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Stop and Search Powers in England & Wales: The Commissioner, The Home Secretary, The Media and The Public

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Introduction

This chapter considers the continual controversy surrounding the use of stop and search powers in England and Wales. As authors, we have approached this chapter from a hybrid position as current or previous police practitioners (see author notes page) as well as academics with a keen interest in studying stop and search. This allows us to understand the wealth of literature, as well as the implications for and nuances of police practice, which is something we have tried to convey in the chapter without prejudice. In England and Wales, stop and search is one of the police's most frequently used powers, with 1,029 stop and searches conducted every day in 2019.¹ There is still a high amount of racial disparity in stop and search figures, with black people being nine times more likely to be stopped and search than white people (ibid). For the police service, getting stop and search right is fundamental to building and maintaining effective community relationships, but as this chapter explores, that is a far from straightforward process.

This chapter is split into three sections. The first section charts the *historical development of stop and search powers*, from the Vagrancy Act 1824, to the Police and Criminal Evidence Act 1984 and new proposed Serious Violence Reduction Orders (SVROs). We examine how and why these

¹ HM Government, 'Stop & search' (Gov.UK, 2020) <<https://www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law/policing/stop-and-search/latest>> accessed 20 November 2020.

powers have developed as well as how they are used by the police. The section also explores how watershed events such as the Brixton riots of 1981, the murder of Stephen Lawrence in 1993 and the police shooting of Mark Duggan in 2011 have impacted on stop and search practices and ultimately police and community relationships. The second section considers the *media portrayal and political involvement relating to stop and search*, with a key examination of how the media can influence public opinion and ultimately affect police and community relations. Particular attention is paid to the use of social media sites, such as Facebook and YouTube, as this presents a relatively new challenge for policing. The 'political interference' that has happened with stop and search since the coalition government came to power in 2010, is examined in detail. This comprises the introduction of the 'Best Use of Stop and Search Scheme' (BUSS) by then Home Secretary Theresa May, only for police forces to be told by subsequent Home Secretaries to ignore aspects of this relating to section 60 'no suspicion' searches. The third section considers *how police application of stop and search powers impacts public perceptions of police legitimacy*, with a detailed examination of key literature and research into the impact stop and search has on the key foundations of the British policing models of police legitimacy and policing by consent. Finally, we consider the position of the police and how they can effectively process the vast amount of conflicting information that is present regarding stop and search in order to improve police and community relationships.

Historical development of stop and search powers

Stop and Search Pre-PACE

It is widely recognised within academic discourse that stop and search powers, or forms thereof, have held a place in British policing since the 1800s.² The history of stop and search powers is long and controversial, with keystone events inspiring reform and refinement of stop and search legislation, as well as policing practice, over the last four decades in particular.³ As a result of legislative change, including the development of the Police and Criminal Evidence Act (PACE) in 1984, stop and search powers have evolved to manifest as a widely practiced contemporary policing power, that maintains an ability to generate both significant praise and criticism.⁴

Prior to the introduction of PACE, the Vagrancy Act of 1824 was the primary legislation utilised by officers for the purpose of a search, with more contemporary stop and search powers introduced under PACE 140 years later in 1984.⁵ Regarded as 'sus laws', notably sections 4, 6 and 8 of the Vagrancy Act 1824, alongside other local and national legislative powers, provided officers with the legal capacity to search and arrest those who they suspected as being a 'suspicious person', 'a rogue or a vagabond' or 'disorderly'.⁶ Whilst the Vagrancy Act was brought into force as a response to incidents of disorder linked to the aftermath of the Napoleonic War in the early 19th century, it fundamentally shaped the way in which formal stop and search powers would evolve and be used into the 20th century, importantly, introducing the notion of suspicion into the new, formal anatomy of policing.⁷ In addition to pre-existing search powers stemming from the Vagrancy Act 1824 in relation to suspicious and disorderly individuals, section 66 of the Metropolitan Police Act 1839 provided supplementary search powers to officers inside

² Jennifer Brown, 'Police Powers: Stop and Search' (House of Commons Library Briefing Paper 3878, 17 June 2020) <<https://commonslibrary.parliament.uk/research-briefings/sn03878/>> accessed 27 October 2020.

³ Joel Miller, 'Stop and Search in England: A Reformed Tactic or Business as Usual?' (2010) 50 *The British Journal of Criminology* 954.

⁴ The Police Foundation, 'Stop and Search' (2012) *The Briefing*, 3 <http://www.police-foundation.org.uk/2017/wp-content/uploads/2017/08/stop_and_search_briefing.pdf> accessed 20 October 2020.

⁵ Rebekah Delsol and Michael Shiner, 'Regulating Stop and Search: A Challenge for Police and Community Relations in England and Wales' (2006) 14 *Critical Criminology* 241.

⁶ Jennifer Brown, 'Police Powers: Stop and Search' (House of Commons Library Briefing Paper 3878, 17 June 2020) <<https://commonslibrary.parliament.uk/research-briefings/sn03878/>> accessed 27 October 2020.

