During the search, there was no appropriate adult present, and the child's parents were not notified. Furthermore, no authorisation for the search had been sought (Gamble & McCallen 2022). This is in clear breach of the regulations.

Strip searches are part of the police's stop and search powers. Under Code A, there are two types of searches that could take place: a 'more thorough search' where a police officer requires an individual to remove more than their outer clothing, for example, a t-shirt (para. 3.6) and 'searches involving exposure of parts of the body' where a person is required to remove all or most of their clothing (para. 3.7). Under PACE Code C (Home Office 2019), a person can also be required to stand with their legs apart and bend down (Annex A, para. 11 (e)). Child Q was subjected to the latter type of search.

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[7] The MERLIN database is the safeguarding tool used by the Metropolitan Police Force to store details of any child aged 17 and under who has become known to the police (IOPC 2020b).

Given the intrusive nature of a strip search, under Code A, a strip search must be reasonable and necessary and conducted in private (paras. 3.6 and 3.7). It is questionable whether the search on Child Q was reasonable and necessary given that nothing of significance was found in a search of her clothing or bag (Gamble & McCallen 2022). Code C further states that a search should be authorised by a supervising officer and that in cases where the person is under 18, an appropriate adult should be present (Annex A, para. 11(c)). As noted, these safeguards were not adhered to.

Allegations from Child Q's family that she was racially profiled were upheld by a safeguarding review into the case which found that racism and 'adultification bias' was likely to be a factor in the decision to carry out a strip search (Gamble & McCallen 2022: 34). The concept of adultification is:

> a form of bias where children from Black, Asian and minoritised ethnic communities are perceived as being more 'streetwise', more 'grown up', less innocent and less vulnerable than other children. This particularly affects black children, who might be viewed primarily as a threat rather than as a child who needs support. (NSPCC 2022)

As can be seen in the case of Child Q, a criminal justice response was deemed by those in power to be more appropriate than a safeguarding approach. This indicates that there are problems of racism not just within the police force, but perhaps in other sectors too (Davis & Marsh 2020).

National statistics on the use of strip searches were released for the first time in March 2023 (Children's Commissioner 2023). The figures show that Child Q's case was not an isolated incident. Between 2018 and mid-2022, there were 2,847 strip searches of children aged between 8 and 17 years old in England and Wales. Approximately a quarter of these searches (24%) were on children between 10 and 15 years old. Fifty-one per cent of the total number of searches required no further action, which raises questions as to whether the use of the power was justified. One of the key safeguards requiring an appropriate adult to be present was not met in 52% of the cases. Moreover, of all the boys that were strip searched, 38% were black. This means that black children are six times more likely to be strip searched, while white children are around half as likely to be searched (ibid.: 9). In some police force areas, the figures are much higher. For example, of the 650 strip searches of children that took place in the Metropolitan Police area between 2018 and 2020, on average, 58% were black, as identified by the police officer (Children's Commissioner 2022). In 2018, the figure was as high as 75%. The impact of a strip search on children is of significant concern. Being strip searched is a humiliating experience that can cause long-lasting trauma and serious harm to the child, particularly in cases where the safeguards in Codes A and C have not been followed (Nickolls & Allen 2022).

In recent years, the push for more intelligence-based policing has led some forces to create surveillance tools to identify and risk-assess potential offenders. For example, the Metropolitan Police Force has set up a gang violence matrix, a database which contains the personal details of people associated with gangs (Metropolitan Police n.d.). There has been strong criticism that such surveillance tools racially profile people, particularly black boys and men. An Amnesty International report (2018) found that in July 2016, 87% of people on the matrix were from an ethnic minority background; 78% were black. This has led commentators to conclude that the 'gang label is disproportionately attributed to BAME people' (Williams & Clarke 2016: 10). The gang violence matrix is used by police to inform stop and search practices, including what areas to patrol and who to stop. This means that people who are on the gang violence database could be stopped and searched more frequently (Williams 2018).

In response to concerns about discriminatory stop and search practices, the police often explain the racial disparities in ways that do not focus on police practice, for example, by reference to high rates of offending by ethnic minorities or because of their availability in the population (Shiner 2010). Such defences are questionable though, as research shows that stop and searches in areas where there is a large number of ethnic minority people is not justified by the levels of crime in these places (Quinton 2015; Vomfell & Stewart 2021). Regarding the available population, this is shaped by societal factors such as housing policy, unemployment levels and school exclusions which result in certain groups being present on the streets during the day (Bowling & Phillips 2007); however, police discretion is still important. The available population is influenced by both organisational decisions and individual officers' decisions on where to patrol or what calls to respond to (Shiner et al. 2018; Pearson & Rowe 2020). Vomfell and Stewart's (2021) research found that deployment decisions contribute to the over-searching of black and Asian people and this, combined with individual officer bias, has an additional negative effect on black people. A report by the IOPC (2022b) also noted that the grounds for stop and search are often weak and influenced by assumptions about a person based on their ethnicity and age, rather than information and/or intelligence, or on the specific behaviour of the person concerned, as required by Code A.

