

RESPONSE CONSULTATION ON THE DRAFT MPS STOP AND ACCOUNT AND STOP AND SEARCH POLICY – LYNNE FEATHERSTONE

We associate ourselves fully with the comments provided on behalf of the MPA following its consultation, and have sought to avoid unnecessary repetition. These are additional comments by Lynne Featherstone, member of the Metropolitan Police Authority and of the London Assembly.

A. GENERAL COMMENTS

- The policy lacks a focus on the quality of an encounter, which was found to be a key factor in the MPA scrutiny in the impact a stop and stop and search had on the individual & community. While this may be addressed in training, it should also form a key part of MPS policy
- The explanation of the accountability and monitoring systems could be made more clear. In particular what is being monitored and by whom (see further comments below under relevant sections). Some guidance on what the MPS is monitoring at a corporate level and how is also desirable.
- We are concerned that there is a lack of clarity in the document on the objectives of stop and stop and search (detection, deterrence?) and a need to develop an objective method of assessing performance against these objectives (and not rely solely on arrest rates).
- We are concerned that the policy does not emphasize the need to share information with communities sufficiently – eg on s44 data, and s60/s44 authorisations. This is important as it clearly links to accountability, as well as community confidence.
- The structure of each of the documents is unclear – to whom does each section apply? Some of the sections could logically be grouped together (specific suggestions below).
- If the documents are to be publicly available – and at the very least the principles document should be – then it should be formatted/worded in such a way that the public can understand (test against Plain English Campaign marks?)
- It is not made clear in the ‘principles’ document where stop and account fits in – do all the principles apply to stop and account as well as stop and search? The phrases seem to be used interchangeably, but are of course different.
- The status of the documents should be made clear. Will this policy be used to test officer’s use of the powers against for professional standards purposes?

B. COMMENT ON SPECIFIC DOCUMENTS

POLICY DOCUMENT

- The stated purpose of the policy does not refer to the obvious overarching objective of ensuring that officers comply with the law and act within their powers.
- The policy statement in its current form makes little sense (in particular the reference to making a contribution to public confidence). It does not contain any commitment to ensuring the power is used fairly. In its current form the statement suggests the MPS is not aware of the problems with stop and search and that it is not committed to addressing them.
- The policy's benefits should be presented as 'aims' or as 'intended' benefits, as to assume that these things will flow merely from the new policy is naïve.

PRINCIPLES

- As with all the other component documents of this policy, it is not clear what section applies to what rank/officer role. The structure of the document is not logical or clear.

Introduction 1st paragraph

- 'Explanation' should be expanded to include reference to 'clear reason' or 'justification'. An explanation is not enough – it needs to be a justified one.

Conduct of search

- This section covers some of the key principles governing the conduct of a search, but does not lay them out in a way which officers are likely to be able to remember easily.
- Do these principles apply to stops as well?

Extent of search

- This section covers some of the key principles but not in a logical or clear way. It is not explicitly stated that a search must be justified under the law.
- The section points to the need to be mindful of 'other considerations' or 'sensitivities' but does not offer concrete guidance to officers on what options to consider should they be confronted by any of these.

Race Relations Act

- The section is not placed in context and should be linked to the section on profiling later in the document and disproportionality in the s44 SOP.
- Ideally this section should discuss disproportionality (in race context).

Human rights

- It is wrong to suggest that merely applying this rough checklist will lead to a decision 'that you can justify in any forum'. That is misleading and inaccurate.
- The section is presented in a 'defensive' manner – what do I need to consider in order to ensure I won't be penalised for my actions. This is the wrong approach – the key reason why officers should have regard to human rights principles and legislation is to ensure that the quality of stops is high and that the power is used appropriately and effectively.

- The section also does not appear to be tailored specifically to applying human rights principles to stop and account and search powers. The section should refer to the text of the key articles.
- We question whether the definition of proportionality is complete and accurate. Under human rights legislation proportionate means that the action is limited to what is required to achieve the intended objective (the meaning given to 'appropriate' here). The linking of the infringement to the benefit to the community is misleading and gives too much scope for wide interpretation. The question of proportionality should be measured in terms of the *specific* objective of each stop and account and search.
- Under necessity, the legitimate aim listed in the ECHR of an interference with an individual's human rights in the context of stop and account and search is the prevention of disorder or crime. However, more specific guidance to officers on what is legitimate/necessary and when would be helpful.
- The last paragraph refers to the need for officers to take the 'opportunity' of a stop and search to demonstrate (to casual observers) high levels of professionalism. Officers should always demonstrate high levels of professionalism regardless of whether there are any observers.
- It is also wrong for a stop and search to be seen as an 'opportunity' for anything other than the legitimate crime detection and prevention objective – to see it as otherwise would distort the objective of the power and lead to a potential shift in the way it is used (eg officers might be tempted to make a showcase out of a stop and search and extend its length/extent even if there are no legitimate reasons for doing so).

