## Module III: Stop and Search

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### Aim of the session:

To explore what stop and search powers police have, what rights individuals who find themselves subjected to them have, and what (if any) recourse people have if they feel they have been wronged.

* What legislation gives police powers to carry out stop and search?
* What is the stop and search procedure?
* What avenues are there for complaints to be addressed?

### Stop and Search, or Stop and Account?

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* A stop and account entails a police officer or police community support officer (PCSO) asking you to account to your presence at any time.
* This may lead to them searching you depending on the situation.

### Stop and Account

* If a police community support officer (PCSO) wishes to stop and question you, they must be wearing their uniform. A police officer doesn’t have to be in uniform but they must show you their warrant card.
* According to the Metropolitan Police, stop and account entails a police officer or police community support officer (PCSO) stopping you in a public place and asking you to account for yourself, and may ask you:
	+ What you are doing,
	+ Where you have been,
	+ Where you are going,
	+ What you are carrying.[[1]](#footnote-1)

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* You don’t have to stop or answer any questions and you cannot be arrested solely on the basis of refusing to answer these questions.
* **However,** **it is always better to cooperate:** If you have nothing to hide it does not make sense to escalate the situation by arousing suspicion, meaning that the police could be entitled to use other powers to detain you.
* There are powers, such as s50 of the Police Reform Act 2002, which the police can use to compel you to answer their questions if they have “reason to believe that a person has engaged, or is engaging, in anti-social behaviour”, which is considered to be behaviour which is likely to cause “harassment, alarm or distress”.[[2]](#footnote-2)
* Likewise, s24 of the Police and Criminal Evidence Act 1984 provides the power to arrest you if you are reasonably suspected of having committed a crime.
* As such, it is always advisable to be polite and answer any questions truthfully. If you do not answer truthfully, it could constitute an offence of obstructing the police in the course of their duty under s89(2) of the Police Act 1996.

### What stop and search powers do police have, and where are they found?

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* There is a range of legislation governing police use of stop and search. This includes:
	+ Police and Criminal Evidence Act 1984 (PACE)
	+ Misuse of Drugs Act 1971
	+ Firearms Act 1968
* Under these three acts, in order for the PCSO or police officer to conduct a search, they must have a genuine and reasonable suspicion that the person is in possession of:
	+ Stolen or prohibited articles,
	+ Drugs,
	+ Weapons,
	+ Anything that could be used to commit a crime.

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* According to the civil rights group, Liberty, “what forms ‘reasonable’ is judged by what an ordinary person with all the information the police officer has would consider reasonable.”[[3]](#footnote-3) Regarding what constitutes as ‘reasonable suspicion’, Code A of PACE states that:
	+ “There must be an objective basis for that suspicion based on facts, information and/or intelligence which are relevant to the likelihood of finding an article of a certain kind, or in the case of searches under section 43 of the Terrorism Act 2000, to the likelihood that the person is a terrorist. Reasonable suspicion can never be supported on the basis of personal factors alone without reliable or supporting intelligence or information or some specific behaviour by the person concerned. For example, a person’s age, race, appearance or the fact that the person is known to have a previous conviction, cannot be used alone or in combination with each other as the reason for searching that person. Reasonable suspicion cannot be based on generalisations or stereotypical images of certain groups or categories of people as more likely to be involved in criminal activity.”[[4]](#footnote-4)