⁷ Paul Lawrence, 'Vagrancy Act 1824 and the Persistence of Pre-emptive Policing in England Since 1750' (2017) 57 *The British Journal of Criminology* 513.

of London. Section 66 of the Metropolitan Police Act enabled officers to stop and search any individual, of whom they held a 'reasonable suspicion' to be in possession of stolen or unlawfully obtained items.⁸ 'Sus laws', alongside legislation such as section 66, maintained positions as being prominent policing tools throughout the early and mid-20th century, with search powers and legislation remaining particularly un-diverse and increasingly recognised as being open to abuse.⁹

The use of 19th century 'sus laws' as a legal grounding for officers to perform searches throughout the latter half of the 20th century began to fundamentally alter relationships between police and communities, with the aforementioned powers increasingly seen as being ancient and discriminatory.¹⁰ Throughout the 1970s, a growing number of complaints and concerns began to materialise, particularly surrounding the disproportionate application of outdated 'sus laws' towards those of black or ethnic minority backgrounds¹¹ as "poor, young black youths in deprived inner-city locations began to be seen as troublesome and potentially criminal".¹² This unjust representation, accompanied by a moral panic surrounding inner-city street robberies, or 'muggings', saw a heavy-handed and disproportionate use of search powers against young black men, particularly in London. As communities of ethnic minority backgrounds felt increasingly marginalised, the 'scrap the sus' movement gained traction as a popular, and soon to be successful, political campaign,¹³ calling for increased police accountability, greater regulation for search powers or their complete abolition. Tensions and concerns were soon climaxed following

⁸ Rebekah Delsol and Michael Shiner, 'Regulating Stop and Search: A Challenge for Police and Community Relations in England and Wales' (2006) 14 Critical Criminology 241.

⁹ Nicole M Jackson, 'A nigger in the new England: Sus, the Brixton riot and citizenship' (2015) 8 African and Black Diaspora: An International Journal 158.

¹⁰ Tony Jefferson, 'Policing the riots: from Bristol and Brixton to Tottenham, via Toxteth, Handsworth etc' (2012) 87 Criminal Justice Matters 8.

¹¹ Nicole M Jackson, 'A nigger in the new England: Sus, the Brixton riot and citizenship' (2015) 8 African and Black Diaspora: An International Journal 158.

¹² Tony Jefferson, 'Policing the riots: from Bristol and Brixton to Tottenham, via Toxteth, Handsworth etc' (2012) 87 Criminal Justice Matters 8.

¹³ Tony Jefferson, 'Policing the riots: from Bristol and Brixton to Tottenham, via Toxteth, Handsworth etc' (2012) 87 Criminal Justice Matters 8.

the controversial 'Operation Swamp' in Brixton by the Metropolitan Police in April 1981,¹⁴ which saw 150 plain-clothes officers perform over 1,000 searches and make 150 arrests over a 10-day period in the London borough.¹⁵ This large operation, which relied on the use of 'sus laws' to perform searches, is widely recognised as the flash point leading to the Brixton Riots from 10th to 12th April 1981, an event which "signalled the loss of hard-earned legitimacy"¹⁶ for the police and effectively triggered significant legislative reform relating to stop and search.

The Scarman Report, PACE and Macpherson

The three days of rioting in Brixton in April 1981 manifested from an accumulation of social and economic disparities affecting those from minority ethnic groups in particular, with it being widely recognised that rioters had specific grievances relating to police actions.¹⁷ During the 1970's, "youngsters were faced with the toxic combination of unemployment, racism, a society which marginalised their political voice and which addressed the symptoms of urban decay with systematic over-policing".¹⁸ Such challenging circumstances resulted in feelings of exclusion, disempowerment and frustration, which eventually turned to visible anger. The disproportionate use of 'sus law' search powers on young black males in London had caused a significant rift between the police and ethnic minority communities, with the breaking point leading to the Brixton Riots being "exasperation at oppressive use of stop and search, in particular the massive Operation Swamp 81".¹⁹ The rioting highlighted the link between the disproportionate use of stop and search on those from ethnic minority communities and profound community

¹⁴ John Lea, 'Institutional racism in policing: The Macpherson Report and its consequences' in Roger Matthews and Jock Young (eds), *The New Politics of Crime and Punishment* (Routledge 2011).

¹⁵ Tony Jefferson, 'Policing the riots: from Bristol and Brixton to Tottenham, via Toxteth, Handsworth etc' (2012) 87 Criminal Justice Matters 8.

¹⁶ Rebekah Delsol and Michael Shiner, *Stop and Search: The Anatomy of a Police Power* (Palgrave Macmillan 2015).

¹⁷ John Lea and Simon Hallsworth, 'Understanding the riots' (2012) 87 Criminal Justice Matters 30.

¹⁸ John Lea and Simon Hallsworth, 'Understanding the riots' (2012) 87 Criminal Justice Matters 30.

