

Review of the Operation of Schedule 7

ENGAGE consultation submission

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Executive Summary

In his 2011 report on the operation of the Terrorism Act 2000 (TACT 2000) and 2006, the Independent Reviewer of Terrorism Legislation, David Anderson QC, urged a 'cautious rebalancing' of Schedule 7 powers stating:

"There should be a public consultation and review of the Schedule 7 power, preceded by the release of as much information as possible about its use. In that context:

"Those who oppose the power or its exercise are encouraged to lodge complaints for independent adjudication, and to contribute fully to that consultation.

"Those seeking to justify the power in its current form are encouraged to adduce evidence as why its more controversial elements are necessary. These include the stopping and examination of travellers without specific intelligence, the compulsion to answer questions and the ability to detain for up to nine hours without special authorisation".

We set out in this submission our concerns on the current exercise of Schedule 7 powers, drawing on official, academic and anecdotal evidence and media reports.

It is our belief that S7 powers are used disproportionately against Muslims, a claim corroborated extensively by qualitative data and the available statistics on Schedule 7 examinations.

The (ab)use of the S7 powers and its disproportionate use against young Muslim males is based on the characterisation of Muslims as a 'suspect community' in security and law enforcement discourse.

We recommend the following changes be implemented to the use and regulation of Schedule 7 powers:

1. Data on all use of Schedule 7 to be recorded in detail, regardless of the duration of the examination. Better data collection practices will improve accountability and democratic oversight of the use of Schedule 7 powers.
2. A reduction in the maximum legal period for which an individual can be held for detention. Schedule 7 stops have the capacity to grossly interfere with a passengers travel plans and personal schedule. It is important that these powers be used in ways that are proportionate, minimizing the level of disruption experienced by individuals as they travel on personal or professional business through UK ports and airports. A maximum limit of an hour should be introduced with no detentions permitted to exceed this period. After this time, individuals should be arrested or released.
3. Improved training of 'examining officers' in religious and cultural sensitivity and to be aware of the effects of intimidatory methods on those examined or detained under S7 powers. Re-building trust and minimizing distrust and anger as a consequence of 'authoritarian' techniques and encounters is important.
4. A 'reasonable suspicion' clause should be introduced to mitigate the risk of arbitrary detention under Schedule 7 powers and its disproportionate use against minorities. This circumscription on police powers was introduced in relation to S44 stop and search in the Protection of Freedoms Bill (2012) to address the violation of Article 8 of the European Convention on Human Rights. We believe the 'reasonable suspicion' clause should be extended to cover S7 powers too.
5. The possible change amending the 'basis for undertaking strip searches to require suspicion and a supervising officer's authority' is commendable and we encourage this amendment to be adopted. As above, 'reasonable suspicion' should be introduced to ensure powers are used proportionately and without bias, discrimination or injury to the affected individual.
6. Those selected for Schedule 7 examinations should have access to publicly-funded legal counsel re-

ardless of the duration of the examination. The current system, which permits access for individuals subjected to over the hour detentions, denies those held for less than this period the comfort and protection of legal advice. This should be remedied allowing any individual stopped for questioning at a port or airport the right to legal counsel.

7. Bio-data, whether non-intimate or intimate, should not be taken in any circumstances. The Protection of Freedoms Bill presently limits the retention of biometrics taken under Schedule 7 to six months unless a Chief Constable applies for an exception allowing retention for up to 2 years. Police officers are at liberty to take biometric samples from those suspects arrested on suspicion of involvement in terrorism. We find no just cause for the taking and retaining of bio-data (for six months or two years) for individuals who stand accused of no crime. We commend the proposal to repeal the power to take intimate DNA samples from persons detained under S7. We would urge that the repealed powers be extended to include all bio-metric data collection and not just samples of an intimate nature.
8. Police should engage proactively in intelligence-led policing by increasing inter-agency cooperation and analytical decision-making. Police forces should request manifests from shipping companies ahead of time to research potential threats and ensure interventions where they occur at ports and airports are targeted and intelligence-led.

Introduction

We welcome this opportunity to contribute to the review on the operation of Schedule 7 stop and search powers prompted by the recommendation of David Anderson QC, the Independent Reviewer of Terrorism Legislation.

The public consultation undertaken by the Home Office notes possible changes to the operation of these powers as follows:

- Reducing the maximum legal period of examination
- Requiring a supervising officer to review at regular intervals whether the examination or detention needs to be continued
- Requiring examining officers to be trained and accredited to use Schedule 7 powers
- Giving individuals examined at ports the same rights to publically funded legal advice as those transferred to police stations
- Amending the basis for undertaking strip searches to require suspicion and a supervising officer's authority
- Repealing the power to take intimate DNA samples from persons detained during a Schedule 7 examination

In this submission we set out our position on the operation of the Schedule 7 powers and Muslim experiences thereof, as well as outlining our assessment of the possible changes noted above and any further recommendations.

Schedule 7 powers under the Terrorism Act 2000 (TACT 2000) afford port police broad powers to detain and interrogate individuals in order to ascertain their support for or involvement in terrorist acts. Independent Reviewers of Terrorism, Lord Carlile of Berriew QC and David Anderson QC, have both noted serious shortfalls in Schedule 7 powers, including disproportionality, lack of recourse to a solicitor for those detained, misuse and abuse of Schedule 7 powers, and a lack of oversight compounded by inadequate data collection.¹

Despite the problems, both independent reviewers have noted the importance of Schedule 7 powers in preserving national security and we affirm that Schedule 7 is a crucial police power.

However, we believe that Schedule 7 powers are not sufficiently circumscribed by law and practice with far too much discretion left in the hands of 'examining officers' in the exercise of these powers.

¹ Lord Carlile of Berriew, *Report on the operation in 2009 of the terrorism act 2000 and of part 1 of the terrorism act 2006*, The Stationery Office, 2010.

What is Schedule 7?

Paragraph 2 of TACT (2000), noting provisions for Schedule 7 powers, states:

An examining officer may question a person to whom this paragraph applies for the purpose of determining whether he appears to be a person falling within section 40(1)(b).

(2) This paragraph applies to a person if -

(a) he is at a port or in the border area, and

(b) the examining officer believes that the person's presence at the port or in the area is connected with his entering or leaving Great Britain or Northern Ireland or his travelling by air within Great Britain or within Northern Ireland.

(3) This paragraph also applies to a person on a ship or aircraft which has arrived at any place in Great Britain or Northern Ireland (whether from within or outside Great Britain or Northern Ireland).

(4) An examining officer may exercise his powers under this paragraph whether or not he has grounds for suspecting that a person falls within section 40(1)(b).