### Suspicionless searches

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* The police also have powers to stop and search without suspicion under certain legislation. Under s44 of the Terrorism Act 2000, any police officer was able to stop and search any person or vehicle within a specific area. The allocation of this area had to be authorised by the Home Secretary and would be valid for a time period of 28 days, and capable of being renewed indefinitely.
* These powers were so broad that this resulted in areas such as the whole of Greater London being designated as areas where anyone could be stopped and searched without suspicion for almost 10 years without a single person being arrested under terrorism charges as a result.[[5]](#footnote-5)
* In 2010, the human rights organisation Liberty won a landmark case before the European Court of Human Rights, which ruled that s44 was unlawful as the power is so broad and fails to provide safeguards against abuse which, therefore, violates the right to respect for private life.[[6]](#footnote-6)
* In 2012, s44 was repealed and replaced in the Protection of Freedoms Act (PFA), which allows for an area to be authorised if there is reasonable suspicion that an act of terrorism is about to occur. It has greater safeguards than s44, including tougher time limits, in order to ensure the power is used responsibly. Bindmans, a law firm specialising in human rights, made some observations on some of these safeguards:
	+ The PFA removes existing police powers to retain the biometric data of innocent suspects, and reduces the length of time for the retention of data, restricting ‘indefinite’ detention to only the cases of those convicted of the most serious offences.[[7]](#footnote-7)
	+ Part 4 of the PFA reduces the maximum period of detention without charge for terrorist suspects from 28 to a maximum of 14 days.[[8]](#footnote-8)
* Provisions under s60 of the Criminal Justice and Public Order Act 1994 also allow for the police to search individuals without suspicion if they are in a designated area that is authorised for a 24hour period (a time period which can be extended).
* For this act to be used, an inspector must authorise the designation of the area because they reasonably believe that:
	+ An incident involving serious violence has or may take place and it is expedient to give an authorisation under this section to find a dangerous instrument or offensive weapon used in the incident.
	+ Or that individuals are carrying dangerous instruments or offensive weapons without good reason.
* This is particularly used after a major incident or to prevent violent offences at large-scale events such as football matches.

### Vehicle searches

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* Under s163 of the Road Traffic Act 1988, a person driving a vehicle or cycle must stop when asked to do so by the police, who do not need reason nor justification.
* This power was supported by the introduction of new offences designated under sections 43 and 44 of the Immigration Act 2016 of “driving when unlawfully in the UK”.[[9]](#footnote-9)
* Failing to stop and comply when requested by police is an offence and, as s163(3) states, you could be found guilty of an offence for doing so.
* Section 4 of PACE authorises the police to search vehicles where there is reasonable suspicion that the vehicle is carrying a person who has committed, or is about to commit, an offence other than a road traffic offence.

### What is the stop and search procedure?

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* According to the government guidance, before you are searched, the PCSO or police officer “must tell you:
	+ their name and police station
	+ what they expect to find, for example drugs
	+ the reason they want to search you, for example if it looks like you’re hiding something
	+ why they are legally allowed to search you
	+ that you can have a record of the search and if this isn’t possible at the time, how you can get a copy”.[[10]](#footnote-10)
* The police can detain you during the search but only for a time as short as possible. According to the Police & Crime Commissioner for West Yorkshire, “you should only be detained for as long as necessary to carry out the search.”[[11]](#footnote-11)

### Removing clothing

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* According to government guidance, the PCSO or police officer can ask you to take off your coat, jacket, or gloves and may ask you to take off other clothes, including anything that you are wearing for religious reasons - for example a hijab. However, if they ask you to take off more than your coat, jacket, and gloves, they must take you somewhere out of public view and they must be the same sex as you.[[12]](#footnote-12)
* Your clothes cannot forcibly be removed (as this would be assault and could render the search unlawful). However, refusal to remove them could lead to prolonged detention and other powers being enacted to compel you to do so.

### Reasonable force

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* To date, the police are allowed to use *reasonable force* when restraining a member of the public. This is largely a contentious issue as there is currently no clear definition or boundaries outlining what is meant by ‘reasonable force’. It is considered to be at the officer’s discretion, dependent upon the circumstances of the situation. The considerations used by the police to assess whether they can use reasonable force may include whether the suspect is already displaying violent behaviour or whether the force used was the last resort.
* However, this is problematic because most people (police included) have subjective interpretations of reasonable force which is vulnerable to an unconscious bias or prejudice. For example**,** when we see media representations of ethnic minorities as violent (e.g. black criminality/gang culture or Muslim terrorists).

### What can I do during a stop and search?

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* You should ask the following questions and record the answers:
	+ The name of the PCSO or police officer,
	+ Why you are being stopped,
	+ How to obtain a record of the stop,
	+ The shoulder number of a the PCSO or uniformed police officer,
	+ To see the warrant card of a plainclothes police officer.