¹⁹ John Lea and Simon Hallsworth, 'Understanding the riots' (2012) 87 Criminal Justice Matters 30.

resentment towards the police. This feeling of resentment towards the police resonated across other major cities, including Manchester, Liverpool, and Leeds. Whilst labelled as “wanton lawlessness”²⁰ by then Prime Minister Margaret Thatcher, the Brixton Riots would lead to significant legislative change which sought to “balance the powers of the police with the rights of the public”.²¹

Following the disorder in Brixton, Lord Scarman conducted an enquiry into the riots which “acknowledged that stop and search was necessary to combat street crime but expressed concerns over the extent to which the ‘sus laws’ were used”.²² The report that followed, concluded the riots were primarily a result of an eruption of underlying frustrations and anger, felt largely by young black men, regarding the way in which they were treated by police at the time.²³ Lord Scarman’s report recommended that ‘sus laws’ be replaced by new, national legislation, incorporating stop and search powers, which would allow for greater accountability, transparency and introduce safeguards to standardise approaches to stop and search; such recommendations resulted in the creation of PACE in 1984.²⁴ The newly established Police and Criminal Evidence Act introduced procedural safeguards for stop and search within an accompanying code of practice,²⁵ including the development of a uniform approach to defining ‘reasonable grounds’ for suspicion, as well as “requiring officers to provide an explanation of the reasons for a search and to complete a written record detailing reasons and outcomes that would be made available to the person searched if requested”.²⁶ PACE, however, did not prove to be a

²⁰ Nicole M Jackson, 'A nigger in the new England: Sus, the Brixton riot and citizenship' (2015) 8 *African and Black Diaspora: An International Journal* 158.

²¹ Joel Miller, 'Stop and Search in England: A Reformed Tactic or Business as Usual?' (2010) 50 *The British Journal of Criminology* 954.

²² The Police Foundation, 'Stop and Search' (2012) *The Briefing*, 3 <http://www.police-foundation.org.uk/2017/wp-content/uploads/2017/08/stop_and_search_briefing.pdf> accessed 20 October 2020.

²³ Jennifer Brown, 'Police Powers: Stop and Search' (House of Commons Library Briefing Paper 3878, 17 June 2020) <<https://commonslibrary.parliament.uk/research-briefings/sn03878/>> accessed 27 October 2020.

²⁴ Joel Miller, 'Stop and Search in England: A Reformed Tactic or Business as Usual?' (2010) 50 *The British Journal of Criminology* 954.

²⁵ Rebekah Delsol and Michael Shiner, *Stop and Search: The Anatomy of a Police Power* (Palgrave Macmillan 2015).

²⁶ Joel Miller, 'Stop and Search in England: A Reformed Tactic or Business as Usual?' (2010) 50 *The British Journal of Criminology* 954.

permanent fix and stop and search was soon to return to the spotlight following the Macpherson Report in 1999.

The long, controversial history and debate surrounding the application of stop and search powers reached “new heights of intensity”²⁷ in 1999 following a series of highly significant, influential findings stemming from the inquiry into the handling of the investigation into the murder of Stephen Lawrence. The Stephen Lawrence Inquiry, and subsequent report published by Sir William Macpherson in 1999, highlighted a series of concerns surrounding the application of stop and search by forces across England and Wales. Perhaps one of the most significant conclusions to arise from within the Macpherson Report, was the notion of the existence of institutional racism within the Metropolitan Police and forces nationwide, with the report defining the concept as being:

“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”.²⁸

Macpherson made specific reference to stop and search figures, with the report claiming that over-representation of those from ethnic minority communities amounted to a “clear core conclusion of racist stereotyping”²⁹ by officers. For example, in 1999, the year the Macpherson report was published, the Metropolitan Police Authority identified that stop searches on Black people accounted for almost 30% of all stop searches within the Met’s force area. Furthermore, when Section 60 CJPOA (Criminal Justice and Public Order Act) searches between 1990 and 1999 were analysed, it was reported that searches on Black people accounted for over 50% of all

²⁷ P.A.J. Waddington, Kevin Stenson and David Don, 'In Proportion: Race, and Police Stop and Search' (2004) 44 *The British Journal of Criminology* 889.

²⁸ Sir William Macpherson, *The Stephen Lawrence Inquiry* (Cm 4262-I, 1999).

²⁹ Sir William Macpherson, *The Stephen Lawrence Inquiry* (Cm 4262-I, 1999).

Section 60 searches.³⁰ In order to implement essential changes, and to address issues highlighted, the report included three fundamental recommendations required for the improvement of police accountability and transparency in relation to stop and search best practice. The recommendations, numbered 61, 62 and 63, began by outlining a necessity for any stop, regardless of use of legislative provision, to be recorded with the inclusion of a detailed reason for the stop, the outcome, and the individuals self-defined ethnicity. Recommendation 61 also proposed a requirement on officers to provide a copy of the search record to the individual. Furthermore, Macpherson recommended that stop and search figures should be analysed by forces and published and reviewed by HMIC, allowing for greater transparency, accountability, and scrutiny of stop and search. The report's final requirement highlighted the necessity for forces to engage in campaigns to educate the public on stop and search powers and their legal rights, with these amendments, specifically to Code A of PACE, collectively seeking to address highlighted issues surrounding disproportionality in figures, accountability, and transparency.

In the 20 years following the Macpherson Report, stop and search has continued to generate controversy and attract the attention of media outlets and governments alike. The application of stop and search powers were thrust into the public arena once more following the summer riots of 2011, as well as in recent years as Section 60 of the Criminal Justice and Public Order Act (CJPOA) has been increasingly employed as a short term, targeted strategy by forces to help combat the rise in knife and violent crime. Introduced as a core component of the CJPOA in 1994, Section 60 was originally intended to be utilised in order to “tackle football hooliganism and the threat of serious violence at football games, but it is now used for a wider range of purposes”.³¹ The perceived extension of search powers for the police has reignited debate in 2020, as the

³⁰ Metropolitan Police Authority, 'Report of the MPA Scrutiny on MPS Stop and Search Practice' (*Police Authority*, 2005) <<http://policeauthority.org/metropolitan/downloads/committees/previous/eodb/eodb-040520-05-appendix01.pdf>> accessed 2 December 2021.

