

STOP AND SEARCH

Response to consultation from the Police Actions Lawyers Group

The Police Actions Lawyers Group

1. The Police Action Lawyers Group (PALG) is an organisation comprised of lawyers who represent claimants in civil litigation against the police throughout England and Wales. Such actions can include private law claims for torts such as assault, false imprisonment, malicious prosecution and misfeasance in public office, as well as judicial review claims involving the police exercise of statutory functions, and cases brought pursuant to the Human Rights Act. PALG members often represent family members in death in custody inquests involving the police.
2. PALG members are concerned first and foremost with the principle objective of those we represent: to ensure that the police are held accountable for their conduct through all available avenues, including those referred to above. However, we should make clear that this response does not solely concern the interests of our clients. Stop and search – a primary interface between the public and the police – has the potential to impact profoundly on the public trust, confidence and support that is essential to effective policing. Accordingly, the fair and effective use of police powers of stop and search is of the utmost importance not only to those that are subject to stop and search but to the police and to the public at large: it is on that basis and with all of those interests in mind that this response is submitted.
3. PALG has a long history of responding to government proposals for changes in the civil justice system, police complaints and misconduct procedures and the operation and scope of legal aid available for claimants in cases involving the police.

QUESTION ONE: 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?

4. PALG Response: Strongly disagree.
5. Although there has been little research into the effectiveness of stop and search, a recent Home Office Review concluded that (i) it has ‘only a limited disruptive impact¹ on crime by intercepting those going out to commit offences’; and (ii) there is little evidence that stop and search plays a significant role in controlling crime or in maintaining public order.²
6. Further, although we do not endorse arrest rates to be an appropriate measurement of effectiveness,³ it is significant that of the 1.1 million stops and searches conducted under section 1 of the Police and Criminal Evidence Act (PACE) in 2011/12, only nine percent resulted in an arrest⁴, particularly when considering that the arrest will often be unrelated to the purpose of the initial stop.⁵ The lack of correlation between rates of stop and search and level of crime is similarly significant in this regard.⁶
7. Academic research also calls into question the effectiveness of stop and search. A Home Office review of the research evidence concluded that stop search has ‘only a minor role in detecting offenders for the range of all crimes that they address, and a relatively small role in detecting offenders for such crimes that come to the attention of police.’⁷
8. The effectiveness of stop and search is of course related to the way in which the relevant powers are exercised. The HMIC Report, ‘Stop and Search Powers: are the police using them effectively and fairly?’ (‘HMIC Report’)

¹ Estimated to be a 0.2% decrease in ‘disruptable’ crimes

² Miller, J., Bland, N., Quinton, P. (2000) *The Impact of Stops and Searches on Crime and the Community*, Police Research Series Paper 127, London: Home Office.

³ This is at least in part due to the fact that arrest rates take no account of the way in which matter is ultimately disposed of.

⁴ Police Powers and Procedures England and Wales 2011/2012, Home Office, April 2013

⁵ *Ibid*

⁶ Equality and Human Rights Commission (2013), *Stop and Think Again: Towards Race Equality In Police PACE Stop and Search*, London: EHRC.

⁷ Miller, J., Bland, N., Quinton, P. (2000) *The Impact of Stops and Searches on Crime and the Community*, Police Research Series Paper 127, London: Home Office.

recorded amongst its findings at page 41 “A considerable number of records we reviewed simply had ‘crime hotspot’ recorded as the grounds. This suggests that where stop and search is targeted to hotspots, officers wrongly believe that this alone provides their reasonable grounds. This leads to the possibility of a high proportion of stop and searches being conducted in a ‘crime hotspot’ without reasonable grounds”.⁸

9. This observation by HMIC chimes with the experience of many of our clients who have instructed us to bring complaints and civil claims in relation to incidents where there appeared to be no lawful justification for the stop and search being carried out. All too frequently, the grounds given for the stop and search will simply be ‘located in a crime hotspot’ or something similar; clearly falling far short of the standard of reasonable suspicion required.
10. The ineffectiveness of stop and search powers is illustrated by the case of “O”, who was stopped and searched by Metropolitan Police 25 times within a 7 month period. 16 of those encounters took place within the immediate vicinity of his home address; none resulted in his arrest or any other disposal short of arrest. Of course, such practices do not simply give rise to an immense waste of resources, they also provoke feelings of resentment and disenfranchisement, impacting negatively on the local community and the level of receptiveness to policing.
11. In view of the above, we are concerned that the consultation paper features an example of a ‘targeted’ stop and search with reference to areas where weapons offenders have previously operated or crime ‘hot spots’. This is at odds with the requirement of PACE Code A that reasonable suspicion must be based on “*intelligence or information about or some specific behaviour by the person concerned*” (emphasis added), and thus is itself demonstrative of the current level of misunderstanding and misapplication of stop and search powers.
12. It is important to remember that stop and search powers were initially introduced as a measure to be taken ‘short of arrest’ to investigate seemingly suspicious behaviour. It was certainly not intended as a general tool of

⁸ HMIC Report, p. 41

deterrence and is in any event unsuitable for that purpose, as highlighted above. We are therefore concerned that the question posed suggests that stop and search could be 'effective' in a broader range of circumstances than is contemplated by s1 of PACE and/or s23 of the Misuse of Drugs Act 1971 and/or the Criminal Justice and Public Order Act 1994. There is no evidential basis for such conjecture and such an extension would, we believe, have a detrimental impact on society.

QUESTION 2: 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?