These findings cast doubt on the ability of law to effectively regulate the use of stop and search. Although Code A states that reasonable suspicion should be based on objective criteria, this is problematic because, in practice, police officers need a certain level of discretion to enable them to do their job, and subjectivity is a part of this. According to Ellis (2010: 2010), it is racist police officers that need to be tackled not subjectivity. He notes:

> What appears to have occurred through the introduction of the concept of 'reasonable suspicion' into the stop and search context is a shift

> of focus from rooting out racism to rooting out subjectivity. This is both impossible, as decision-making processes cannot be divorced from subjectivity, and simply futile, as subjectivity (for example the development of personalised policing expertise) is at the heart of much good policing work.

Moreover, Quinton (2011) found that the law only had a limited impact on the police decision making process. When initiating stop and searches, police officers worked within their own understanding of reasonable suspicion and officer practice varied considerably. However, the requirement to have reasonable suspicion provided some level of constraint to unlawful practices. If this is the case for stop and search powers that require reasonable suspicion, then stop and search powers that do not require reasonable suspicion have much weaker levels of control on police discretion and discriminatory practices.

Stop and Search: No Reasonable Suspicion

Under certain circumstances, the police have the power to stop and search persons or vehicles where there are no grounds for reasonable suspicion of criminal activity. The most notable power of this type is found in section 60 of the Criminal Justice and Public Order Act 1994 which permits a senior police officer, at the rank of inspector or higher, to authorise the use of stop and search powers in specified locations where there is reason to believe that serious violence may occur or that persons are carrying offensive weapons or dangerous instruments. Authorisations are usually set for a duration of 24 hours which can be extended up to 48 hours by a superintendent. The power should, however, operate for the shortest period necessary. It should not be used to stop and search people for reasons unconnected to the authorisation or to discriminate against anyone unlawfully (Code A, para. 214A). Those in favour of section 60 view it as an essential tool in responding to violent crime (House of Commons 2020). Those against it point to its ineffectiveness, the possibility of abuse and the harm it could do to police-community relations (Brown 2020).

The power to stop and search without individualised reasonable suspicion is highly controversial. When the authorisation is in effect, any police officer can stop and search any individual or vehicle for offensive weapons or dangerous instruments without any reasonable suspicion. Section 60 was originally aimed at tackling violence at specific events, for example, hooliganism at football matches. It is now frequently used to combat knife crime, gang violence, gun crime and low-level disorder where there is no other relevant power. In the year ending March 2020, 18,081 people were stopped and searched under this power, which represents an increase of 35% from the previous year and the third consecutive annual increase (Home Office 2020). However, arrest rates

remain low. In the year ending March 2020, it was just 4% (ibid.). Even though the power should be used for the shortest period necessary, in practice, certain areas are often subjected to section 60 powers continuously (Bridges 2015; Welsh, Skinns & Sanders 2021). Moreover, these powers are being used disproportionately on members from ethnic minority groups, more so than stop and searches where reasonable suspicion is required. HMICFRS (2021) reports that black people were 18 times more likely to be searched than white people under section 60 powers. Despite the problems with section 60 powers, the government has rolled back some of the limits on the use of section 60 powers (Nickolls & Allen 2022), making it easier to authorise area-wide stop and searches that do not require reasonable suspicion.

Prior to 2011, sections 44 to 47 of the Terrorism Act 2000 contained similar provisions to section 60. Under these provisions, a person could be stopped and searched without any reasonable grounds of suspicion that the person was involved in terrorist related activity. Like stop and search under section 60, authorisation by a senior police officer was required and could be given only if it was expedient for the prevention of acts of terrorism. These provisions were repealed following the European Court of Human Right's (ECtHR) decision in *Gillian and Quinton v the United Kingdom* (2010) in which the court held that sections 44 and 45 stop and searches violated the right to privacy under Article 8 of the European Convention on Human Rights 1950. In its reasoning, the court noted that despite the 28-day limit for authorisations, the Metropolitan Police District had been operating under a continuous rolling programme of authorisation since the powers came into force (para. 81). It further acknowledged the risk of arbitrariness and discrimination in granting police officers a wide discretion to authorise and carry out stop and searches on those suspected of engaging in terrorist activities (paras. 83–85). The Court therefore concluded that the powers of authorisation and confirmation were 'neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse' (para. 87). As a result of the judgment in *Gillian*, section 44 stop and searches were suspended and subsequently replaced by Section 47A in 2012. Although section 47A did not put in place the usual requirement for there to be a reasonable suspicion of an individual, the authorising officer must reasonably suspect that an act of terrorism will take place and that the powers are necessary to prevent such an act.

