



A response by

**The Chartered Institute of Legal
Executives**

to

**The Home Office Consultation on Police
Powers of Stop and Search**

24 September 2013

Introduction

1. This response is submitted by the Chartered Institute of Legal Executives (CILEx) as an Approved Regulator (AR) under the Legal Services Act 2007. This consultation response follows membership engagement, together with specialist feedback from a CILEx Council member specialising in criminal law. CILEx is a statutory consultee for the purposes of the Police and Criminal Evidence Act 1984 (PACE) Codes of Practice pursuant to section 67 of PACE.
2. CILEx continually engages in the process of policy and law reform. At the heart of its engagement is the public interest, as well as that of the profession. Given the unique role played by Chartered Legal Executives, CILEx considers itself uniquely placed to inform policy and law reform relating to justice issues.
3. As it contributes to policy and law reform, CILEx endeavours to ensure relevant regard is given equality and human rights, and the need to ensure justice is accessible for those who seek it. Where CILEx identifies a matter of public interest which presents a case for reform it will raise awareness of this with Government and other stakeholders and will advocate for such reform.
4. CILEx welcomes the opportunity to respond to the Home Office Consultation on police powers of stop and search. The police powers of stop and search are a powerful tool in the armoury of the police to fight crime. However, the powers must be used responsibly. The public expect the police to protect them from harm by using the powers granted to them by Parliament in an effective and fair manner. Arguably, some of the most intrusive and contentious powers are those of stop and search. For decades the inappropriate use of these powers, both real and perceived, has tarnished the relationship between the police and the public they serve, and in doing so has brought into question the very existence of these powers. As such, this is an important consultation. The evidence in the paper notes that figures in England and Wales show that of the 1.2 million stop and searches carried out, just nine per cent resulted in an arrest. The figures do not show, however,

how many of those arrested were subsequently charged or found guilty. CILEx seeks clarification as to whether data is available to indicate how many of those arrested are subsequently charged and found or pleaded guilty.

5. Subject to the above, we answer the questions in the order that they are raised.

Q1. To what extent do you agree or disagree that the use of police powers of stop and search is effective in preventing and detecting crime and anti-social behaviour

6. Stop and search powers can be very effective if used sparingly and in accordance with the PACE and the Codes of Practice. Code A paragraph 2.2 to 2.11 makes clear that “reasonable suspicion”, the threshold to trigger stop and search under section 1 of PACE, must be judged objectively. As Code A rightly points out “Reasonable suspicion can never be supported on the basis of personal factors”. Practitioner evidence suggests that there is a perception that stop and search powers are being employed indiscriminately. For example, without the officer having credible grounds to suspect “reasonable suspicion”. This appears to be borne out by the arrest to stop ratio figures. Similarly, there appears to be scant evidence to support the effectiveness of prevention, detection or deterrence of stop and search powers, which play into the community perceptions that stop and search is not effective.

Q2. What are, in your view, the types of crime and anti-social behaviour that can be tackled effectively through the application of stop and search powers?

7. It is important to balance public protection with individual freedom by ensuring the powers are used fairly and with the support of communities. Stop and search, if used indiscriminately, does nothing to counter crime and anti-social behaviour. To use stop and search as a means of 'social control' is completely alien to the concept of freedom of movement and association which is held dear in the United Kingdom; it alienates the public as it is perceived to be an abuse of power; and it is also contrary to the principles of stop and search set out in Code A paragraph 2.2 which states:

“A person's race, age, appearance or the fact that a person is known to have a previous conviction cannot be used alone or in combination with each other as a 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”

Q3. To what extent do you agree that the arrest rate following stop and search events is a useful measure of the power's effectiveness

8. The arrest rate following stop and search can be used as a measure to indicate whether the police are using stop and search powers proportionately and effectively. As mentioned above, however, the figures do not show how many of those arrested were subsequently charged or found guilty.

Q4. In your view, what other things, beyond the number of resulting arrests, should be considered when assessing how effective the powers if stop and search are?

9. Community monitoring of stop and search is vital. Internal police safeguards are necessary and must be adequate to ensure effective regulation. External scrutiny reminds the police that they are accountable to the public and encourages them to take account of community experiences and local priorities. In addition, the Home Office could look at the reduction in crime categories in a particular area.

Balancing public protection and individual freedoms

Q5. To what extent do you agree or disagree that the ‘with reasonable grounds’ stop and search powers are used by the police in a way that which effectively balances public protection with individual freedoms?

10. The police powers of stop and search are a powerful tool for the police, but they must be used responsibly having regard to public protection and individual freedoms. CILEx was concerned to note that a recent finding of Her Majesty's Inspectorate of Constabulary (HMIC) has indicated that a majority of

forces do not understand how to use these powers effectively and fairly to prevent and detect crime¹. Further, the findings noted that there is scant data on whether the powers of stop and search are, indeed, effective.

11. In view of the above, we fully subscribe to the view of the Chief Inspector of the Constabulary when he observed following the HMIC's findings that:

"The police service in the UK is almost unique in investing its lowest ranking officers with its greatest and most intrusive powers. These include those of stop and search.

"The lawful and proper use of the powers is essential to the maintenance of public confidence and community acceptance of the police, without which the British model of policing by consent cannot function. It is therefore crucial that police officers can show, with the greatest transparency, that they use these powers with the utmost lawfulness and integrity at all times."².

Q6. To what extent do you agree or disagree that the 'without reasonable grounds' stop and search powers described in the paragraphs above are used by police in a way which effectively balances public protection with individual freedoms?