13. We again emphasise that stop and search powers were not intended to be a tool of general deterrence, as appears to be suggested in the question posed.
14. As above, although there is an absence of data regarding the effectiveness of stop and search, that which does exist indicates this to be extremely limited.⁹
15. The ability to assess effectiveness is further limited by the absence of any data connecting the purpose of the stops that are carried out (i.e. the nature of the crime they are being directed to address) with the level of that type of crime. This was specifically commented upon in the HMIC Report, which identified a lack of recording, monitoring and analysis of stop and search practices, and "*found little evidence that forces were using information to understand what effect the use of stop and search powers was having in relation to the prevention and detection of crime*".¹⁰
16. Several of the key recommendations of the HMIC Report focussed on the need for Chief Constables to monitor the use of stop and search so that they can be satisfied that the power is used effectively, stating, for example:

[W]e found that, with a few exceptions, forces were not able to demonstrate an approach to using stop and search powers that was based upon a foundation of evidence of what works best to fight crime.

⁹ Miller, J., Bland, N., Quinton, P. (2000) *The Impact of Stops and Searches on Crime and the Community*, Police Research Series Paper 127, London: Home Office.

¹⁰ HMIC Report, page 40

A good example of this was that we found little evidence that police leaders were focusing stop and search activity towards priority crimes in their areas. Most forces had priorities in acquisitive and violent crimes, and in some urban areas this included the use of weapons by gangs. However, about half of stops and searches in 2011/12 were focused on drugs, the vast majority of which were low-level possession offences. Too many forces could not explain what they achieved from their use of stop and search powers.¹¹

17. We can certainly see no case for the extension of stop and search powers beyond the bounds of the current law, particularly in circumstances in which the powers that do exist are commonly being misused.¹² We accept that stop and search powers do have a role to play, but only if they are used where reasonable grounds for suspicion exist.

18. The unlawful use of stop and search is counter-productive to the policing objectives of preventing and detecting crime, resulting in a breakdown of trust between police and the communities they should serve.¹³ Notwithstanding the negative effects of this upon local communities, more directly this deprives the police of a vital source of intelligence which that community could otherwise provide. Such intelligence is likely to be a far more effective tool for detecting and preventing crime than the exercise of stop and search powers. Again, this was specifically recognised by HMIC:

“Research shows that for the police to be effective in reducing crime over the long-term, they not only need to get the right outcomes, they also need to demonstrate fairness in the decisions and actions they take. This is because police fairness encourages people to be more socially responsible by reporting crime, providing intelligence about criminal activity, and giving evidence in court.”¹⁴

¹¹ *Ibid*, page 47

¹² *Ibid*, page 30

¹³ Bradford, B. and Jackson, Jonathan (2011) “When Trust is Lost: The British and their Police after the Tottenham Riots,” *Books and Ideas.Net*; The Guardian and London School of Economics (2011) *Reading the Riots: Investigating England’s Summer of Disorder*, London: The Guardian.

¹⁴ HMIC Report, page 12

QUESTION 3: To what extent do you agree that the arrest rate following stop and search events is a useful measure of the power's effectiveness?

19. PALG Response: Neither agree nor disagree.
20. Although we are concerned to ensure that any 'measure of effectiveness' does not introduce a perverse incentive to increase the rate of arrest following a stop and search encounter, we are of the view that the low arrest rate is demonstrative of the ineffectiveness of these powers.
21. We recognise that stop and search was introduced in order to provide police officers with powers for the prevention and detection of crime falling short of arrest, thereby reducing the number of unnecessary arrests. However the very low rate of conversion from stop and search to arrest is cause for concern.
22. This is principally because it indicates that police officers' suspicions are misplaced and/or that they are failing to establish reasonable grounds to suspect before using stop and search powers. The latter is supported by the findings of the HMIC, including:
- "Nationally we found that 27% (2,338) of the 8,783 records reviewed did not have reasonable grounds for suspicion recorded. This does not mean that all those searches were unlawful and carried out without the required grounds. However, in some cases it was clear that there were no reasonable grounds: for example, in one case the officer recorded the grounds by using just one word 'speeding'".¹⁵*
23. Our collective experience is that police officers are regularly using stop and search powers without reasonable grounds for suspicion. Returning to the case of 'O' (see question 1), on 13 of 25 stop and search records where the encounter ended with no further action, the grounds for the search were recorded as 'appears nervous' or 'evasive to questions' with little or no other detail. Such inadequate justifications feature all too frequently in our caseloads.

¹⁵ *Ibid*, page 30

24. By way of further example, clients are also stopped on the basis that a police officer says he or she 'smelt cannabis'. This is particularly problematic as it is difficult for clients to disprove such a contention, meaning that police officers are able to use this statement indiscriminately and abusively.
25. The limitations of arrest rates as a measure of effectiveness must also be accorded due recognition for no account is thereby taken of the basis for the arrest, that is, whether it relates to the initial stop. The HMIC Report notes that arrest rates include those arising from a stop and search encounter where no stolen or prohibited item was found but where, for example, a computer check revealed the person was already wanted for an offence or where the encounter itself triggers an angry reaction by the person searched which results in them being arrested for a public order offence.
26. Further, arrest data accords no weight to the ultimate disposal of the matter. Framed simply, an unlawful arrest would of course provide no evidence of the purported effectiveness of the stop and search from which it resulted.

QUESTION 4: In your view what other things beyond the number of resulting arrest should be considered when assessing how effective the powers of stop and search are?