Replacing section 44 stop and searches has called into question the legality of section 60 stop and searches (Bridges 2015).[8] Section 44 was better regulated, as the giver of the authorisation had to inform the Secretary of State as soon as

[8] Similar provisions that permit 'suspicionless' stop and searches are contained in Schedule 7 of the Terrorism Act 2000. Choudhury and Fenwick (2011: 175, 167) note that this power is having the 'single most negative impact' on British Muslim communities and 'silently eroding Muslim communities' trust and confidence in policing'.

it was reasonably practicable. This was deemed by the ECtHR as an inadequate check on the misuse of stop and search. Section 60 contains no such provision. The authorisation need only be given by a senior police officer; there is no requirement for confirmation by the Secretary of State or any higher authority. The ECtHR also expressed concern at the continuous rolling nature of stop and search under section 44. As mentioned, this is also a concern with the section 60 powers. Finally, the ECtHR acknowledged the risk of discriminatory use of stop and search against people from ethnic minority communities. It was noted that the guiding Code of Practice was insufficient in reducing this risk (Bridges 2015).

In contrast to the approach of the ECtHR, the legislative and statutory guidance covering the operation of section 60 has been held to be a sufficient safeguard against the potential abuse of 'suspicionless' stop and searches. In the case of *R (on the application of Roberts) v Commissioner of Police of the Metropolis and another* (2015), the UK Supreme Court was required to assess whether these powers were compatible with the right to privacy under Article 8 of the European Convention on Human Rights. Noting the various safeguards in the legislation, the Code of Practice and other guidance documents, and the existence of accountability mechanisms, the Court held that section 60 powers were not in violation of Article 8. Ip (2017: 538) notes that the Court's discussion of the safeguards 'does little more than note their formal existence'. For example, although there is reference to the work of the HMIC, there is no acknowledgement of the HMIC's 2013 report which found a lack of compliance with the Code of Practice, a lack of training for both authorising and junior police officers in the use of section 60, limited overall supervision of stop and search activity, and problems with record keeping. HMICFRS (2021) follow-up report notes that while there have been some improvements in these areas, there are still significant gaps and more needs to be done. This calls into question the safeguards in the legislation and statutory codes.

The Court in *Roberts* further noted that although there was a risk that these powers could operate in an arbitrary and discriminatory way, this risk was outweighed by the great benefit to the public, specifically a reduction in serious violence often involving offensive weapons and gangs. Interestingly, the Court went on to justify the use of section 60 by noting that gangs were largely made up of young people from black and other ethnic minority groups, and therefore it was these individuals who would benefit the most from a reduction in serious violence (para. 41). It is questionable whether people from ethnic minority groups, especially those who are frequently exposed to stop and search, would see it this way.

Despite the problems with stop and search powers that do not require reasonable suspicion, an additional 'suspicionless' stop and search power was enacted via the Police, Crime, Sentencing and Courts Act 2022. The power allows police officers to stop and search people who are under a Serious Violence Reduction

Order[9] without a need to have any reasonable grounds of suspicion or authorisation from a senior police officer. The new power is being piloted before a decision on a national roll-out is made.

Recording Requirements

To act as a safeguard against unauthorised searches, Code A includes a requirement to keep records of each stop and search. This was one of the key amendments to stop and search recommended in the Macpherson Report. The data should include the date, time and place of the search, the object of the search, the power authorising the search, the identity of the officer carrying out the search and, importantly, the ethnicity of the person searched (para. 4.3). It used to be the case that the name and address of the person searched also had to be recorded, as well as other information, but this requirement was dropped partly to ease the 'needless' bureaucracy especially as stop and search activity had increased (Shiner 2010). As Shiner (2015: 154) notes, dropping the names and addresses of individuals makes it 'more difficult to monitor repeat searches, measure effectiveness and hold officers to account'. Moreover, the HMICFRS (2021) has found that there is a failure to record ethnicity data which hides the real disproportionality rate. This affects the police and the public's understanding of how stop and search powers are used and the impact they could have on people from ethnic minority groups.

Police were also previously required to record all stop and accounts, but this too has been dropped. Stop and account is a non-legislative power (Home Office 2013; Pearson & Rowe 2023) which allows police officers to stop any member of the public and ask them to account for their presence, their actions or what they are carrying in a public place. No search is conducted. As there is no national requirement to record these stops anymore, any information regarding disproportionality in its use is unknown, although some data suggests that black people are more likely than white people to be stopped and asked to account for their presence (StopWatch 2022).