Section 40(1)(b) defines a 'terrorist' as an individual who -

(a) has committed an offence under any of sections 11, 12, 15 to 18, 54 and 56 to 63, or

(b) is or has been concerned in the commission, preparation or instigation of acts of terrorism. These sections are detailed below:

| Section | Description |
|---------|---|
| 11 | Membership in a 'proscribed organisation' |
| 12 | 'Inviting support' to a person or organisation involved in acts of terror |
| 15 | Fundraising on behalf of organisations or groups involved in planning or executing acts of terror |
| 16 | Use of funds or property in the planning or execution of acts of terrorism |
| 17 | An individual is involved in a transaction or arrangement with reasonable cause to believe that any money or property could be used for terrorist purposes |
| 18 | The concealment of property from authorities that might be used for terrorism |
| 54 | Involvement in or reception of training in the use of firearms, radioactive materials, explosives, or chemical, biological, or nuclear weapons, unless it can be proven that this research was not in order to carry out acts of terrorism. |
| 56 | Directing, at any level, acts of terrorism |
| 57 | In possession of any monies or property used for the planning or execution of acts of terrorism |
| 58 (A) | Recording of information of use to a person committing or preparing an act of terrorism, (Recording of information regarding HM Armed Forces of use to a person committing or preparing an act of terrorism) |
| 59 | Inciting acts of terrorism overseas that would qualify as a terrorist act in England and Wales |
| 60 | Inciting acts of terrorism overseas that would qualify as a terrorist act in Northern Ireland |
| 61 | Inciting acts of terrorism overseas that would qualify as a terrorist act in Scotland |
| 62 | Committing an act of terrorism outside the United Kingdom |
| 63 | Financing or supporting an act of terrorism outside the United Kingdom |

According to the Association of Chief Police Officers (ACPO),

Schedule 7 provides powers to stop, question, search and, if necessary, to detain people without suspicion. There is a legal obligation placed on the person concerned to cooperate with the exercise of these powers.²

Schedule 7 powers can only be used in port areas and applied to a person on a ship, aircraft, or international train which has arrived at any place in the United Kingdom, or if their presence is for the purpose of entering, leaving, or traveling within the United Kingdom. Key to the exercise of this power is that it can proceed without any sort of reasonable suspicion, but is executed based on the following criteria:

- Known and suspected sources of terrorism;
- Individuals or groups whose current or past involvement in acts or threats of terrorism is known or suspected
- Known or suspected supporters or sponsors of terrorist activity;
- Any information on the origins and location of terrorist groups;
- Possible current, emerging and future terrorist activity;
- Emerging trends or patterns of travel through specific ports or in the wider force area that may be linked to terrorist activity³

While this criteria may seem robust, it is based on the same assumptions that inform the CONTEST counter terrorism strategy and the relevant strands: Pursue, Protect and Prevent.

Studies demonstrate that these strategies define and depict Muslims as a 'suspect community' consequentially resulting in consistent ethnic profiling at the service level.⁴

2 National Policing Improvement Agency, *Practice Advice on Schedule 7 of the Terrorism Act 2000*, Association of Chief Police Officers (NPIA, 2009), pg 7.

3 *Ibid.*, pg 21.

4 M Hickman et al, "Suspect Communities'? Counter-terrorism policy, the press, and the impact on Irish and Muslim communities in Britain," London Metropolitan University (2011); S Poynting and V Mason, "'Tolerance, Freedom, Justice, and Peace'? Britain, Australia and Anti-Muslim Racism since 11 September 2001," *Journal of Intercultural Studies* 27, no. 4 (2006): 365-391; G Mythen and S Walklate, "Terrorism, Risk, and International Security: The Perils of Asking 'What If,'" *Security Dialogue* 39 (2008): 221-242.

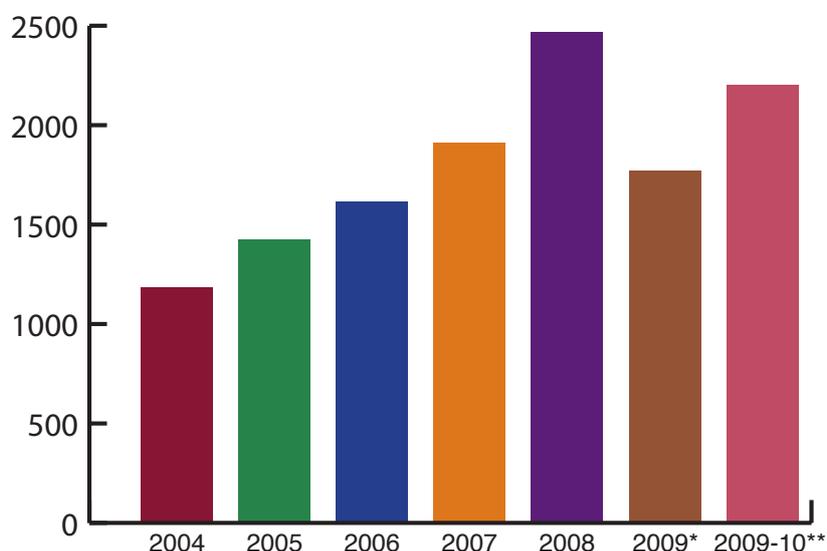
Muslims and the disproportionate use of Schedule 7 on minority groups

It is important to note that data collected on S7 stops is incomplete. First, there is no recording of data on stops, only details of examinations, those stops lasting under an hour or over an hour, and detentions, stops lasting over an hour and up to nine hours.

Data on examinations and detentions is patchy and discontinuous. Data released under a Freedom of Information request aggregates data nationally for the period 2004 – 2009. Data released separately by the Home Office covers 2009-2010, and data provided in the report of the Independent Reviewer, David Anderson, covers the period 2010 – 2012. Data published in the annexes of the public consultation on the operation of S7 powers contains further information in aggregated form making it difficult to discern individual ethnic group categories from the aggregated 'White', 'Asian or Asian British', 'Black or Black British', 'Chinese of other' and 'Mixed or not stated'.

Data on the use of Schedule 7 from 2004-2010

Number of over-the-hour examinations

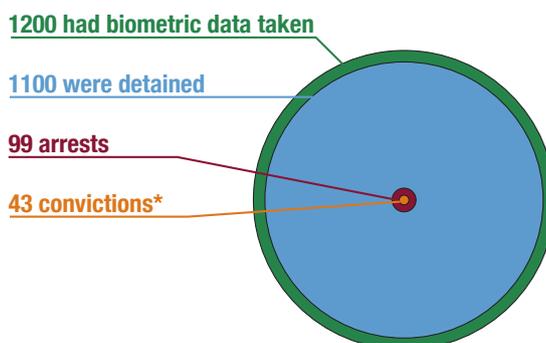


2004-2009 data taken from FOI Case No. 15293, submitted by FOSIS (Federation of Student Islamic Societies).