27. The concept of 'effectiveness' is itself problematic, and once again we are concerned that it is defined in such a way that permits the introduction of intangible and unverifiable justifications for the power.
28. Equally, however, we are of the view that the following matters should be taken into account in the formulation of effectiveness:
 - a. The level of satisfaction communicated by those individuals stopped and searched as to their treatment by police, including whether they were treated with respect and courtesy, whether PACE was complied with and whether they felt that the police acted reasonably.

The HMIC Report found *"when those who had been stopped and searched were asked about how their experience of the way the powers were used had affected their opinion of the police, 39% said their opinion*

had diminished and 32% said it had not changed. However, almost a quarter, 24% said their experience had improved their opinion of the police ... the result should represent an incentive for forces to make sure officers conduct stops and searches in a professional and lawful way, which builds rather than erodes public trust”.

- b. The rate of recovery of stolen or prohibited items as a result of stop and searches carried out pursuant to s 1 PACE.¹⁶
- c. The rate of recovery of controlled drugs resulting from stop and searches carried out pursuant to s 23 Misuse of Drugs Act 1971.¹⁷
- d. The impact on crime rates of targeted reduction in the use of stop and search powers.¹⁸

QUESTION 5: To what extent do you agree or disagree that the ‘with 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?

29. PALG response: Strongly disagree

30. PALG members see on a regular basis the impact that stop and search has upon clients that we represent, many of whom feel the sharp end of police stop and search. Our clients report the humiliation of being stopped and searched in front of friends and neighbours in their local area, experiences that leave them feeling degraded and criminalised. Our members act for children for whom stop and search is their first experience of the police and criminal justice system. Such experiences can lead to a deep and long-lasting distrust of the police and an understandable inability to see them as an organisation to whom they can look for protection. In short, the effect of stop and search on ‘individual freedoms’ should not be underestimated, and it is with that in mind that the balancing exercise contemplated in this question (and the one that follows) must be approached.

¹⁶ *Ibid*, page 38

¹⁷ *Ibid*, page 39

¹⁸ See for example the Metropolitan Police target of reducing the use of stop and search under the misuse of drugs act where no drugs were found by 50%, HMIC Report, page 25

31. We also note that both questions are premised on the assumption that there is a public protection benefit to be derived from stop and search, which justifies at least some level of intrusion into individual freedoms. PALG members consider that there are compelling reasons to doubt that premise. We consider that there is not sufficient evidence that stop and search contributes to public protection. Indeed, there is persuasive evidence that it does not and even that it may interfere with the ability of the police to protect the public. We repeat the submissions made above in responses to questions 1 and 2 regarding the low level of effectiveness of stop and search powers generally, and note the following in particular:

- a. The majority of arrests resulting from stops and searches in 2011/12 were for drugs (39,741) and stolen property (28,424), which represented more than half of all arrests made as a result of searches under section 1 of PACE.¹⁹
- b. Any contribution towards public protection from stop and search must be viewed in the context of the negative impact that these powers may have on the ability of the police to protect the public. The corrosive effect of stop and search on community relations with the police is well established.²⁰ As the HMIC Report (page 15) notes, a loss of trust in the police can *'lead to a withdrawal of the public's cooperation and a reluctance to take up their responsibility to report crime, provide intelligence about criminal activity and give evidence in court, making it more difficult for the police to work with the public to reduce crime.'*

32. In short, PALG members consider that before addressing the balancing exercise contemplated in the consultation questions, there must be a proper rigorous examination of the contribution made by stop and search to public protection. The gravity of the impact on our clients demands that the debate does not proceed on questionable assumptions.

33. We also submit that, even if established that stop and search can make a significant contribution to public protection, the manner in which police powers of stop and

¹⁹ *Ibid.*

²⁰ See for example *After the Riots: The final report of the Riots Communities and Victims Panel*, Riots Communities and Victims Panel, March 2012.

search are currently exercised amounts to such a grave interference with individual freedoms that balance is far from being achieved. We would note the following in that connection:

- a. The requirement that there must be reasonable suspicion before a police officer has the power to conduct a search is an essential safeguard against arbitrary and discriminatory use of those powers. Through the experiences of our clients, PALG members have long been aware of very many cases where that requirement is not met, with scant and spurious bases being provided for the stops and searches of our clients. The scale of that problem is demonstrated by the findings of the HMIC Report which, having considered 200 stop and search records from each force, found that 27% did not have reasonable grounds for suspicion recorded.
- b. Our clients regularly report police failures to comply with other procedural requirements in the exercise of stop and search powers, such as those provided for by s 2 of PACE.
- c. There is unequivocal evidence in official statistics produced by the Home Office and Ministry of Justice demonstrating the disproportionate use of stop and search powers against black and ethnic minority groups (see further below). Again, that is borne out by the experiences of many of our clients and is a matter of grave concern to our members.
- d. The above matters highlight the need for effective training, supervision, and oversight of the exercise of police powers of stop and search. It is therefore a matter of grave concern that the HMIC Report found that *'most officers have not received any training in the use of stop and search powers since they joined the service'*²¹ and that there were *'disturbingly low levels of supervision of officers' conduct of stop and search encounters, and of how they recorded them.'*²²

²¹ HMIC Report, page 6

²² *Ibid.*

34. In summary, even if public protection is an achievable aim of stop and search, it will not be possible to strike the balance between that and the intrusion on individual freedoms until the systemic issues set out above are addressed.

QUESTION 6: 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?