³¹ Equality and Human Rights Commission, 'Race disproportionality in stops and searches under Section 60 of the Criminal Justice and Public Order Act 1994' (*Equality and Human Rights Commission*, 2012) <<https://www.equalityhumanrights.com/sites/default/files/briefing-paper-5-race-disproportionality-in-stops-and-searches-under-s60-of-criminal-justice-and-public-order-act-1994.pdf>> accessed October 3 2020.

government announced the introduction of Serious Violence Reduction Orders, which will allow for officers to search based on previous convictions for knife or weapons related offences. The media portrayal and the extent of government involvement in shaping stop and search use since the publication of The Macpherson Report, is explored and discussed in the next section.

Media portrayal and political involvement relating to stop and search

Media portrayal of stop and search

Stop and search is a topic that continually attracts media attention, and police encounters are readily available to the media due to the widespread prevalence of mobile video recording devices and websites such as YouTube.³² Certain media outlets have a strong emphasis on police accountability, with stop and search being a particular focus. For example, the online version of *The Guardian* has a section dedicated to stop and search with over 330 news stories dating back to 2000.³³ Police officers behaving in a justifiable and normative way are considered as key elements in procedural justice.³⁴ This is reflected in the latest College of Policing guidance on engagement and communication³⁵ where the importance of perception of police fairness is emphasised. This public perception of policing will typically be drawn from two types of encounters, either reporting a crime or being approached by the police.³⁶

³² PAJ Waddington, Kate Williams, Martin Wright and Tim Newburn, *How People Judge Policing* (OUP, 2017). 13.

³³ The Guardian, 'Stop and search' (*The Guardian*, 2020) <<https://www.theguardian.com/law/stop-and-search>> accessed 9 Oct 2020.

³⁴ Ben Bradford, *Stop and Search and Police Legitimacy* (Routledge, 2017). 144.

Jonathan Jackson, Ben Bradford, Betsy Stanko and Katrin Hohl, *Just Authority? Trust in the Police in England and Wales* (Routledge, 2013). 175.

³⁵ College of Policing, 'Engagement and communication' (*College of Policing Authorised Professional Practice*, 2013) <<https://www.app.college.police.uk/app-content/engagement-and-communication/>> accessed 12 Oct 2020.

³⁶ Jonathan Jackson, Ben Bradford, Betsy Stanko and Katrin Hohl, *Just Authority? Trust in the Police in England and Wales* (Routledge, 2013). 62.

Not every citizen will have encounters with the police of this nature, though some people will hear anecdotally about police stop and search, but many members of the public will perceive policing through a media lens. We must then consider the accuracy of this media portrayal of policing, and with particular attention to the type of stop and search encounters that are abundant in the media. A simple typing of the phrase 'stop and search' into YouTube reveals a range of videos, some are promotional, or training videos uploaded by police forces but often these videos are public recorded encounters of stop and search incidents. Many of the public recorded encounters can be regarded as having a negative perception of the police, with descriptors of 'bullies', 'intimidation', 'harassment' or 'racist' being prevalent.³⁷ Given that the internet and social media are the second and third most commonly used platforms respectively for consumption of news,³⁸ the impact of negative perceptions of policing in online videos is of great importance to police legitimacy. Taken in isolation these videos often do not provide any context to the rationale for police-initiated contact leading to the stop and search encounter, as the video recording may start minutes after the encounter has begun. This leaves the viewer to speculate, and with platforms such as Facebook and YouTube, this often leads to negative comments about the police being made, further eroding trust and police legitimacy. Routine sharing with the media of police body worn video (BWV) from stop and search encounters may help to negate this issue and demonstrate that the police are acting proportionately, but current College of Policing guidance³⁹ does not allow BWV to be shared with the media for this purpose.

Stories about stop and search that are in the mainstream media potentially offer more balance than social media, as the police forces concerned are invited to comment on any story. On Saturday 4th July 2020 two Olympic athletes, Bianca Williams and Ricardo dos Santos were

³⁷ YouTube, 'stop and search' (*YouTube*, 26 November 2021)

<https://www.youtube.com/results?search_query=stop+and+search> accessed 26 November 2021.

³⁸ Ofcom, 'New Consumption Report 2020' (*Ofcom*, 2020) <<https://www.ofcom.org.uk/research-and-data/tv-radio-and-on-demand/news-media/news-consumption>> accessed 12 Oct 2020.