Community groups

- This section in the October version appears to have lost the presumption in favour of sharing data with local communities that featured in earlier versions, as well the references in earlier versions to the need to understand any local issues surrounding stop and search and the need to communicate priorities to the local community.
- The emphasis on involving communities in setting objectives is welcome.

Personal responsibilities

- This section should logically appear earlier in the document

Intelligence

- Is this section seeking to identify the objective of stop and search? If so, this should appear earlier in the document, and be expanded upon. Are objectives other than detection seen as unlawful? Does the same objective apply to mere stop and account?
- The section refers to deterrence – suggesting this too is an objective, whereas at the beginning of the section detection was named as the sole legal objective – this is confusing.
- If the section seeks to underline the importance of stops/stop and search being intelligence-led, this is welcome, but the section does not provide any guidance on what an intelligence-led stop/stop and search means.

Profiling

- Is it wise to rely on a definition from Amnesty Int'l USA? Why not seek guidance from the CRE, or Counsel? Anyone reading the paragraph might come away thinking that profiling a suspect based on race alone is

acceptable – race can only ever be one of a number of factors an officer takes into account.

- Why is this section not contained together with the section on the Race Relations (Amendment) Act? The section does not explain disproportionality as the outcome of racial profiling.

Reasonable grounds

- Again this section would logically fit with the section on human rights, as both seek to offer guidance to officers on their decision-making.
- Concern that this section may confuse officers, since the grounds for a search and the ‘test’ of reasonableness differs depending on what legislation is being relied upon.
- There is also the need to ensure this section is consistent with, or at least refers to, whatever guidance is given in the documents relating to each specific power (eg in the PACE document reasonable grounds is explained again).

Briefings

- Sections which apply specifically to supervisors/senior officers should be grouped together.

Forensic

- Surely this should come under the conduct of the search section?

Children and young persons

- The section should also make reference to the need to be extra sensitive when dealing with young people and children, given their greater vulnerability, and the long-lasting damage a poorly conducted stop/stop and search can have.

Misconduct and complaints

- “The matters should be dealt with relative to the possible impact on the reputation of the service” What does this mean? A member of the public might read this as implying the need to cover-up any such circumstances which have a negative impact on the service’s reputation. Surely community confidence is a key factor in handling complaints and misconduct properly?
- What systems, if any, are in place to ensure that individual officers are made aware of the nature of complaints by members of the public, particularly where they relate to the way a stop/stop and search was conducted.

Monitoring

- We note the section suggesting disproportionality isn’t inherently wrong has been removed. However, while this section’s original wording needed improvement, its removal does leave supervisors without guidance on what they are looking for, e.g. on when disproportionality should give rise to concerns.

STOP AND SEARCH POWERS PRIOR TO ARREST

Reasonable grounds

- (p6) “Such feelings are invariably based on objective reasoning”. This suggests that relying on a gut feeling or a sixth sense are objective in themselves. They are not. They are only objective where the ‘gut feeling’ or ‘sixth sense’ arises from a rational factor.

S60

Reasonable grounds

- While the lack of a requirement for reasonable grounds to conduct a stop and search once an authorisation has been given is accepted, is there not a need to make clear to officers that the exercise of their powers must relate to the object of the grant of the authorisation and be limited to that authorisation.

Community groups

- It is vital that awareness of a s60 authorisation is spread as widely as possible within the area concerned, and informing community groups may not be sufficient – what thought is being given to public notices (like for dispersal orders?), use of the internet?

S44

- Generally the structure of the document should be tightened, making it clear what section applies to whom.

Data sharing

- Strongly object to the presumption of data not being shared with the local community. How will local communities be able to have any confidence in the practice if this is not done? The argument that such information is helpful to terrorists is unconvincing – such data is shared on a London-wide basis, and we are told that the City of London force – about the size of a BOCU – published its data.

Use of the power

- Nowhere in the document is there a section on monitoring of misuse of the power – there has been widespread concern over the use of the power for non-anti-terrorist purposes, and indeed the low arrest rate for offences connected with terrorism gives rise to similar concerns. What mechanisms are in place for senior officers to monitor their officers’ use of the power and ensuring it is used only in connection with terrorism?

REC 61

- Why is there no explanation of the reasons why Rec 61 is being introduced and what the purpose of the forms are?