35. PALG Response: Strongly disagree
36. PALG considers that the doubts with regard to the public protection benefits of stop and search are even greater when one considers the power to stop and search under section 60 of the Criminal Justice and Public Order Act 1994 (section 60) where reasonable suspicion is not a requirement. We would note the following in that regard:
- a. Of the 46,961 section 60 searches carried out in England and Wales in 2011/12, less than 2.8% led to arrest. Moreover, less than 0.4% led to an arrest for an offensive weapon, the search for which is the only reason the power may be exercised. Further, it is clear that the incredibly low arrest rate is not a result of the discovery of weapons being dealt with by alternative means of disposal as only 0.83% of searches led to the discovery of such weapons.²³
 - b. Two Home Office studies that focused on knife crime initiatives have concluded that there was little evidence to suggest that section 60 was having an impact on the carrying of knives.²⁴ This is supported by the impact of recent falls in the numbers of section 60 searches across London due to the ‘Stop It’ initiative: although section 60 stops and

²³ Police Powers and Procedures England and Wales 2011/2012, Home Office, April 2013

²⁴ Ward, L., Nicholas, S., and Willoughby, M. (2011) *An Assessment of the Tackling Knives and Serious Youth Violence Action Programme (TKAP) – Phase II*, Research Report 53, London: Home Office; Ward, L., Nicholas, S., and Willoughby, M. (2011) *An Assessment of the Tackling Knives and Serious Youth Violence Action Programme (TKAP) – Phase II*, Research Report 53, London: Home Office.

searches have fallen by 90% there has been no impact on levels of violence.²⁵

- c. Moreover, section 60 is likely to have an even greater tendency to corrode community relations bearing in mind the alarmingly high levels of disproportionality in its use against black and minority ethnic groups, which dwarf the already disproportionate rates in respect of those searches that do require reasonable suspicion.

37. In light of the above, it is submitted that it is very difficult to see how the power under section 60 can be said to make any positive contribution towards public protection.

38. PALG further submits that the intrusive nature of the power under section 60 upon individual freedoms is so profound that, even leaving aside concerns with regard to its effectiveness in protecting the public, a proper balance is not possible and its use cannot be justified. We note the following:

- a. It is essential that the intrusive powers of stop and search are not exercised in an arbitrary or discriminatory manner. PALG recognises that (subject strictly to the qualifications set out in the response to Question 5) that may be achievable by the imposition of safeguards limiting the use of the power, and most importantly the requirement for reasonable grounds for suspicion. Where that safeguard is not present, as in the case of section 60, there simply cannot be adequate protection against arbitrary and discriminatory use.
- b. It is notable in that connection that the available official statistics strongly suggest that the absence of such safeguards does in fact allow the power under section 60 to be exercised in an arbitrary and discriminatory manner. As set out above, less than 0.4% of searches under section 60 led to an arrest for an offensive weapon, compared with an arrest rate of around 9% in respect of section 1 of PACE where reasonable grounds are required. So, where there are fewer safeguards it appears that there is a greater risk of the arbitrary use of the power.

²⁵ HMIC Report, page 41

- c. A similar effect can be seen when one compares the figures in respect of the disproportionate use of the respective powers against black and minority ethnic groups. Those figures show that in 2010/11 black people were stopped approximately 23.5 times as much as white people nationally and around 7.1 times as much in the Metropolitan Police Area (which has by far the greatest use of section 60). The figures in respect of section 1 of PACE are significantly lower, which again strongly suggests that the absence of safeguards leads to a more disproportionate use of the power.
 - d. That resonates with the experiences reported to PALG members by many of our clients, who have been forced to conclude that they are being stopped and searched not because of any legitimate suspicion with regard to criminal activity on their part but because of prejudice on the part of the relevant police officer. Of course, in the absence of a requirement that the officer meet an objective test before conducting the search (e.g. reasonable grounds), there is greater scope for his own subjective prejudices to inform his decision making.
39. In view of the above, PALG submits that it is simply not possible for the balance in question to be struck in the case of stop and search not requiring reasonable suspicion, and accordingly that such powers should be repealed.

QUESTION 7: To what extent do you agree that it is right that police are under a national requirement to record the information set out above in respect of each stop and search?

40. PALG Response: Strongly Agree.
41. We are concerned that the statements made at paragraphs 2.8 and 2.9 of consultation appear to display a wilful ignorance of the findings of the HMIC Report and/or disregard the fundamental importance of recording of stop and search. We are concerned that what should be a key tenant to ensure accountability and public faith in the use of stop and search powers has been framed in a negative tone through the use of such terms as “unnecessary bureaucracy”, “form-filling” and the need to “free up officers’ time”.

42. The Home Office states that police officers' time should be available to tackle crime and anti-social behaviour on the front line in their local neighbourhood and that stop and search is an *"important power in their [officers] daily fight against crime"*. Yet the HMIC Report repeatedly states that the effectiveness of stop and search as a part of tackling crime and anti-social behaviour is not evaluated by police forces. In many cases there is a lack of relevant information recorded at stop and search encounters, without which the effectiveness of stop and search cannot be known. The HMIC Report found that forces were generally not able to demonstrate an approach to stop and search powers that was based upon a foundation of evidence of what works best to fight crime and too many forces could not explain what they achieved from their use of stop and search powers.

"...there is surprisingly little attention paid by either the police service or the public to how effective stop and search powers are in reducing or detecting crime"

"Too many forces could not explain what they achieved from their officers' use of stop and search powers."

*"For forces to understand the effectiveness of their use of stop and search powers, they need to collect **relevant** information."* [emphasis added]

"None of the forces considered the effectiveness of the use of stop and search powers within their audit regimes."

"With research clearly indicating that the use of stop and search powers is most effective when associated with good grounds for suspicion, this finding indicates that officers are being less effective than they should be in crime hotspots."