³⁹ College of Policing, 'Body-Worn Video' (*College of Policing*, 2014) <<http://library.college.police.uk/docs/college-of-policing/Body-worn-video-guidance-2014.pdf>> accessed 12 Oct 2020.

stopped and searched under section 1 of the PACE.⁴⁰ The Metropolitan police reported that the vehicle had been driving suspiciously, on the wrong side of the road and had initially failed to stop when requested by the police.⁴¹ Bianca Williams publicly disputed the police's version of events and raised concerns that they had been racially profiled as they were both handcuffed during the search with their 3-year-old child in the car.⁴² The Metropolitan police directorate of professional standards initially concluded that there had been no misconduct, but subsequently referred itself to the Independent Office for Police Conduct (IOPC) who initiated a misconduct investigation on 9th October 2020 after reviewing the evidence.⁴³ This incident was reported in a wide range of news media, most of which also reported comments from the Metropolitan police which allows a balance, but a major theme amongst the headlines used was racial profiling. Despite balance in the reporting of this incident, the public are left to draw their own conclusions on whether the stop was lawful or not. Transparency over the full grounds recorded for this stop and search are required for the public to be able to judge this incident. Either the media are not reporting it, or the police are not providing it. The latter seems more likely to be the case, despite College of Policing guidance stating that 'police use of stop and search powers must be transparent and accountable'.⁴⁴ It seems that in order for the police to be portrayed accurately in the media over stop and search, there needs to be a greater release of information held by the police such as BWV and recorded search grounds so that ultimately the public can judge the incidents - instead of conjecture filling the information void.

Political involvement in stop and search

⁴⁰ Police and Criminal Evidence Act 1984, s. 1.

⁴¹ Jamie Grierson, 'Why did police stop and search Bianca Williams and Ricardo Dos Santos' (*The Guardian*, 6 July 2020) <<https://www.theguardian.com/law/2020/jul/06/why-did-police-stop-and-search-bianca-williams-and-ricardo-dos-santos>> accessed 12 Oct 2020.

⁴² BBC News, 'Bianca Williams stop: Police 'want to discuss sprinter's concerns'' (*BBC News*, 6 July 2020) <<https://www.bbc.co.uk/news/uk-england-london-53307555>> accessed 12 Oct 2020.

⁴³ BBC News, 'Bianca Williams stop-and-search: Met PCs face probe' (*BBC News*, 9 October 2020) <<https://www.bbc.co.uk/news/uk-england-london-54466254>> accessed 12 Oct 2020.

⁴⁴ College of Policing, 'Stop and search' (*College of Policing Authorised Professional Practice*, 2017) <<https://www.app.college.police.uk/app-content/stop-and-search/>> accessed 12 Oct 2020.

There was significant political involvement in the creation of stop and search powers under PACE,⁴⁵ and recently, there has been a significant contribution from politicians in the debate surrounding stop and search. Major pieces of work by the Equality and Human Rights Commission highlighted disproportionality in searches of black and minority ethnic communities. The *Stop and Think* report threatened legal action under the Equality Act 2010 against several police forces,⁴⁶ and *Stop and Think Again* sought to highlight the limited progress made by police forces in reducing disproportionality in their stop and search practices.⁴⁷ This prompted the HMIC to review police practices over stop and search, finding that 27% of stop and searches they examined did not justify lawful use of the power, leading to several recommendations for reform.⁴⁸ This was further emphasised by the then Home Secretary, Theresa May, making the following comments in a speech to the House of Commons in April 2014:

“I want to make myself absolutely clear: if the numbers do not come down, if stop and search does not become more targeted, if those stop-to-arrest ratios do not improve considerably, the government will return with primary legislation to make those things happen”.⁴⁹

This comment can be construed as dictatorial from the government to the police, and the impact of this cannot be understated. Following this, the *Best Use of Stop and Search Scheme* was created in August 2014,⁵⁰ with the aims such as ensuring better recording, allowing lay

⁴⁵ Ben Bradford, *Stop and Search and Police Legitimacy* (Routledge, 2017). 19.

⁴⁶ Equality and Human Rights Commission, 'Stop and think. A critical review of the use of stop and search powers in England and Wales' (*Equality and Human Rights Commission*, 2010)

<https://www.equalityhumanrights.com/sites/default/files/ehrc_stop_and_search_report.pdf> accessed 12 Oct 2020.

⁴⁷ Equality and Human Rights Commission, 'Stop and think again. Towards race equality in police PACE stop and search' (*Equality and Human Rights Commission*, 2013)

<https://www.equalityhumanrights.com/sites/default/files/stop_and_think_again.pdf> accessed 12 Oct 2020.

⁴⁸ HMIC, 'Stop and Search Powers: Are the police using them fairly and effectively?' (*Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services*, 2013) <<https://www.justiceinspectors.gov.uk/hmicfrs/publications/stop-and-search-powers-20130709/>> accessed 12 Oct 2020.

⁴⁹ Home Office and Theresa May MP, 'Oral statement to Parliament. Stop and search: Comprehensive package of reform for police stop and search powers' (*HM Government*, 2014) <<https://www.gov.uk/government/speeches/stop-and-search-comprehensive-package-of-reform-for-police-stop-and-search-powers>> accessed 12 Oct 2020.

⁵⁰ Home Office, 'Best Use of Stop and Search Scheme' (*HM Government*, 2014)

<<https://www.gov.uk/government/publications/best-use-of-stop-and-search-scheme>> accessed 14 Oct 2020.

observations of encounters and crucially increasing the authorisation level for section 60 no suspicion searches to above Chief Superintendent. Although not legally binding, all 43 police forces in England and Wales signed up to the scheme and were monitored by HMIC with findings being reported back to the Home Secretary. In July 2016, the Home Secretary changed from Theresa May to Amber Rudd. Despite recommendations from HMIC in September 2016 for the level of authorisation for a section 60 be lowered to the rank of Inspector for exceptional circumstances,⁵¹ the rhetoric from the Home Secretary remained the same as her predecessor with Amber Rudd maintaining that any increased stop and search powers would be a 'backward step'.⁵²