12. It is essential that the limited power granted under section 60 of the Criminal Justice and Public Order Act 1994 (the 1994 Act) can only be authorised by a senior officer for a limited period. Exceptional circumstances where it can be justified, for example, may include terrorist threats. Blanket authorisation to stop and search 'without reasonable grounds' can be abused by individual officers. CILEx, in order to ensure that the correct balance is struck, would suggest that there should be additional circumstances pertaining at the time, judged objectively, to justify stop and search under the 1994 Act.

¹ <http://www.hmic.gov.uk/news/releases-2013/0202013-hmic-finds-the-police-use-of-stop-and-search-powers-is-too-often-ineffective/>

² *ibid*

Q7. To what extent do you agree that it is right that the police are under a national requirement to record the information set out above in respect of each stop and search?

13. CILEx strongly agrees that there should be a national requirement to record information in respect of the use of stop and search for the following reasons:

14. It is probably fair to say that the police do not command the automatic trust of the public they once enjoyed. For example, since the 1970s, there has been a 'catastrophic deterioration' of relations between the police and the BAME community³. More recently, the evidence suggests that levels of confidence have also fallen among white people⁴. The research findings indicate that that for much of this period a lack of adequate accountability was a major factor undermining public confidence with the police⁵.

15. Police stop and search powers are a highly influential point of contact between the police and the public. When members of the public are treated rudely and unfairly, trust and confidence in the police suffers. When members of the public are treated fairly and with respect, they are more supportive of the police and more respectful of the law. Recording stops is important precisely because it promotes fairness and confidence by reminding police officers of their legal duties (not to discriminate on the grounds of the protected characteristics under the Equality Act 2010 for example) and by ensuring that their actions are subject to scrutiny, both by their supervising officers and members of the community. Without these important safeguards officers will be less accountable for their actions and the public less protected.

³ Reiner, R. (2010) *The Politics of the Police*, Oxford: Oxford University Press, p.94.

⁴ Bradford, B. (2011) 'Convergence, Not Divergence?: Trends and Trajectories in Public Contact and Confidence in the Police', *British Journal of Criminology*, 51(1): 179-200

⁵ By accountability, we mean police officers being responsible for their actions; having to account/ answer to the public they serve for the activities that they undertake. public they serve for the activities that they undertake.

16. Recording the stops also has the following valuable functions:

- It ensures that people who are stopped are told why they have been stopped;
- It provides a resource which supervising officers can use to check that individual officers are conducting themselves appropriately and within their statutory remit; and
- Statistics can show whether the powers of stop and search are being used disproportionately in relation to any of the protected characteristics, including disability.

17. Importantly, the information gathered as a result of stop and search data may be able to be used to promote operational efficiency. For example, we understand in West Yorkshire, stop and search activity is mapped and compared to local crime patterns. This helps to ensure that the police are most active when and where crime is most prevalent, allowing much greater targeting of stops and search.

Q8. In your view, should Government require police forces to record stop and search events in a certain way (for example, using particular technology) or are individual forces better placed to make this decision? Please give reasons.

18. Individual police forces should be left with unfettered discretion as to how to make their own decisions on how to record stop and search – the main issue is that it is recorded in some form.

Q9. To what extent do you agree or disagree with the following statement: “I am confident that the police use stop and search powers fairly to prevent and detect crime and anti-social behaviour?”

19. Whether the police use stop and search ‘fairly’ would depend on the individual’s opinion of police powers and this question is therefore subjective. There are sections of the BAME community that feel alienated by the powers

of stop and search because they feel that they are 'singled out' or 'picked on' unfairly.

Q10. What would give you greater confidence in the police's use of stop and search powers? Please give reasons.

20. See answer to question 7 above. There is also a need to reinforce the requirements of Code A paragraph 2.2 to 2.11 which makes clear that "reasonable suspicion", the threshold to trigger stop and search under section 1 of PACE, must be judged objectively.

Q11. To what extent do you agree or disagree that the current requirement to explain the reasons for the stop and search make the use of the power more fair and transparent?

21. It is right that police officers, as agents of the state, should explain their motives and reasons for stop and search powers being used. It increases public confidence and respect in the police.

Q12. Before today, had you heard of the police.uk website?

22. No Comment

Q13. To what extent do you agree or disagree that police.uk should contain information on stop and search in your local area?

23. It is about being open and transparent. We agree that the police.uk website should contain information on stop and search in local police areas.

Questions 14 and 15 will be answered together

Q14. To what extent do you agree or disagree that local communities should have direct involvement in deciding how the police use their stop and search powers?

Q15. In your view, how might local communities be directly involved in decisions concerning the use of stop and search powers? Please give reasons.

24. Engaging with communities can build public confidence.

25. CILEx is of the view that communities are more likely to have greater confidence in the stop and search powers if they are used properly and are demonstrable effective. As such, it is essential that the police engage with local communities to inform the public about the use of powers within their local area. Local communities should be afforded the opportunity to feedback to police their experience of stop and search and to discuss their concerns about crime in the area.

Q16. Are there any other views or comments that you would like to add in relation to stop and search powers that were not covered by the other questions in this consultation?

26. It is essential that the government supplements the law enforcement powers available to the Police, like stop and search, with stronger strategies geared towards crime prevention. These strategies can be geared to tackle the risk factors that cause crime because it is more cost effective and leads to greater social benefits as well as supplementing the law enforcement powers of the police. The role of the criminal justice system is of course oriented to detecting and punishing crimes that have already taken place. But this fact itself has always been considered to have a preventative dimension. The high likelihood of detection by the police, and the deterrent effects of punishment have been seen as forms of crime prevention.