*The 2009 timescale refers to 1 January 2009 to 30 September 2009—figures are provisional.

**The 2009-2010 timescale refers to 1 April 2009 to 31 March 2010.

Biometric details taken, detentions, arrests, and convictions under Schedule 7, 2004-2009



* As noted by Choudhury and Fenwick, the figure 43 does not denote the number of individuals convicted; some individuals may have been convicted of more than one crime.

From data available and cross-analysed against Census data, we are able to establish that the ethnic profil-

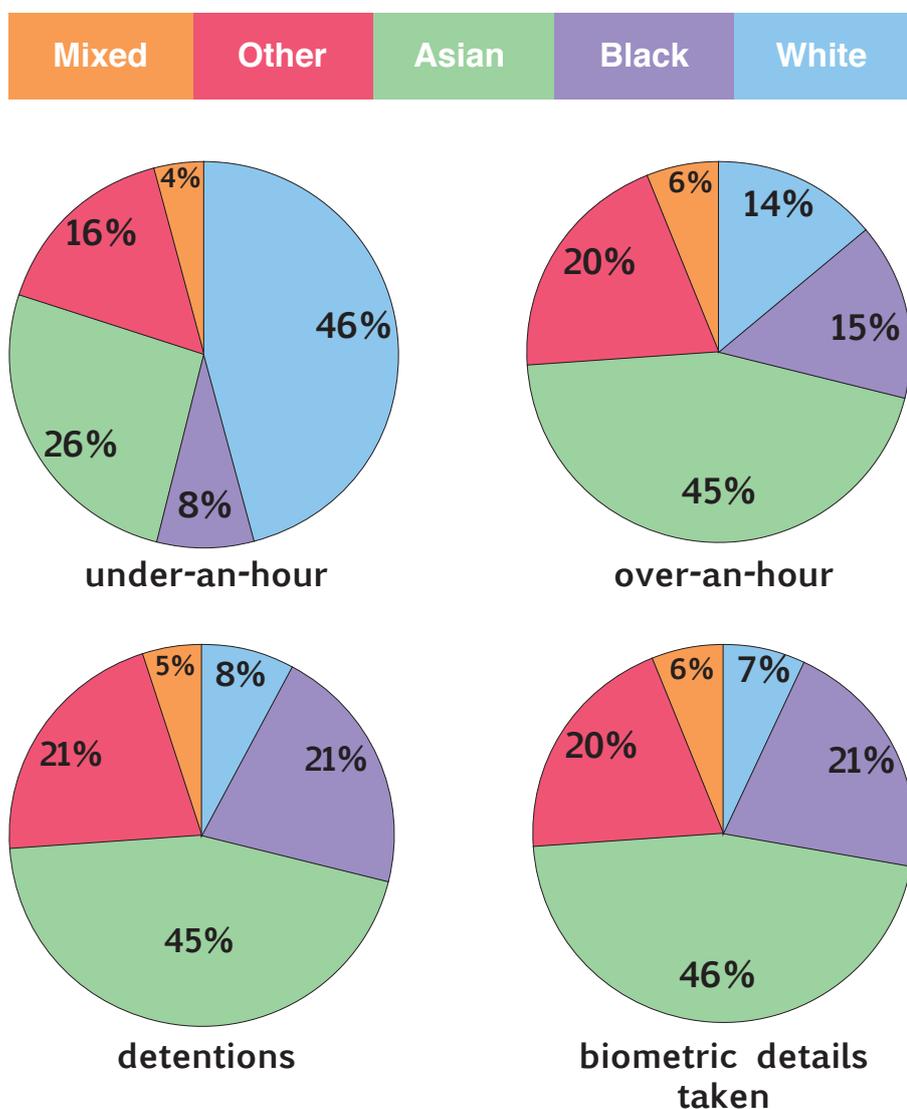
ing of Muslims by police, particularly in port and airport spaces, is a fact and one which has adverse effects on cooperation between Muslim communities and the police.⁵

With the Home Office and Police Force Areas not publishing the self-defined ethnicity of individuals stopped under S7 powers from 2001 to 2009, it is impossible to precisely calculate the degree of disproportionality leveraged by police using Schedule 7 power towards Asians and British Asians. The lack of disclosure and open scrutiny of data over this period obscures the ability to analyse comparative improvement or decline in the use of the powers against minority groups.

However, if the trends on police ‘intuition’ noted by leading criminologists on the exercise of powers under Section 44 (TACT 2000), Section 60 of the Criminal Justice and Public Order Act (CJPO), and the Police and Criminal Evidence Act (PACE) are similar to Schedule 7, then we can expect a strong indication of disproportionate use against Asian and Asian-British persons.⁶

There is evidence of ethnic disproportionality in the available statistics for the years 2009-2010 and 2010-2011 on Schedule 7 examinations. The following table, taken from David Anderson QC’s (2012) report, identifies the distribution of searches across ethnic categories.⁷

Ethnic proportionality of Schedule 7 Stops (2010/11)



5 T Choudhury and H Fenwick, “The impact of counter-terrorism measures on Muslim communities,” Equalities and Human Rights Commission (2011).

6 C Pantazis and S Pemberton, “From the ‘Old’ to the ‘New’ Suspect Community,” *British Journal of Criminology* 49 (2009): 646-666.

7 D Anderson QC, *The Terrorism Acts in 2011*, Independent Reviewer of Terrorism Legislation (London: The Stationery Office, 2012), pg. 104.

In examinations lasting over one hour, the clear majority of persons stopped are Asian, fitting with qualitative evidence that Muslims in particular, are stopped, examined, and detained more frequently than any other group.⁸

These figures are complemented by a further alarming statistic: Asians constituted 46% of those whose biometric details were taken.

It is indisputable that minorities are subjected to Schedule 7 power in gross disproportion to whites. In his review on the operation of terrorism legislation in 2011, David Anderson QC, noted that the figures for the year 2009-2010 demonstrated that minorities ‘constituted a majority of those examined...and 92% of those detained’ under Schedule 7.⁹

This is inconsistent with the ethnic composition of convicted terrorists, of whom 22% are White. Yet, White Britons and other White persons only constitute 8% of those stopped and 7% of those who had biometrics taken. While the objective of the use of Schedule 7 powers is not to produce an even application across races, there can be no room for complacency when presented with the results these figures suggest in relation to ethnic disproportionality.¹⁰

ACPO has collected data for the period 2009-2010 on *ethnicity*, which is not an exact measure for the assessment of the number of Muslims detained under S7. Because Muslims are the most ethnically diverse religious group in the United Kingdom, it is difficult to use ethnicity data to accurately assess the extent of disproportionality towards Muslims as a group defined by religion.