With a change in Home Secretary seemingly came a change in position on stop and search, with Sajid Javid announcing in March 2019 that the level of authorisation for section 60 will be lowered to Inspector, as well as the required threshold of certainty of violence occurring being lowered.⁵³ The government are now proposing changes to stop and search powers through Serious Violence Reduction Orders (SVROs), arguably influenced by recommendation 14 of the *It Can Be Stopped*⁵⁴ report from The Centre for Social Justice thinktank. SVROs proposals would drastically increase police powers to stop and search, by allowing no suspicion searches under section 1 of PACE of

⁵¹ HMIC, 'Best Use of Stop and Search (BUSS) Scheme: The findings of an HMIC revisit of the 13 forces that were not complying with three or more features of the scheme in 2015' (*Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services*, 2016) <<https://www.justiceinspectorates.gov.uk/hmicfrs/publications/best-use-of-stop-and-search-second-revisits/>> accessed 14 Oct 2020.

⁵² Home Office, 'Amber Rudd writes about stop and search in The Times' (*HM Government*, 2017) <<https://homeofficemedial.blog.gov.uk/2017/08/09/amber-rudd-writes-about-stop-and-search-in-the-times/>> accessed 14 Oct 2020.

⁵³ Home Office, 'Greater powers for police to use stop and search to tackle violent crime' (*HM Government*, 2019) <<https://www.gov.uk/government/news/greater-powers-for-police-to-use-stop-and-search-to-tackle-violent-crime>> accessed 14 Oct 2020.

⁵⁴ The Centre for Social Justice, 'It Can Be Stopped. A proven blueprint to stop violence and tackle gang and related offending in London and beyond' (*The Centre for Social Justice*, 2018) <<https://www.centreforsocialjustice.org.uk/core/wp-content/uploads/2018/09/CSJJ6499-Gangs-Report-180911-FINAL-WEB.pdf>> accessed 14 Oct 2020.

people previously convicted of a knife crime (whilst still serving their sentence) or a court power allowing such people to be stopped and searched without suspicion.⁵⁵

Across a period of around 6 years, the government has told the police that they are doing too much stop and search and have limited their powers. They changed policy, increased the powers and suggested more stop and search is needed to reduce crime. The police do not always conduct stop and search correctly, but their job is being made harder by this pendulum government policy. The effect of this is that officers across all ranks of the police service will be confused by what they are being asked to do over stop and search, which will filter to frontline officers being cautious about how to use their powers. The current evidence base on stop and search suggests that it has little impact on crime rates and results in marginalised communities.⁵⁶ The police service and public require clarity and consistency over stop and search with further longitudinal studies to review the effectiveness and community impact, and not necessarily a range of new proposals to increase stop and search powers. The government appears to be ignoring this evidence base. If these proposals develop into new stop and search laws, it could increase the amount of stop and searches that occur with by-products of minimal crime reduction and negative ramifications for police and community relations.

This ongoing political involvement in stop and search powers seems to be hindering and not helping stop and search. Despite this, the police application of the powers is crucial, as eloquently stated by Neil Parpworth: “the controversy relating to stop and search powers is essentially concerned with their exercise rather than their existence”,⁵⁷ as discussed in the next section.

⁵⁵ Home Office, ‘Serious Violence Reduction Orders: A new court order to target known knife carriers. Government consultation’ (*HM Government*, 2020) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/917277/SVRO_consultation.pdf> accessed 14 Oct 2020.

⁵⁶ Matteo Tiratelli, Paul Quinton and Ben Bradford, ‘Does Stop and Search Deter Crime? Evidence from Ten Years of London-Wide Data’ (2018) 58 *The British Journal of Criminology* 1212.

⁵⁷ Neil Parpworth, ‘Reforming Police Powers of Stop And Search: Voluntary Action’ (2014) 87 *Police Journal: Theory, Practice and Principles* 234.

How police application of stop and search powers impacts public perceptions of police legitimacy

Whilst the contentious history of stop and search has been highlighted in this chapter, it is also important to further explore the potential impacts that the use of stop and search powers have on public opinions of the police, as well as the subsequent effect on perceptions of police legitimacy. The term legitimacy can, on a rudimentary level, be understood as “the right to exercise power”,⁵⁸ a well-recognised and highly important concept, particularly when applied to policing and the powers of the state relating to the maintenance of social order. Empirical evidence stemming from research conducted by Justice Tankebe in 2012, a year after the Summer Riots in cities across England, highlighted the important relationship between police legitimacy and the preservation of lawful behaviour by the wider population. Tankebe’s research in London concluded that “legitimacy was found to exhibit both a direct influence on cooperation that is independent of obligation and an indirect influence that flows through people’s felt obligations to obey the police”.⁵⁹ Legitimacy, therefore, is essential in allowing for effective policing and the continuation of public support and cooperation with the police.⁶⁰

In the context of policing, it is well recognised that “personal contacts between police and citizens are important moments in which public trust and the legitimacy of the police is tested, reproduced or undermined”.⁶¹ Research has supported the notion that an interaction with a member of the public which is initiated by the police, such as a stop and account or stop and

⁵⁸ Justice Tankebe, 'Viewing Things Differently: The Dimensions of Public Perceptions of Police Legitimacy' (2012) 51 Criminology 103.