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* You should also record the date and time of the incident
* After the search, you are entitled to a copy of the record of the incident, but you must request it within three months if you have not received one at the time.

### Discrimination

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* The police are subject to the Equality Act 2010 in the same way as any other public body. Therefore, they cannot stop and search you because of your protected characteristics.
* They also cannot stop and search you on the basis of previous convictions or because of your clothing or general appearance. However, there are acceptable exceptions in the case of gangs.
	+ Citizens Advice, the consumer information and advice network, points out that there is an exception to the general rule that the police cannot stop and search someone because of their clothing or general appearance - where the police have access to reliable knowledge or intelligence of gang members “who dress or look similar to one another” and are known to carry drugs or offensive weapons.[[13]](#footnote-13)

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* However, valid accusations of discrimination within stop and search practices remain. The ratio of Black to white stops increased from 5 to 1 in 1999 to 8 to 1 in 2002.[[14]](#footnote-14) Subsequent reports from the Equalities and Human Rights Commission (EHRC) in 2010 and 2013,[[15]](#footnote-15) as well as Home Office data from 2015/16, showed that Black people were between six and 29 times more likely to be stopped than white people.[[16]](#footnote-16) The most recent government data on stop and search between April 2018 and March 2019 shows that the rate for Asian and mixed people is 11 in every 1,000 people; for black people it is 38 in every 1,000; while for white people it is just 4 in every 1,000.[[17]](#footnote-17)
* The detrimental impact of the stop and search powers can be observed in their effect on Muslim males. As the EHRC noted in a report in 2011, “For many young Muslim men on the streets, stop and search under Section 44 of the Terrorism Act (s44) has become their most frequent and regular contact with the police… Such measures were seen to add to perceptions of racial and religious profiling and discrimination.”[[18]](#footnote-18)
* Analysis commissioned by the Guardian in 2019 showed how the Met police increased its use of stop and search powers, with a 19% annual rise of their use against black Londoners, compared to just a 5% rise in the same time period for white people.[[19]](#footnote-19) According to StopWatch, in 2018/19 in London, Asians and people from mixed ethnic backgrounds were searched at approximately 1.5 times the rate of white people, while people from Chinese or ‘other’ ethnic backgrounds were actually found to be slightly overrepresented in the statistics compared to white people.[[20]](#footnote-20)
* The Guardian’s data highlights how disproportionately stop and search powers are used against ethnic minority communities in London. White people make up 59.8% of London’s population, yet 35.5% of those stopped and searched by police in London were white; black people make up 15.6%, yet 43% of those stopped and searched were black.[[21]](#footnote-21)
* Home Office statistics on stop and search show the extent of the disproportionality in the exercise of these powers. The equivalent of four in every 1,000 white people were searched in 2018/19, compared to 38 in every 1,000 black people, 11 in every 1,000 Asian people, 7 in every 1,000 people of Chinese or other heritage, and 11 in every 1,000 people of mixed heritage. In summary, the equivalent of 17 in every 1,000 people from BAME communities were searched in 2018/19.[[22]](#footnote-22)

### Complaints

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* If you are unhappy with any aspect of police conduct, such as if you don't think the police correctly or adequately followed the code of practice when they searched you, for example, you are able to make a complaint. In some cases, you may also be able to find legal recourse if, for example, you felt discriminated against.
* You should complain to the police directly first. You can do this in the following ways:
	+ At the local police station in person
	+ Through your local police website
	+ By sending a postal complaint form to the police station you are complaining about
* Alternatively, you can complain directly to the IOPC, who will send your complaint to the police force in question.