Examinations and Detentions under Schedule 7 (2009-2010) Estimations of disproportionality of S7 powers against Muslims

Data compiled from ACPO and Home Office, Religious composition data from 2001 Census

| Ethnicity of persons stopped under S7 | Percentage of Muslims in Ethnic Group (2001 Census Table S104) | Under-the-hour | Est. Muslim | Over-the-hour | Est. Muslim | Detentions | Est. Muslim |
|---|--|----------------|-------------|---------------|-------------|------------|-------------|
| White British | 0.10% | 16892 | 17 | 124 | 0 | 8 | 0 |
| White Irish | 0.10% | 7247 | 7 | 69 | 0 | 6 | 0 |
| White Other | 8.60% | 13423 | 1154 | 222 | 19 | 27 | 2 |
| Mixed (White, Black Car) | 0.60% | 100 | 1 | 2 | 0 | 0 | 0 |
| Mixed (White, Black African) | 13.30% | 269 | 36 | 17 | 2 | 4 | 1 |
| Mixed (White, Asian) | 16.10% | 319 | 51 | 11 | 2 | 5 | 1 |
| Mixed (Other) | 14.10% | 1275 | 180 | 50 | 7 | 6 | 1 |
| Asian (Indian) | 12.70% | 2775 | 352 | 97 | 12 | 12 | 2 |
| Asian (Pakistani) | 92.00% | 9082 | 8355 | 417 | 384 | 138 | 127 |
| Asian (Bangladeshi) | 92.00% | 988 | 909 | 63 | 58 | 10 | 9 |
| Asian (Other) | 37.00% | 7798 | 2885 | 320 | 118 | 56 | 21 |
| Black (Car) | 0.80% | 295 | 2 | 11 | 0 | 2 | 0 |
| Black (African) | 20.00% | 4832 | 966 | 162 | 32 | 37 | 7 |
| Black (Other) | 6.00% | 952 | 57 | 30 | 2 | 6 | 0 |
| Chinese | 0.30% | 1129 | 3 | 8 | 0 | 41 | 0 |
| Other Ethnic | 25.70% | 15494 | 3982 | 598 | 154 | 128 | 33 |
| Total | | 82870 | | 2201 | | 486 | |
| Estimated number of Muslims searched | | | 18959 | | 791 | | 204 |
| Estimated percent of Muslims subjected to S7 powers | | | 23 | | 36 | | 42 |

8 T Choudhury and H Fenwick, “The impact of counter-terrorism measures on Muslim communities,” Equalities and Human Rights Commission (2011).

9 D Anderson QC, *The Terrorism Acts in 2011*, Independent Reviewer of Terrorism Legislation (London: The Stationery Office, 2012), pg. 105.

10 *Ibid.*, 105

We have used table S104 of the 2001 Census ('Religious Composition of Ethnic Group') as 2011 Census data is not yet available. Table S104 provides proportions on the number of Muslims in each of the ethnic groups. We have used these proportions to estimate the number of examinations that are likely to have involved Muslims, multiplying the number of under-the-hour, over-the-hour, and detentions (up to nine hours) under each ethnicity by the proportion of that ethnic group that is considered to be Muslims.

For example, 16.1% of Mixed Asian and White persons are considered to be Muslim. 319 Mixed Asian and White persons were examined under-the-hour, so we approximate that 51 of those individuals were Muslims. This is only an approximate figure as can only give a rough estimate of the number of Muslims stopped. However, in the absence of data that is disaggregated by religious affiliation, this is as close a rendering as we can ascertain on the religious affiliation of those examined and detained under Schedule 7.¹¹

Following suppositions analysed in academic literature on Muslims as a 'suspect community', we hypothesize that Schedule 7 stops affect Muslims more than any other religious group. This is also evident in the statistics made available by ACPO.

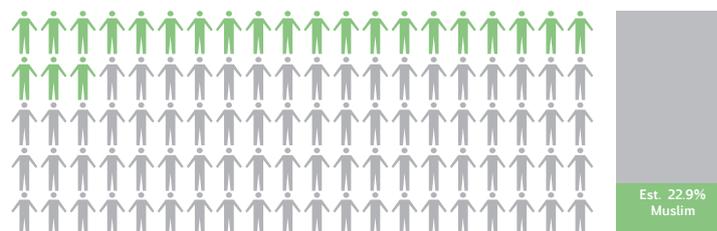
Based on our calculations, there is strong evidence of disproportionate use Schedule 7 stops on Muslims. The disproportionality is summarised in the following three points:

- 22.9% of under-the-hour examinations are likely to be of Muslims, about 1 in 5
- 35.9% of over-the-hour examinations are likely to be of Muslims, over 1 in 3
- 41.9% of detentions are likely to be of Muslims, about 2 in 5.

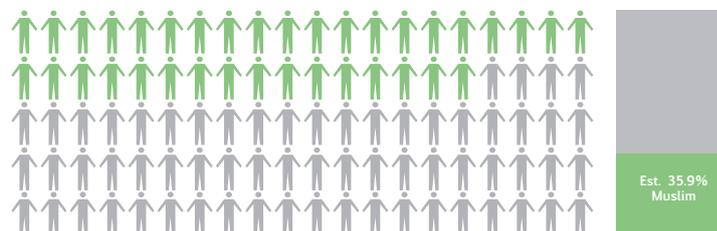
The data above shows an acute disproportionality towards Muslims; despite Muslims being just over 3% of the population (based on the 2001 Census). Muslims are almost 23% of all those stopped, and almost half of those detained. This data confirms many of the suspicions made by qualitative researchers who argue that law enforcement and counter-terrorist discourse renders Muslims a 'suspect community' thereby resulting in profiling and discriminatory policing.

**Disproportionality in S7 use on Muslims:
a visual representation**

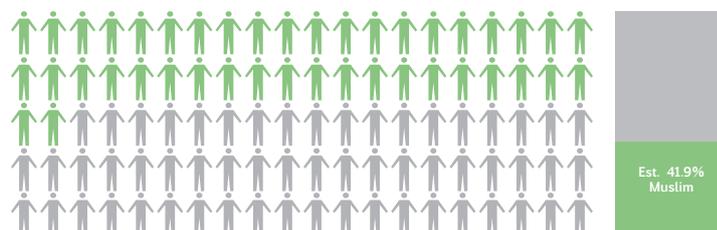
Under-an-hour examinations under schedule 7



Over-an-hour examinations under Schedule 7



Persons detained under schedule 7



¹¹ These approximations are further affected by the fact that Census data for 2001 is outdated.