⁵⁹ Justice Tankebe, 'Viewing Things Differently: The Dimensions of Public Perceptions of Police Legitimacy' (2012) 51 Criminology 103.

⁶⁰ Peter Neyroud, 'Past, Present and Future Performance: Prospects for the Measurement of Police Performance' (2008) 2 Policing 340.

⁶¹ Ben Bradford, *Stop and Search and Police Legitimacy* (Routledge 2017).

search, is more likely to have a detrimental impact on that individual's ability or willingness to trust the police than if the role of the initiator was reversed.⁶² Trust is a fundamental component in the maintenance of police legitimacy.⁶³ However, with research indicating those stopped by police are less likely to trust them in the future, it appears to be a natural progression for the same individual to indicate they do not view the police as being legitimate in the application of their powers.⁶⁴ Stop and search therefore, given its contentious history, presents as being a specific challenge for officers, balancing the necessity to 'fight crime' with the maintenance of public trust and perceptions of legitimacy.

The police are arguably in a precarious position. Firstly, attempting to fulfil the expectation placed upon them to be visibly 'fighting crime', an expectation resonating from both public and political pressure to be providing a proactive, assertive, reassuring approach.⁶⁵ Such an approach may manifest as a stop and account or, providing the existence of reasonable grounds to do so, a stop and search. Secondly, the police must attempt to do this whilst addressing concerns raised by those who object to encounters such as stop and search, which can have a profound impact on those on the receiving end of such practices,⁶⁶ damaging trust and legitimacy between individuals, communities, and the police. Stop and search brings the relationship between trust and police legitimacy to the forefront.⁶⁷ The application of stop and search can significantly impact public opinion, either enhancing or undermining trust and perceptions of police legitimacy, not only for those who have experienced the exercise of this policing power, but also for those observing.

⁶² Ben Bradford, *Stop and Search and Police Legitimacy* (Routledge 2017).

⁶³ London Assembly Police and Crime Committee, 'Stop and Search: An investigation into the Met's new approach to stop and search' (*London Assembly*, 2014) <https://www.london.gov.uk/sites/default/files/14-02-06-Stop%20and%20search%20FINAL_1.pdf> accessed 7 October 2020.

⁶⁴ Ben Bradford, *Stop and Search and Police Legitimacy* (Routledge 2017).

⁶⁵ Ben Bradford, *Stop and Search and Police Legitimacy* (Routledge 2017).

⁶⁶ Estelle Clayton, 'Stop and search and police legitimacy' (2017) 27 *Policing and Society* 813.

⁶⁷ Estelle Clayton, 'Stop and search and police legitimacy' (2017) 27 *Policing and Society* 813.

Research from the London Assembly Police and Crime Committee in 2014, indicated that “the Met is at another crossroad in its relationship with some Londoners...for some parts of the community, distrust with the police is entrenched”.⁶⁸ The report highlights the importance of building trust to enhance community confidence in policing, particularly among those from ethnic minority backgrounds, citing stop and search as being a powerful symbol of the tension that exists between the Met and many Londoners”.⁶⁹ A cumulation of academic research surrounding stop and search and police legitimacy indicates that it is not necessarily the of stop and search powers which has the most significant impact on trust and community confidence in policing, but rather the way in which these powers are used.⁷⁰ This theme resonates throughout various reports, including a year-long qualitative study by the Criminal Justice Alliance in 2016. After interviewing over 500 black, Asian and minority ethnic males between 15 and 26 years old, the report concluded that perceptions and feelings following a stop and search are the most important factors likely to result in corrosive feelings of mistrust and confidence in the police.⁷¹ The committee concluded that “the quality of encounters with the police is the most important driver of police legitimacy; this affects people’s willingness to cooperate with the police and the police’s ability to do their job”.⁷² The quality of stop and search encounters, alongside the disproportionate representation of those from ethnic minority communities and the resulting feelings of mistrust and contempt for the police that have followed, have undoubtedly

⁶⁸ London Assembly Police and Crime Committee, 'Stop and Search: An investigation into the Met's new approach to stop and search' (*London Assembly*, 2014) <https://www.london.gov.uk/sites/default/files/14-02-06-Stop%20and%20search%20FINAL_1.pdf> accessed 7 October 2020.

⁶⁹ London Assembly Police and Crime Committee, 'Stop and Search: An investigation into the Met's new approach to stop and search' (*London Assembly*, 2014) <https://www.london.gov.uk/sites/default/files/14-02-06-Stop%20and%20search%20FINAL_1.pdf> accessed 7 October 2020.

⁷⁰ Neil Parpworth, 'Reforming Police Powers of Stop And Search: Voluntary Action' (2014) 87 *Police Journal: Theory, Practice and Principles* 234.

⁷¹ Peter Keeling, 'No Respect: Young BAME men, the police and stop and search' (*Criminal Justice Alliance*, 2017) <<http://criminaljusticealliance.org/wp-content/uploads/2017/06/No-Respect-290617.pdf>> accessed 3 October 2020.

⁷² London Assembly Police and Crime Committee, 'Police and Crime Committee response to the draft Police and Crime Plan for 2013-2017' (*London Assembly*, 2013) <<https://www.london.gov.uk/about-us/londonassembly/meetings/documents/s26909/Research%20into%20Young%20Peoples%20Views%20of%20Stop%20and%20Search%20for%20Police%20and%20Crime%20Committee%20Investigation%20-.pdf>> accessed 7 October 2020.

significantly contributed to the loss of perceived legitimacy in the past, manifesting as the 1981 Brixton and 2011 Summer Riots.