### The Independent Office for Police Conduct (IOPC)

* The IOPC is an independent public body founded in January 2018 to oversee the police complaint system without the involvement of the police or government. As stated on its website: “by law, our Director General can never have worked for the police. Also none of our executive team, regional directors or our Director for Wales have worked for the police.”[[23]](#footnote-23)
* As it states on its website, there is a legal requirement for police forces to refer certain matters to them, including:
	+ “Certain complaints made to their force – such as those that include an allegation of serious corruption or serious assault,
	+ indications that police officers or staff have committed misconduct – for example, any suggestion that a criminal offence has been committed or that a serious injury has been caused,
	+ if someone had direct or indirect contact with the police when, or shortly before, they were seriously injured or died. However, forces only need to refer cases where the contact may have caused or contributed to the death or injury.”[[24]](#footnote-24)
* Even if an incident is not referred to the IOPC by police forces because, for example, it does not fit into the above categories, the IOPC states how it can direct forces to record them and then “call them in”, and how it also has the power to consider the incident and decide whether and how to investigate.[[25]](#footnote-25)
* The IOPC emerged out of the previous complaints body - the Independent Police Complaints Commission (IPCC) which was established in 2004.
* The IPCC faced heavy criticism for their perceived incompetence and lack of independence as the majority of cases brought to the IPCC were still dealt with by the local police forces under the “supervision” of the IPCC. Having cases dealt with in this manner meant that complaints made against local police were effectively being investigated by that very same police force. The appointment of ex-police officers into the IPCC was also problematic as it raises conflict of interest and ultimately undermined the independent nature of the IPCC.
* The IOPC aimed to overcome the criticisms levied against the IPCC through the Policing and Crime Act 2017 which has equipped the IOPC with new powers such as:
	+ The power to initiate its own investigations without relying on a police force to record and refer.
		- Indeed, the IOPC says on its website that “we can direct forces to record incidents and then ‘call them in’. We can also consider incidents that have not been referred to us by police forces, and decide whether and how we will investigate them.”[[26]](#footnote-26)
	+ The power to determine appeals and recommend remedies.
	+ A shortened process for deciding whether a case should go to a disciplinary hearing.
* The new powers bestowed on the IOPC were implemented to ensure greater efficiency and democratic accountability of the services and ultimately improve public trust in the police and its relevant institutions.

### Reasons for complaining

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* Ask The Police, the official police resource for England and Wales, says you can make a complaint to the IOPC if you have:
* Experienced inappropriate behaviour from a police/ staff member e.g. rude or aggressive in their treatment of you,
* Witnessed a police officer/staff member acting inappropriately,
* Been adversely affected by the conduct of a police officer/staff member even if it did not involve you. This means that you can complain on behalf of someone who may be in critical condition or deceased after police contact.[[27]](#footnote-27)

### How do I submit a complaint to the IOPC?

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* You can fill out a complaint form at the IOPC website.
* You can visit the police station.
* You can speak to a solicitor or Member of Parliament.
* Someone can make a complaint on your behalf, but you must give your permission in writing for them to do this.
* There is no time limit on when you should complain, however, earlier is better as IOPC can decide not to deal with a complaint if it’s 12 months after the incident (at their discretion). If you want to complain after 12 months, you should explain why your complaint has been delayed.

### How is my complaint processed?

* The IOPC has an assessment unit which reviews the information provided from a police force referral to decide a) whether an investigation is required; and, if one is, b) the type of investigation. On its website, the IOPC lists three different investigations: [[28]](#footnote-28)
	+ Independent – we investigate the matter using our own investigators
	+ Directed – we direct and control the investigation using police resources
	+ Local – the police force [Professional Standards Departments] investigates, with no involvement from us.

### Progression of Complaints

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* You must be kept informed about progress of the investigation through agreed correspondence e.g. phone, in person or letter.
* You must receive an update at least every 28 days.
* When the investigation is complete, you will be informed about the outcome of your complaint and what action needs to place. E.g. an officer might face a disciplinary hearing.
* If the investigation indicates a member of staff may have committed a criminal offence, the report will be referred to the Crown Prosecution Service (CPS) for a decision as to whether criminal charges can be brought against the individual.

## Appeals

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* If the IOPC agree to handle your appeal, they will only look at how the police handled your complaint. They will not investigate your original complaint. If your appeal is not upheld, they will write to you explaining how and why they have made that decision.
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