The 'suspect community'—Muslims and policing practice

*"[Policy discourse] shows how Irish communities and Muslim communities found themselves situated in an ambiguous position, both as a consequence of the political violence and of the anti-terrorism measures. Whether pointing openly to the 'enemy within' or calling for the cooperation of the 'moderate' and 'lawabiding' members of these communities in order to eradicate extremism, the implicit message of the establishment seems to be that they have become 'suspect communities'."*¹²

The PREVENT agenda points to terrorism inspired by jihadist interpretations of Islam as the primary threat to the United Kingdom. The strategy revised and published in 2011 states:

"The UK faces a range of terrorist threats. The most serious is from Al Qa'ida, its affiliates and like-minded organisations".¹³

While the PREVENT agenda does have its basis in historical events and modern geopolitics, the threat against European countries from 'Islamic fundamentalist' terror is decreasing in dominance based on recent reports by EUROPOL.¹⁴ In its report on The Roots of Violent Radicalisation, the Home Affairs Select Committee notes among its observations, "We suspect that violent radicalisation is declining within the Muslim community."¹⁵

Nevertheless, the operation of counter-terrorism powers appears to have a clear and distinct effect on Muslim communities. In part, this is due to the cultivation and reinforcement of stereotypes informed by the media and political discourse on what constitutes 'threats' to the United Kingdom's security. It is the pervasive nature of certain stereotypes that renders police officers susceptible to them affecting, as intended or unintended consequence, the 'intuitive' process employed by law enforcement officers when selecting persons for stop-and-search.¹⁶ There is every reason to assume that port police, despite particular training that they might have had, are influenced by this discourse and stereotyping.

This is not to say that the police are 'institutionally racist'. Rather, we emphasise that the existing frameworks provided to the police and their location in a discursive and operational environment proven to employ certain stereotypes, leads to the targeting of Islam and Muslims under stop-and-search powers.

"Safety/security discourses around terrorism are merging with and subsuming existing 'problem groups'. In this way, fears about terrorism become linked to contemporary folk devils... Thus, the treatment of terrorism forms part of a broader sweep of classifying and identifying offenders by risk value [that] easily become attached to... particular groups – for instance, young male Asian Muslims."¹⁷

Dr Basia Spalek in her work on community policing, trust and Muslim communities found that the attachment of particular images of 'suspect' Muslims leads to discrimination and profiling at the immediate level of policing.¹⁸ While the ACPO Code of Practice does not mention Islam by name, it emphasises that an officer, when deciding to exercise Schedule 7 powers, should consider 'known and suspected sources of terrorism.'¹⁹ In a discursive and policy environment that focuses on al-Qaida inspired terrorism at the exclusion or neglect of other forms of terrorism, whether animal rights activism, ethno-national or sectarian violence, or far right supremacist violence, it is difficult to see how, against this backdrop, Muslims might evade some form of profiling by officers exercising S7 powers.²⁰

12 M Hickman et al, "Suspect Communities'? Counter-terrorism policy, the press, and the impact on Irish and Muslim communities in Britain," London Metropolitan University (2011).

13 The Prevent Strategy, (London: The Stationery Office 2011), pg. 12.

14 EUROPOL, *TE-SAT 2012 EU Terrorism Situation and Trend Report*, (European Police Office, 2012).

15 House of Commons, Home Affairs Committee, *Roots of violent radicalisation*, (London: The Stationery Office 2012).

16 P Quinton, "the formation of suspicions: police stop and search practices in England and Wales," *Policing and Society* 21, no. 4 (2011).
G Mythen and S Walklate, "Terrorism, Risk, and International Security: The Perils of Asking 'What If,'" *Security Dialogue* 39 (2008): 221-242.

17 G Mythen and S Walklate, "Terrorism, Risk, and International Security: The Perils of Asking 'What If,'" *Security Dialogue* 39 (2008): 229.

18 B Spalek, "Community Policing, Trust, and Muslim Communities in Relation to "New Terrorism"," *Politics & Policy* 38, no. 4 (2010): 790

19 National Policing Improvement Agency, *Practice Advice on Schedule 7 of the Terrorism Act 2000*, Association of Chief Police Officers (NPIA, 2009).

20 M Hickman et al, "Suspect Communities'? Counter-terrorism policy, the press, and the impact on Irish and Muslim communities in Britain," London Metropolitan University (2011).

Front line examination resources should be spent on rigorous risk assessment rather than searches based on the apparent risk posed by particular religious symbols, attire or appearance.²¹

Qualitative, quantitative and anecdotal evidence suggests that experience of S7 powers has led to widespread perceptions among Muslims that they *will be* targeted for examination, search, and possible detention when they travel through ports and airports. A study by academics at Durham University commissioned by the Equality and Human Rights Commission assembles a comprehensive overview of qualitative evidence of the disproportionate targeting of Muslims under Schedule 7 power.²²

It includes the observation noted from focus groups and semi-structured interviews that Muslims viewed the S7 powers as a “routine part of their travel experience”.²³

Based on interviews and focus groups, the study explains that:

anger arises from the nature of the questions asked as these intensify their sense of being targeted because they are Muslim. Individuals recalled being asked questions relating to their religious and political beliefs, as well as their personal activities in their communities. One interviewee recalls being questioned about his understanding of jihad; another about polygamy and his views of different political Islamic organisations and community groups. Such questions led most to feel that they were being targeted as Muslims, and that the questions were being used to build up profiles of them and to gather information in general about Muslim communities.²⁴

This evidence is corroborated by information provided by an Independent Police Complaints Commission (IPCC) member of the National Accountability Board who said it was “the types of questions that individuals were being asked that frequently prompted people to complain.”²⁵

The experience of being asking questions designed to ‘build a profile’ and ‘gather information’ on the Muslim community is borne out in reports of Muslims being harassed and intimidated by security agents and border police.²⁶

Reports published in the national media include one in The Independent newspaper which in 2010 covered three such cases, Mohamed Nur, Adil Hussain and Asif Ahmed.²⁷ The newspaper reported:

Mohamed Nur, 26, was stopped at Heathrow airport in June after returning from a holiday in Dubai. He was held for nine hours and forced to give DNA samples and fingerprints. During the questioning, one of the police officers asked about his British credentials. “He asked me ‘Do you consider yourself to be English?’ I said I consider myself to be British, rather than just English,” Mr Nur said.

He said ‘How do you consider yourself to be British when you have no historical links with Britain? It’s like me going to Somalia and living there and people still not considering me to be Somali because of the way I look.’

I said ‘I’ve lived most of my life in Britain so that’s why I’m British’. Then he asked me about Dad’s Army, and whether I watched it or not. I said ‘Yes’. He said ‘Do you find it funny?’ and I said ‘Yes’. Then he said ‘I consider you British’.”