Thus, the requirement to record stop and searches (and the lack of a requirement to record stop and account) is inadequate to effectively monitor police practice and hold police officers to account. In fact, as Reiner (2015: xii) notes, '[t]he list of unacceptable criteria for reasonable suspicion (ethnicity, age, style of dress, etc.) could be cynically interpreted as advice on how to complete acceptable records rather than guidance on what did constitute objectively reasonable grounds'. This view is supported by Quinton (2011) and Ellis (2010)

[9] This order is issued to people convicted of offences involving knives or offensive weapons (chapter 1A Sentencing Act 2020, as amended by s.165, Police, Crime, Sentencing and Courts Act 2022).

who both found that police officers creatively constructed records that fit with the law, downplaying the real factors that influenced their decision to initiate a stop and search.

Accountability Measures

Although the Codes of Practice accompanying PACE are statutory codes, failure to comply with them will not necessarily render a police officer liable to criminal or civil proceedings (PACE, section 67). Any breach of the provisions could, however, result in a disciplinary hearing for police officers, and the evidence gathered from an unauthorised stop and search could render that evidence inadmissible in court (PACE, section 67 and Code A, para. 5.6). The responsibility to monitor stop and search activity falls on the supervising police officer. This could be through direct supervision, examining stop and search records, asking officers to account for their conduct and record keeping, or through complaints made against the police officer (Code A, para. 5.5). Body worn cameras can also be viewed to establish the circumstances surrounding a stop and search, although recent reviews by the HMICFRS (2021) and IOPC (2022b) indicate that the use of such cameras and the monitoring of the footage needs to be improved. The disciplinary measures taken against police officer will depend on the nature of the conduct but could involve warnings or performance reviews through to gross misconduct hearings (College of Policing 2014).

The possibility of disciplinary action, like the requirement to keep records, are internal mechanisms that rely on police supervisors having the will to hold junior policers officers to account. The lack of any statutory penalties allows police discretion to operate relatively unchecked, thus limiting the power of the law to protect people against unlawful stop and searches. As Bowling and Phillips (2007) note, a person who refuses to comply with an officer's request to stop and search commits a criminal offence, but a police officer who conducts an unlawful search is not criminally penalised. Unlawful stops may, however, be challenged through civil proceedings, but Shiner (2015: 165) emphasises that 'litigation only ever deals with a minority of cases and is costly, uncertain and slow'.

Other accountability measures include the work of bodies such as the IOPC and the HMICFRS which, through their reviews of police practice and individual cases, provide an additional layer of scrutiny of police powers. The latest HMICFRS (2021) review of the disproportionate use of stop and search has been referred to throughout this chapter and highlights numerous shortcomings in police activity. The IOPC's (2022b) recent national stop and search learning report also identifies problems with the use of stop and search, particularly involving ethnic minority people, and makes proposals for improvement in police practice. The work of these bodies is valuable in keeping the issue of racial discrimination at the forefront of the debate.

Conclusion

Although practices vary across different police forces and not all officers hold the same views, this chapter has shown that racial biases can and do influence police practice on stop and search which contributes to the disproportionality rate. Moreover, intelligence-based policing, bringing with it concerns about racial profiling, could exacerbate rather than ameliorate the problems (see Keane 2023). Through the introduction of legislation and the Codes of Practice, the law has attempted to curb any misuse of these powers mainly by prohibiting decisions based on generalisations and stereotypes and introducing better monitoring practices. However, the police decision making process is complex and involves a high level of discretion and some level of unconscious bias, both of which are difficult to regulate in practice. Despite the legal reforms, every year, the statistics tell the same story: people from ethnic minority groups are overrepresented in the figures. This shows that existing regulations are ineffective in curtailing the disproportionate use of stop and search. Despite the difficulty in regulating stop and search, there needs to be a continued effort at rooting out discriminatory practices in policing, many of which only come to light after official investigations have been initiated or after accounts of questionable stop and searches appear in the media. Although training programmes on the law, on racial biases and on the damage caused by unfair and unlawful stop and searches are crucial, these on their own are not enough. There are other barriers to reform that need to be addressed, such as changes to the organisational culture and internal police resistance (see Shiner 2015; and Miller et al. 2020).

Recent events such as the killing of George Floyd by a police officer in the USA in May 2020 and the Black Lives Matter protests that followed demonstrate the negative impact that the use of police powers can have on individuals, communities and the police themselves. This could be a turning point in our understanding of discriminatory police practices; however, we have been here before, for example, with the flawed investigation into the murder of Stephen Lawrence. It appears that we are still facing the same challenges in rooting out discrimination in stop and search: racial biases, poor monitoring practices and a lack of an effective enforcement mechanism. Unless change actually means change, it is difficult to continue justifying the use of stop and search as it currently operates.

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