As previously explored in this chapter, the 1981 Brixton Riots have been found to be rooted in mistrust and anger towards the police, primarily from young black males in London, who felt they were being targeted by officers using outdated 'sus laws' for the purpose of a search, derived from the Vagrancy Act of 1824.⁷³ The Scarman Report made specific reference to the over-use of 'sus laws', particularly during 'Operation Swamp' in April 1981, a widely agreed flash point for the riots, stating:

"They provoked the hostility of young black people, who felt they were being hunted irrespective of their innocence or guilt. And their hostility infected older members of the community who, hearing the stories of many innocent young people who had been stopped and searched, began themselves to lose confidence in, and respect for, the police. However well-intentioned, these operations precipitated a crisis of confidence between the police and certain community leaders".⁷⁴

This 'crisis of confidence' significantly impacted perceptions of police legitimacy and following 'Operation Swamp', Brixton saw three days of rioting as frustrations and feelings of victimisation turned into visible acts of anger. Brixton is recognised as a very real example of the possible consequences following a significant loss of police legitimacy, which is arguably linked to and caused by the initial diminishment of trust and community confidence in policing.⁷⁵ Although the Scarman Report highlighted these concerns and issues with stop and search, leading to the implementation of PACE in 1984 exactly 30 years later, feelings of mistrust and contempt towards the police as a result of perceived inequalities in the treatment of ethnic minority community members would once again see rioting in the streets of the capital. The riots, which started on

⁷³ John Lea and Simon Hallsworth, 'Understanding the riots' (2012) 87 Criminal Justice Matters 30.

⁷⁴ Lord L G Scarman, *The Scarman Report: The Brixton Disorders 10-12 April 1981* (Penguin 1982).

⁷⁵ Rebekah Delsol and Michael Shiner, *Stop and Search: The Anatomy of a Police Power* (Palgrave Macmillan 2015).

4th August 2011 following the police shooting of Mark Duggan resulted in 5 deaths, £3million worth of damage, and 5100 offences across 10 force areas in just four days.⁷⁶ Although the death of Mark Duggan is seen as the 'flash point' for the disorder, research that has followed the Summer Riots of 2011 has since highlighted the importance of the pre-existing feelings of mistrust towards police, stemming from perceived "persistent, oppressive, over-policing", particularly of communities with high ethnic minority populations through the use of stop and search.⁷⁷ Although the riots of 1981 and 2011 differ in context, the significant community reactions following a particular 'flash point', make them important events in highlighting the possible consequences of when community trust and confidence in policing, result in a perceived loss of legitimacy. Stop and search, whilst viewed by some as an important policing power in the prevention and detection of crime, when seen as being applied disproportionately or used ineffectively, can have detrimental impacts on an individual or a community's confidence and trust, which in turn can result in the loss of perceived police legitimacy.

Conclusion

Stop and search is a powerful tool that is granted upon police officers in order to keep the public safe. There have been a number of key events that have led to reflection on how stop and search should be conducted, most notably the Brixton riots in 1981 which resulted in the creation of PACE that is still the defining piece of legislation on stop and search today. PACE, with particular reference to Code A of the codes of practice, is quite clear in terms of how the police should be conducting stop and search. However, policing and stop and search do not occur in a vacuum; other factors influence and shape policing practice. The media have a strong influence over the reporting of stop and search, with outlets such as The Guardian having an entire section dedicated to it on their website. A video of a negative stop and search encounter has the

⁷⁶ John Benyon, 'England's Urban Disorder: The 2011 Riots' (2012) 3 Political Insight 12.

⁷⁷ Daniel Briggs, *The English Riots of 2011: A Summer of Discontent* (Waterside Press Ltd 2012).

tendency to proliferate rapidly on media outlets, particularly with social media platforms increasing their reach. This can have adverse consequences for police and community relations, not just in the location where the search occurred but nationally as well. Even though video footage on social media may not show the full event, damage is easily done with a short clip which reflects negatively on the police. The police service needs to consider increasing transparency through not only more routine use of body worn video, but considering how that footage can be shared with the public more broadly to allow for a fair judgement of these encounters so sensationalist media does not fill the gaps.

There is a key question of whether politics and politicians are a hindrance or a help to the police in terms of stop and search, with the former seeming the case recently. In the last six years politicians have gone from telling the police that they are doing too much stop and search and that legislation will be restricted, through to relaxing legislation to increase stop and search and proposing new legislation that will increase police powers. The new powers of Serious Violence Reduction Orders will provide the police greater powers to search previous offenders, and there will be strong opposition to not only the powers but their implementation too. This constant flux in political position on stop and search is understandably leaving the police in a state of confusion over how to implement stop and search. This will manifest in continually changing internal police policy, which may filter down to frontline officers who are conducting stop and search being left in a challenging position of not having confidence in their powers or being supported in their actions. The ultimate result of this is that the current state of affairs regarding stop and search is not conducive to building effective relationships between the police and communities, and in particular people from black and ethnic minority backgrounds. All of which is undermining police legitimacy and public confidence in the police, and an honest public debate is required to readdress the balance with fundamental questions around what stop and search powers we want the police to have and how and when we expect them to be used.

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