Adil Hussain, A PhD student at Imperial College, London, told the Independent reporter, of his experience on being stopped and the caution given by border police that, “I do not have the right to remain silent – if I refuse to answer any questions I could be arrested.”

In a report published in The Guardian newspaper,

21 Abul Taher, ‘The middle-class terrorists: More than 60pc of suspects are well educated and from comfortable backgrounds, says secret M15 file’, *Mail on Sunday*, October 16, 2011.

22 T Choudhury and H Fenwick, “*The impact of counter-terrorism measures on Muslim communities*,” Equalities and Human Rights Commission (2011).

23 *Ibid.*, pg. 22

24 *Ibid.*, pg. 23.

25 Schedule 7 Terrorism Act 2000 National Accountability Board, “Minutes, 20th September 2011” (2011).

26 Robert Verkaik, Exclusive: How MI5 blackmails British Muslims, *The Independent*, May 21, 2009; and Robert Verkaik, MI5 ‘still using threats to recruit Muslim spies’, *The Independent*, January 5, 2010

27 Robert Verkaik, ‘They asked me where Bin Laden was, then they took my DNA’, *The Independent*, September 21, 2010.

Asif Ahmed, 28, said he was asked to spy after landing at Edinburgh airport. He said he was separated from his wife and taken to a room and told he must answer questions about his beliefs and faith. 'They asked if I would like to work with special branch, to keep an eye on the Muslim community in Edinburgh. They asked me three times. They said do it covertly.'²⁸

The experiences of Muslim passengers travelling through Glasgow Airport is captured in a report published by The Herald newspaper which also covers a public meeting held in the Pollockshields area of the city organized to address concerns expressed by Scottish Muslims.²⁹

An Afghan asylum seeker was asked for the whereabouts of Osama bin Laden, while others have been asked extremely personal questions, such as their mosque affiliations, community groups they belong to, marital information, and even financial affairs.³⁰ Most Muslims are happy to comply with the increases in airport and port security following 9/11 and 7/7, but are alarmed by the frequency of examinations and the deeply intrusive nature of questions asked by officers.

Fewer than 3% of all of those stopped are examined for over an hour, and only 1% are detained. The statistics raise questions on the lasting impact on the 96% of persons who are stopped for examinations lasting under an hour.

A high proportion of Muslims are being examined, reinforcing anxieties that they are a suspect community and eroding the possibility of co-operative, community-oriented policing. The massive proportion of those that are innocent, but who are still questioned, are left alienated, embarrassed, and frustrated. The further use of these stops in order to ascertain information on the activities of civil society and religious organisations and seeking the recruitment of informants even after the subject's innocence is established, is a disturbing practice that must be curtailed.

The cumulative impact of disproportionality in S7 stops and invasive lines of questioning, is the political apathy and disenfranchisement it engenders in a generation of young British Muslims. Questions which seek to probe a Muslim's membership of community and other religious organisations, or their political beliefs, leaves open the very real possibility that Muslims will be deterred from engaging in political activism.

In its report on *The Roots of Violent Radicalisation*, the Home Affairs Select Committee, notes the importance of the Prevent strategy "demonstrating that the British state is not antithetical to Islam".³¹

Correcting the disproportionate use of S7 powers against Muslims, and its broader impact on their dignity and political sensibilities, is an important step towards alleviating the belief, real or perceived, that the war on terror is a war on Islam and Muslims.

The current framework and use of S7 powers is ineffective and counterproductive. Ineffective because it results in extremely low conviction and arrest rates in proportion to the numbers that are stopped, generating frustration and anger. Schedule 7 is counterproductive because its use actively erodes the opportunity for intelligence-led policing that depends on trust between police and communities.³²

28 Vikram Dodd, "Terrorism Act: 'They asked me to keep an eye on the Muslim community'," *The Guardian*, May 23, 2011.

29 Alison Campsie and David Leask, 'Muslims boycott airport', *The Herald*, July 12, 2011.

30 T Choudhury and H Fenwick, "*The impact of counter-terrorism measures on Muslim communities*," Equalities and Human Rights Commission (2011).

31 House of Commons, Home Affairs Committee, *Roots of violent radicalisation*, (London: The Stationery Office 2012), pg. 12.

32 B Spalek, "Community Policing, Trust, and Muslim Communities in Relation to "New Terrorism", *Politics & Policy* 38, no. 4 (2010): 789-815.

'Reasonable suspicion' and police powers

In the case brought by human rights group Liberty to the European Court of Human Rights, *Gillan and Quinton v. UK*, the court ruled that the use of counter terrorism powers in the name of national security must be 'sufficiently circumscribed,' 'proportionate', and 'subject to adequate legal safeguards against abuse.' This decision ended the use of Section 44 (Terrorism Act 2000) with the court ruling that the 'clear risk of arbitrariness' in the exercise of the powers, and its disproportionate use against minorities violated article 8 of the European Convention on Human Rights.

According to the aforementioned EHRC report, several Muslim interviewees "viewed Schedule 7 as equivalent to a s44 stop and search at the airport" on account of the absence of 'reasonable suspicion' as grounds for stopping a passenger.³³

Data demonstrates that the former S44 powers and S60 of CJPO stop and search, showed the highest rates of disproportionality and the lowest rates of arrest.³⁴

Sufficient circumscription of police power with a clause requiring 'reasonable suspicion' increases the conviction rate and efficiency of law enforcement, particularly in the context of the port, airport, or border zone. David Anderson QC in his review on the operation of terrorism legislation in 2011, argued:

It is fair to say that the majority of examinations which have led to convictions were intelligence-led rather than based simply on risk factors, intuition or the "copper's nose." Indeed...I have not been able to identify from the police any case of a Schedule 7 examination leading directly to arrest followed by conviction in which the initial stop was not prompted by intelligence of some kind.³⁵

Anderson's analysis of intelligence-led policing suggests that 'reasonable suspicion,' as is requisite of Section 43 and the reformed, Section 44 stops, leads to better outcomes. All of the convictions that have been made from Schedule 7 have been prompted by intelligence informing reasonable suspicion.