43. Without the evidential basis obtained through analysis of recorded information, statements about the importance of stop and search in fighting crime become meaningless and serve only to undermine the credibility of the use of these powers and community confidence in them.

“The lack of relevant information makes it extremely difficult for forces to understand the impact stop and search encounters are having upon crime and community confidence...forces did not analyse the activity to determine whether deployments had an impact on crime levels or public confidence.”

“Very few forces could demonstrate that the use of stop and search powers was based on an understanding of what works best to cut crime: and rarely was it targeted at priority crimes in the areas. Forces had reduced the amount of data collected to reduce bureaucracy, but this had diminished their capability to understand the impact of the use of stop and search powers on crime levels and community confidence.”

44. In addition, the consultation paper has provided little information to substantiate the comments that officers spend hours filling in stop and search forms. The evidence of the HMIC Report is indeed to the contrary, showing that many officers fail to provide even the most basic information required in stop and search forms – particularly reasonable grounds – and others do not collect information that would allow an assessment of effectiveness. In addition there is a failure to evaluate the information that is recorded and follow this up with adequate leadership and supervision.

*“Independent research, based on direct observations, found that only about one-third of stop and search encounters were recorded”.*²⁶

45. The consultation paper has also failed to justify why we should be able to trust officers ‘to exercise their judgement and discretion’ in light of the findings of the HMIC Report.

“27% (2,388) of stop and search records examined by HMIC did not contain reasonable grounds to search people, even though many of these records had been endorsed by their supervisors. They were not fulfilling their duties according to the code of practice.

In addition this suggests that police forces may not be fully complying with the requirements of the public sector equality duty, which requires them to have

²⁶ HMIC (2013) Stop and Search Powers: Are the police using them effectively and fairly – *Upping the PACE? An evaluation of the recommendations of the Stephen Lawrence inquiry on stops and searches*, Police Research Series. 128, Bland, N.Miller, J, and Quinton, P. Home Office 2007

due regard to the need to eliminate unlawful discrimination and promote equality of opportunity, foster good relations and to that end, ensure that they are adequately collecting analysing and publicising data to demonstrate that they have sufficient information to understand the effect of their work.

These responsibilities are important in protecting the public from the misuse of this intrusive power.”

46. The consultation paper betrays a superficial understanding and analysis of the importance of recording information in respect of stop and search. There is a failure to consider the intricacies of the issue, such as the time that would be saved through accurate and detailed recording of information from a stop and search which would serve to improve the use of stop and search, which could be enforced through appropriate training and supervision. This in itself would in turn save officers’ time by preventing unlawful and unnecessary stop and searches, and address the failings identified in the HMIC Report.

“Recording less information and replacing supervisory oversight...does not necessarily provide the information required to assess whether the use of stop and search powers is effective.”

47. However, the consultation paper rightly notes that information is needed to monitor and account publicly for the fair use of stop and search powers, and that officers should be able to account for why and how officers use stop and search powers.
48. Fairness and effectiveness are key themes in both the HMIC Report and the Home Office consultation paper. It is not clear how the fair and effective use of stop and search powers can be monitored without a national requirement to record the information set out at 2.9 in respect of stop and search. We submit that it is worrying that question 7 appears to be framed towards seeking to justify the recording of ‘less’ information whereas the debate should in fact be framed around whether there is a need for ‘more’ information to be recorded, and a nationwide standard for recording introduced.

“The Police and Criminal Evidence Act 1984 does not require the police to record whether or not anything was actually found, and a description of it. Nor is it obligatory to record the details of the particular legislation used, whether

an arrest was made and, if so, for what offence. However, HMIC believes that this information would be useful in assessing how effectively the power is used.”

Effectiveness

“Central to making sure the powers of stop and search are being used effectively and fairly is the availability of accurate information about their use.”

49. Faced with evidence that the use of stop and search powers was one of the contributory causes of the summer riots in 2011, that inappropriate stop and search can have a corrosive effect on community relations, that they are some of the most intrusive of powers available to police, and that black people are stopped and searched seven times more frequently than white people (2009/10)²⁷, ensuring the effectiveness of stop and search is surely fundamental. As stated above effectiveness can only be known through the recording and analysis of the relevant information.

Failure to record information impacts upon the ability to assess the effectiveness of a stop and search encounter - Possession of a stolen or prohibited item

50. For a stop and search encounter to be effective and lawful under section 1 of PACE, a police officer must have reasonable grounds for suspecting that a person is in possession of a stolen or prohibited item. The HMIC Report states that recording whether a stolen or prohibited item searched for is found is information which provides an indicative measure of the strength of grounds of suspicion. However, only 7 of the 43 forces currently record how often these items are discovered. HMIC notes that forces instead rely on measures such as arrest rates, which are, as submitted above, too simplistic.
51. As has been highlighted, the HMIC Report notes that arrest rates include those arising from a stop and search encounter where no stolen or prohibited item was found but where, for example, a computer check revealed the person was already wanted for an offence or where the encounter itself triggers an angry reaction by the

²⁷ Statistics on Race and the Criminal Justice System 2010, Ministry of Justice, October 2011, chapter 3, page 34.

person searched which results in them being arrested for a public order offence. This clearly demonstrates the limitations of arrest data as an effective tool.

52. We believe not only that the information listed at 2.9 of the consultation should be recorded, but that documentation should also be made of whether a stolen or prohibited item searched for is found.

Failure to record information impacts upon the ability to assess the effectiveness of a stop and search encounter – wrongly focusing on arrests

53. The HMIC Report notes that not only is there a lack of information recorded, but the assessment of the effectiveness of stop and search is based on a crude evaluation of the number of arrests.