Section 44 powers were curtailed by Section 47(A) introduced in the 2012 Protection of Freedoms Act following the ruling by the ECHR in *Gillan and Quinton v. UK*. Drawing a parallel with the reform of S44 with the extant S7 powers and the abuse of power endemic to their design, Liberty argued in its briefing at the Second Reading of the Protection of Freedoms bill,

[Schedule 7 powers] currently drafted without any need for a ground of suspicion before stopping someone is unnecessarily broad, counter-productive and accordingly requires repeal or amendment. One of the main concerns of the Court in *Gillan* was that the overly broad nature of section 44 opened the power up to misuse and unintended consequences. The potential for discriminatory use of the power was held by the Human Rights Court to be "a very real consideration" leading in part to a finding that section 44 breached the right to private and family life. The breadth of the Schedule 7 power means that it likely falls foul of the same human rights considerations.³⁶

Observing the higher threshold introduced in Section 47(A) of TACT 2000, the stringent test and stricter limits to police discretion, Anderson notes:

Under the new TA 2000 section 47A, an authorisation for the use of the stop and search power can only be given where the senior police officer giving it –reasonably suspects that an act of terrorism will take place and reasonably considers that the authorisation – is necessary to prevent such an act. These are very high thresholds, reflected in the fact that in 16 months since its provisional introduction in March 2011, no authorisation has been made under section 47A in any part of the United Kingdom.³⁷

33 T Choudhury and H Fenwick, "The impact of counter-terrorism measures on Muslim communities," Equalities and Human Rights Commission (2011), pg. 20.

34 Home Office, "Operation of police powers under the Terrorism Act 2000 and subsequent legislation: Arrests, outcomes and stop and searches, Quarterly update to December 2010," Home Office, June 29, 2011, <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/counter-terrorism-statistics/hosb1411/> (accessed November 29, 2011).

35 D Anderson QC, *The Terrorism Acts in 2011*, Independent Reviewer of Terrorism Legislation (London: The Stationery Office, 2012), pg. 111.

36 Liberty, "Liberty's Second Reading briefing on the Protection of Freedoms Bill (Supplementary provisions) in the House of Lords," (2011), pg. 15.

37 D Anderson QC, *The Terrorism Acts in 2011*, Independent Reviewer of Terrorism Legislation (London: The Stationery Office, 2012), pg. 92.

Improving the Operation of Schedule 7

A number of other issues beyond disproportionality are highlighted by studies and critical reviews of Schedule 7. David Anderson QC puts forth a number of issues a Schedule 7 consultation should address:

- Training and accreditation of persons entitled to use Schedule 7 powers
- The compulsion placed on all subjects to comply with the examining officers, with or without the presence of a solicitor
- The time a person is examined without being detained, which is a particular concern for under-the-hour examinations
- The ability to conduct strip searches and take DNA samples³⁸

Anderson encourages anyone with the right to exercise Schedule 7 power to address these issues 'as best they can.' This subjective rendering of a power as broad and intrusive as S7 is insufficient a safeguard against misuse, disproportionality and encroachment of civil liberties. The taking of intimate biometric details, for example, disproportionately affects BME persons. While there has been some progress made on this issue, with the requirement that all biometric details be scrubbed from the system after six months, the principle of taking biometric data without reasonable suspicion of involvement in terrorist acts is an affront to due process and an individual's rights under Articles 5 and 8 of the ECHR.

The possible changes to S7 powers as established, though not exhaustive, in the public consultation are listed as follows:

1. Reducing the maximum legal period of examination
2. Requiring a supervising officer to review at regular intervals whether the examination or detention needs to be continued
3. Requiring examining officers to be trained and accredited to use Schedule 7 powers
4. Giving individuals examined at ports the same rights to publically funded legal advice as those transferred to police stations
5. Amending the basis for undertaking strip searches to require suspicion and a supervising officer's authority
6. Repealing the power to take intimate DNA samples from persons detained during a Schedule 7 examination

Our responses and recommendations to these and other changes are outlined below:

Police Training

Police should be highly sensitive when applying Schedule 7 powers. First and foremost, they should be aware of the intimidation and anxiety experienced by those stopped for examination. One way to encourage more 'intelligent' stop-and-search use is through, as Nick Glynn, Chief Inspector of Leicestershire Constabulary, advises:

"An uplift in the awareness and understanding of police officers regarding the effect they have on individuals and the wider community every time they stop someone. It is my belief that this will lead to stop encounters of a higher quality and efficiency."³⁹

³⁸ D Anderson QC, *The Terrorism Acts in 2011*, Independent Reviewer of Terrorism Legislation (London: The Stationery Office, 2012).

³⁹ N Glynn, "Police Stops and Stop/search - It's Quality not Quantity that Counts," in *Ethnic Profiling: The Use of 'Race' in UK Law Enforcement*, 23-24 (London: Runnymede Trust, 2010).

More than just better education, Glynn argues that an amount of empathy on the part of constables towards individuals stopped and searched can be crucial in encouraging mutual trust and for more effective policing.

It can be extremely frustrating, intimidating, and worrisome—as well as embarrassing—when someone is pulled aside for examination and being told that they will be examined *without recourse to a solicitor* and that they *must comply with all requests made by an examining officer*. Examining officers as well should be fully conscious of the fact that the subject is obliged to an intimidating level of compliance, and without the comfort and security presented by legal counsel that would normally be provided by a solicitor. Part of this problem, according to a senior police officer, is in the training and execution of Schedule 7 services by police officers:

I always worry about the level of training you need to give an officer. [...] I could have a chat about all aspects of the Muslim religion, [that] has come from many years of exposure. [...] My worry is that some clever person is given a series of questions [the Schedule 7 screening questions], and we've made it a tick box, and of course it looks stupid. It's huge training; it's asking police officers to read papers, to understand about cultural issues. It's asking a lot.⁴⁰

The proper training of officers to be sensitive to the diverse and individual nature of the threats to the United Kingdom as well as the contexts of different cultures is crucially important for more responsible use of Schedule 7 powers. The Home Affairs select committee in its report on *The Roots of Violent Radicalisation* calls for the revised Prevent strategy to be broadened to capture, in discourse, policy, and policy implementation, the full range of security threats facing the UK - moving away from the heavy, misplaced emphasis on 'al Qaida inspired terrorism'.

In particular, police officers should attend regular training organised by police forces, in partnerships with local communities to ensure better awareness and education on the diversity of positions within Islam and actively attempt to deconstruct the wider discourse about Muslims as a 'suspect community.' Police officers should be able to appreciate the difference between a regular British Muslim and a person who might potentially or actually be involved in terrorism. Education on the context of Islam will help police officers to ask more targeted questions *related specifically to intelligence concerns* rather than general questions about a Muslim's faith or extent of piety and religious observance. This is in response to the problem pointed out in a number of studies that questions related to a subject's Islamic faith led the assumption that they were being targeted because of their religion. For this reason, a *risk based*, rather than biased 'suspect community' based approach should be taken when deciding who to examine under Schedule 7 powers.

A measure of incorporation of these suggestions is evident, and commendable, in the establishment of the National Accountability Board. The NAB, a body that comprises representatives of Muslim organisations and officers engaged in counter terrorism policing, facilitates a two way transfer of knowledge between officers and Muslim community organisations. As with the role played by the Muslim Safety Forum as a liaison body between the Metropolitan Police Service and Muslim Londoners (and the wider British Muslim communities), NAB is an important mechanism to facilitate awareness-raising on Muslim experiences of counter-terrorism policing and early warning of any abuses.

The current members of the National Accountability Board are from a range of organisations and include the Young Muslims Advisory Group (YMAG), the Black Police Association (BPA), The National Association of Muslim Police (NAMPP), the Independent Police Complaints Commission (IPCC), ACPO lead for Stop and Search, the NPIA Stop and Search Community Panel, Islamic Human Rights Commission (IHRC), ACPO PREVENT Unit, Office for Security and Counter Terrorism (OSCT) and the Mayor's Office for Policing (MOPC).

Smarter use of schedule 7: Risk-based policing

Risk-based policing should extract religious or ethnic affiliation from an officer's ability to determine whether a particular traveler is a risk to national security. 'Self-regulation' will not be an effective measure, considering the history of Section 44 and the deep suspicion that the ECHR, Liberty, EHRC, and StopWatch have all expressed that without strict guidelines, exercise of the powers will produce disproportionate results. A statutory measure, in the form of an amendment for 'reasonable suspicion', must be incorporated. This requires more intelligent policing that operates in line with the National Intelligence Model. An effective move to a more

⁴⁰ Senior Police Officer, quoted in T Choudhury and H Fenwick, "The *impact of counter-terrorism measures on Muslim communities*," Equalities and Human Rights Commission (2011), pg. 24.

rigorous risk-based policing around Schedule 7 would involve these major changes:

- Where possible, police should work with the Muslim community to educate them of their rights and work with Islamic organizations to be informed of the concerns of the community and open channels of cooperation and communication, particularly in regard to Schedule 7 stops. Trust cultivated between police forces and British Muslim communities will be more beneficial to the police than the difficult situation that has emerged today.
- The new Police and Crime Commissioners should work to alleviate tensions generated by perceptions and experience of S7 powers by working closely with local communities, particularly in police force areas in which ports and airports are located.
- The work of the National Accountability Board must be publicised, its Muslim community members encouraged and assisted in establishing open and regular channels of communication with Muslim communities and to act as a conduit for community concerns. Meetings held by NAB must be more frequent and minutes of the meetings publicly accessible, as is presently the case.
- Police should keep written records of all Schedule 7 stops regardless of their duration, and this should include instances where examination ceases after the initial screening questions. Recording data on ethnicity *and* religion, should be mandatory to allow for continuous scrutiny to detect disproportionality in use. The Home Office should publish data on S7 stops annually, disaggregated by police force area, and by ethnicity and religion. Where this might threaten national security or existing investigations, the data should be aggregated and published at the national scale.
- The statutory introduction of ‘reasonable suspicion’ to the exercise of S7 powers is recommended. For under-the-hour examinations that go beyond initial screening questions, the officer must keep an individual informed of why they have been held for further examination and every effort must be taken to conclude the interview with ample time for the subject to keep to their schedule.
- ‘Reasonable suspicion’ should be based on intelligence and have some evidential basis; religious affiliation or point of travel origin should not be sufficient conditions to stop an individual under S7 powers.
- Airlines, ships, and rail operators should provide manifests well in advance of arrivals to allow police and intelligence services ample time to study travel patterns and evaluate the risk of any entrants

An intelligence-led approach should have three main goals. First and foremost, it would send an unambiguous signal to Muslims that they will not be targeted in a discriminatory manner. It would also address the widely held view that ‘treatment [under Schedule 7] is illegitimate and [meshes] with a political narrative about Muslims’ as potential threats.⁴¹ It would attempt to build trust with the Muslim community by reaching out to Muslim individuals and organisations. Threats to the United Kingdom should focus on the evidentiary and demonstrable links that exist between travellers, the countries they have visited, and any possible intelligence that might suggest their travel has to do with the execution, propagation or support of terrorist activities.

The second goal would be to improve intelligence gathering by requiring earlier provision of manifests so that police have adequate time to conduct research on any potential threat posed by individuals seeking to enter the UK by conferring with the Home Office and intelligence services ahead of time, allowing for ample time to collect evidence and substantiate ‘reasonable suspicion.’

Third, officers should only be able to initiate examinations based on reasonable suspicion and good intelligence that document clear reasons to why someone should be subjected to a stop under S7 powers. When the discretion of an officer is further circumscribed and the ability to examine is strictly controlled, officers are able to focus on intelligence and the facts. Officers should be required to report to their superiors at regular time intervals the reason behind why a person is being examined further and why previous lines of questioning have not been sufficient to dispel any ‘reasonable suspicion.’

41 L Blackwood, S Reicher and N Hopkins, “Muslim encounters at airports: the production of disengagement,” in *Annual Report*, 12-14 (2011).

Monitoring Schedule 7: Better data collection and publication

It is almost universally acknowledged that Schedule 7 data is deeply inadequate. There is virtually no information on examinations prior to 2009, as only examinations over-the-hour were recorded. There is no data on the ethnicity of those examined available for the period 2010-2012, so it is impossible to assess and account for disproportionality or other discriminatory factors.

There is also no full disclosure of information on the number of arrests and convictions arising from the use of S7 powers over this period. It is impossible to assess the effectiveness of these powers without the availability of information through which independent assessment of how effective they are in aiding the arrest and conviction of individuals suspected of engaging in or supporting terrorist acts, can be conducted. Publicly available data on arrest and conviction rates is essential to assessing the effectiveness of these powers and proportionality.

Furthermore, there is no way to tell how many people have had intimate biometric details taken, such as DNA. While it is important that the Home Office exercise caution in releasing statistics on Schedule 7 to maintain national security interests, it should release general data to allow a degree of scrutiny. Shrouding the data in the cloak of national security will do little to dispel perceptions of ethnic or religious bias. Following the National Intelligence Model and best practice in policing, communities need data to hold the police to account, and for the police to be able to engage in critical self-reflection. Accurate data collection and publication will go a long way in allowing NGOs and civil society to provide criticism and feedback to the police.

The Protection of Freedoms Act restricts the length of time for which biometric data may be held to six months, except where authorised to exceed this period. However, the Act applies to biometric data acquired after the adoption of the statute. It does not, we understand, apply retrospectively meaning that those individuals from whom samples, non-intimate or intimate, were taken in the years 2001-2011 are unaware if this data is still held on record.

We would welcome assurances that the protection of freedoms granted under the 2012 Act retrospectively apply to the years since the introduction of the Schedule 7 powers and that no data from the years 2001-2011 has been kept on record without due process.

Schedule 7 powers are necessary to the preservation of collective security. Their use should, as far as is possible, be consistent with and circumscribed by the individual's right to liberty and security.