“...in 30 forces we found no evidence that effectiveness had been considered, and the only outcome monitored was the percentage of stops and searches resulting in arrests.”

...only about half (21) of forces recorded whether a stop and search encounter resulted in a ‘non-arrest disposal’. Of these, many did not record the type of non-arrest disposal used. This hindered their ability to establish the full range of outcomes achieved from stop and search encounters, and to test the effectiveness of their use of the powers.

54. We believe that simply recording arrests is not sufficient. As above, when an arrest is recorded information is needed as to the basis for that arrest.

Failure to record information undermines the ability to provide effective police leadership and to intervene when things are not done correctly

55. The HMIC Report notes that there is a ‘worrying deficiency in frontline supervision of stop and search powers’. In order to reverse this trend, improve supervision and in turn ensure the effective and lawful use of stop and search powers, information must be recorded.

“Leadership in this contentious area of policing should be underpinned by: analysis of the proper and effective use of the powers; knowledge of what works’ and a willingness to intervene when things are done incorrectly.”

“We found little evidence that forces were using information to understand what effect the use of stop and search powers was having in relation to prevention and detection of crime. In particular, I is concerning that very little was being done to understand how well officers were establishing their grounds to search. The establishment of reasonable grounds of suspicion, based on specific and not general information, is the foundation of an effective and fair stop and search.”

56. It is not clear how the Home Office proposes to address the serious failings identified by the HMIC Report without first tackling poor recording of information. As stated above the debate should not be framed in terms of recording information as ‘bureaucracy’ and time wasting, but about the value of recording information and what recorded information is needed to assess the effectiveness of stop and search and improve the use of this power. In turn this will impact positively upon public confidence and the legitimacy of this power.

Failure to record information undermines public scrutiny

57. If information related to stop and search is not recorded accurately and effectively and if any less information is recorded than currently required, it will be impossible for the police to be held accountable by the public for any abuses of this intrusive power.

“Considering the high proportion of stop and search records that did not have sufficient grounds recorded, the absence of public scrutiny makes this an even more serious threat to police legitimacy.”

58. It is notable that the HMIC Report notes that fewer than half of forces complied with the requirement in the code of practice to make arrangements for the public to scrutinise the use of stop and search powers. To address the serious concern that ‘Almost half of forces did nothing to understand the impact of stop and search encounters upon communities’ information must be recorded.

Recording information provides learning from positive encounters and can reduce the number of stop and search encounters

59. The Home Office have failed to consider that the recording of information, and potentially increasing the information recorded, would have the positive impact of reducing the number of unlawful and unnecessary stop and searches, thus reducing time spent by officers on stop and search and saving resources. In addition it could increase public confidence in the use of stop and search powers.
60. By contrast, the failure to record information results in a failure to prevent or reduce unlawful stop and search and/or misuse of this power.

“It is of significant concern to HMIC that police leaders are, too often, failing to use the stop and search records to monitor whether or not officers are carrying out stop and searches in accordance with the law.”

“Very few forces monitored data to identify people who had been stopped and searched on multiple occasions. In one force, we found an example of one person who had been stopped and searched 53 times in a year (2011/2012). This type of monitoring can help forces identify misuse of the power and the consequences this might have on wider public confidence in the police.”

61. In conclusion, we strongly believe that if the police are to continue to use stop and search powers, this must be done on an evidence-based approach. There must be rigorous assessment of the effectiveness of this power in achieving the stated aims of tackling crime and anti-social behaviour. Without accurate and essential recorded information there is no basis upon which the effectiveness of stop and search can be analysed.
62. Until the Home Office addresses the very serious concerns raised in the HMIC Report, to call stop and search an important power is meaningless. At the core is the quality of the information recorded. It is right that the police are under a national requirement to record information. The Home Office should not be considering reducing the information recorded, but improving the quality and increasing the required information. This in turn will ensure that if stop and search powers are used, they are done so lawfully and effectively, which will ensure that police time is used as efficiently as possible.

QUESTION 8: In your view, should the Government require police forces to record stop and search events in a certain way or are individual forces better placed to make this decision?

63. Given the very serious failings identified by the HMIC Report in the recording of information, we support the introduction of a national process and procedure for recording and evaluating stop and search incidents. This could easily include a paper based standard stop and search form, potentially with a technological equivalent.
64. We do note that the approach that will be taken by police forces about the way stop and search events are recorded is likely to include an assessment of resources. This will potentially impact upon the adoption of certain forms of technology to record stop and search events.
65. There can be no doubt that in the future there will be increasing use of technology by police and this is likely to include recording stop and search events. Whilst it is clear in addressing question 7 that police forces can significantly improve their use of stop and search powers to reduce unlawful and ineffective stop and searches which waste police time, the use of technology, the type of technology used and the impact that it will have on ensuring lawful and effective stop and search requires careful analysis.
66. Further consultation will therefore be required prior to any further technological methodologies being introduced.

QUESTION 9 – 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?"

67. PALG response: Strongly disagree
68. The experiences of PALG members and our clients do not give rise to confidence in the fairness of police use of stop and search powers.

69. By way of example, PALG members often find the reasons given for stopping and searching clients is because of an apparent desire of the person concerned to avoid the police, or reluctance to speak to or assist a police officer.
70. The understandable resentment of unfairly targeted groups towards the police becomes in itself a purported ground for suspicion. Such behaviour reinforces mistrust for the police within communities already disproportionately targeted by these powers. It also negatively affects the police's ability to prevent and detect crime and anti-social behaviour if the public are increasingly less willing to engage with officers on the street, for fear of being unfairly targeted.
71. A quarter of those surveyed by the HMIC believed that these police powers are used discriminatorily, with half of the black and minority ethnic groups believing that to be the case. The Home Office, and the police, must prioritise reform of the policies and practices underlying these powers if they are to regain the trust of large sections of the population.
72. A lack of proper records of searches (as detailed in our response to questions 7 and 8 above) means that forces are unable to assert whether or not their use of stop and search is fair and effective.
73. Even where forces are properly recording stop and search encounters, this data is redundant if the proper lessons are not learnt from it. The HMIC report found that the "vast majority" of forces had no effective system in place to supervise the use of stop and search powers. The report found only limited evidence that supervisors were challenging inappropriate behaviour. This is despite the fact that almost a third of those stop and search records examined by the HMIC did not show reasonable grounds for suspicion.
74. Not only does this failure compound the lack of training and monitoring of this commonly used, and abused, power, but it is in itself a form of misconduct by the officer(s) who do not challenge or report the improper behaviour of another officer. As such, the Home Office should take the findings of the HMIC extremely seriously and look to urgently reform the manner in which stop and search powers are recorded, supervised and independently monitored.

QUESTION 10 – What would give you greater confidence in the police’s use of stop and search powers? Please give reasons.

75. To ensure that any police power is exercised fairly, it is vital that the appropriate mechanisms are in place to safeguard individual rights. The obvious mechanism is the complaints system. Unfortunately, however, it is the experience of our clients that the complaints procedure does not adequately deal with complaints in this area. The HMIC’s findings support the experience of PALG members and their clients.
76. The HMIC Report found that only 16% of those who were unhappy with the stop and search made a complaint, and the main reason for not doing so was a lack of faith in the complaints system. This certainly accords with the experience of our clients. Recent changes to the complaints system means that complaints about the abuse of stop and search powers can be resolved locally, without any formal investigation and without obtaining the consent of the complainant. Furthermore, reduced obligations to record searches and provide records to those subjected to searches leaves the police even less accountable both internally and externally.
77. The consultation acknowledges the intrusive, and potentially damaging, effect of the use of stop and search powers. It is vital therefore that proper safeguards are put in place. The nature of stop and search, which takes place in a public arena without (i) pre-planning; (ii) proper contemporaneous records being made; and (iii) after-the-event supervision and monitoring being undertaken, means that officers are able to act without fear of consequences.
78. Whilst an assault in police custody may result in substantial evidence and attract public funding to bring a civil claim against the police, it is unfortunately the case that very frequently an unlawful stop and search will not do so. This is despite the fact that these abuses of power occur in a person’s own community, in public (in front of friends, family, neighbours, colleagues).
79. It is clear from the HMIC findings the police’s willingness to properly monitor and train their officers, and make use of the data recorded on stop and search, has been entirely inadequate that over many years . and shows no signs of improvement.²⁸ It is

²⁸ HMIC report, page 49

therefore imperative that an independent and well-resourced system is now put in place.

80. PALG members support the recommendation of Stopwatch for an independent monitoring system to be established, which may assist both in increasing public confidence in the police use of such powers and ensuring that abuses of power are recorded and those involved held to account.

QUESTION 11 – To what extent to 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?

81. PALG Response: Tend to agree.
82. PALG is strongly opposed to any relaxation of the current requirement to explain the reasons for a stop and search, which we consider would increase both the potential for the powers to actually be exercised in an arbitrary way and the public's perception of this.
83. Even if a stop and search is carried out with adequate grounds being formed in the officer's mind, if the search does not lead to any prohibited articles being found and the reasoning for that search is not explained to the person being searched, this will inevitably cause the person searched to feel that the power has been exercised arbitrarily and unfairly.
84. The widespread perception among many ethnic minority and other groups that particular groups are being targeted unfairly is not unfounded, but instead substantiated by statistics. For many years Home Office data has consistently shown that black and ethnic minority individuals are more likely to be subject to stop and search, as highlighted above, re-enforcing the view that many ethnic minorities are being targeted on the basis of their skin colour alone, thereby provoking community disengagement.
85. As mentioned above, where a search is carried out without any explanation of the reasoning behind it the perception of unfairness is likely to increase. Conversely, if a clear and objective reason is given for the search, which has no relation to the

person's ethnicity or other protected characteristic, the power is more likely to be perceived as having been exercised fairly.

86. The failure to explain the reasons for a search will also mean, in many cases, that the person being searched has less inclination to comply; in some cases, this may manifest itself in resistance to the search. This can generate "unnecessary" arrests for offences such as obstructing a constable in the execution of his duty, with the consequence that further police resources are then used to arrest and sometimes prosecute the person, rather than focussing on the types of crime that directly affect members of the public including burglary, robbery and violent crime.
87. Even if a search does not have such direct negative consequences, searches which are not properly explained have the effect of fuelling distrust in the police, which in turn undermines their ability to protect the public and fight crime. Where a person perceives that they have been unfairly stopped and searched, it is often the case that not only they, but also their families and friends, will become less inclined to assist the police in other investigations.
88. We are also concerned that, if the requirement to *explain* the reason during the search is removed, this would in practice remove the requirement for a genuine reason to exist at all, introducing a risk that officers without requisite grounds at the initiation of the encounter will be enabled to provide retrospective justification for it.
89. As commented above, in our experience as practitioners, we frequently encounter questionable reasons for stops and searches such as the mere fact of an individual's presence in an area. In other cases we have found that the police initially stop someone to ask general questions, e.g. about how they are or where they are going, which the person has no obligation to answer and at which point the person is free to leave; however, when they then decide to do so, this is considered sufficient grounds for a search to take place, which is, of course, entirely contrary to Code A of PACE.
90. Again as above, these anecdotal concerns are supported by statistical evidence, with the HMIC Report showing that 27% of stop forms they reviewed did not disclose reasonable grounds for suspicion. This is already an unacceptably high level, and there is clearly a potential for it to increase further if the officer is not required to justify their reason for a search at the time it takes place.

91. For the reasons that have been set out, we consider that the current requirements to explain the reasoning and justification for a search should be retained. However, we cannot unequivocally agree that the current requirements are effective in making the use of the power fair and effective, because we are concerned that these requirements are not consistently adhered to. In many of the cases we encounter it is notable that not only the account given by the person searched, but also that recorded by the searching officer shows the reason for the search being given in very vague terms or not at all. It is also concerning that the explanation is often given *after* the person has been asked to comply with the search and, in some cases, had force used against them to achieve this.
92. Again, our concerns, which are primarily drawn from our collective experience, are substantiated by the HMIC's findings, in which an alarming 37% of those surveyed who had been stopped and searched had not been provided with any reasons for this. We therefore consider that, rather than removing the obligation to explain reasons for a search, the focus should be on ensuring that this requirement is followed universally. In particular, it should be emphasised that officers are expected to clearly explain their reasons for a search *before* taking steps to carry it out. Any incidents in which searches have been carried out before the reasons are given or without reasons being given should be considered, as a minimum, a matter of poor performance; if force has been used to effect a search where reasons have not been given this must be treated as misconduct. We consider reasons should be given both verbally and also, in clear terms, on the stop and search slip.
93. Concerns about "wasting police time" through the process of explaining and recording reasons for searches are, in our view, misplaced. The experience of being stopped and searched is not only time-consuming and inconvenient for the person being searched; it is also, in many cases, intrusive and humiliating. If a person is subjected to this experience, it is only fair for them to be provided with a clear and objective reason that it was necessary. In practice, the time taken to explain the reason for a search will usually be minimal and if a matter is so trivial that it does not justify the short time that it takes to explain the reasons, then it is unlikely to justify a stop and search at all.

QUESTION 13: To what extent do you agree or disagree that police.uk should contain information on stop and search in your local area

94. PALG Response: Tend to agree.
95. We are concerned that provision of information about stop and search, particularly where this relates to the frequency of its use, could have the effect of stigmatising certain localities. Many members of the public will view a high incidence of stop and search in a particular area as demonstrating that the area in question is “high crime” – however inaccurate this may be, it could have a detrimental effect on the community and its relations with police.
96. If the website were to show statistics on the use of stop and search, we consider this should be accompanied by information as to its effectiveness, to include, for example, statistics on how many people have actually been arrested and / or convicted as a result of stop and search operations. If this information is provided in sufficient detail this would enable the identification of areas in which stop and search powers have been over-used, without sufficient results to justify this.

QUESTION 14: 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?

97. PALG Response: Neither agree nor disagree
98. The answer to this question is not straightforward as it depends on how “local communities” are defined and how their views are gauged. Provided that safeguards are in place we consider it would be appropriate to involve local communities, but great care must be taken to ensure that all parts of the community are represented and views used in appropriate ways.
99. The HMIC Report notes that notes that “more than half the respondents said that seeing the police using the powers in their areas made them feel safer.” It is clear from the wording that the respondents in question are unlikely to be those who are often, or indeed ever, stopped and searched – indeed the report notes that “all the survey findings should be seen in the context that the vast majority of the respondents had not themselves experienced a stop and search encounter”.

100. The concept of directly involving local communities poses the danger that views such as these are allowed to dominate the debate and influence decisions on the use of stop and search powers. Involvement of only these particular parts of the “community” can lead to sidelining the views of the individuals who are primarily subject to stop and search, often on a recurring basis, many of whom are young and / or from an ethnic minority background. It is vital to remember that these individuals are *part* of the community, rather than separate from it. PALG would support direct involvement of local communities only if steps are taken to ensure that all sections of the community are represented, not only those made to feel safer by the use of stop and search powers.
101. Any involvement of local communities should not be permitted to lead to prioritisation of making people “feel safe” at the expense of other considerations, which is problematic for a number of reasons. It can lead to officers trying to carry out searches in public view as a way of reassuring members of the “community,” when in fact the aim should be to minimise embarrassment by carrying the search out in the least intrusive and public way possible. Fundamentally, stop and search powers do not exist to increase the feeling of safety, or to have a deterrent effect, but rather to identify unauthorised articles and lead to the apprehension of those who carry them, or are otherwise involved in crime.
102. Any decision to increase the use of stop and search in an area must be based not only on the views of (sections of) a local community but also on objective evidence confirming its effectiveness. The HMIC data shows that, of those who thought stop and search powers were used on some groups more than others, 58% believed one of the reasons was that members of those groups are more likely to be committing crime. It would be hugely problematic if these prejudices, which are not backed by evidence, came to determine policing priorities in respect of stop and search. At worst, it could mean that an area where the community members involved in deciding how police use their powers hold these types of prejudiced views could see an increased use of discriminatory measures on the basis of these views.
103. It must also be borne in mind that Equality Act duties are paramount; whatever the views of certain sections of a local community, this can never justify the use of stop and search powers in a discriminatory way. Similarly, we do not consider it would be appropriate for a local community to recommend that an authorisation being put

in place under s60 Criminal Justice and Public Order Act, as this must always be based on objective evidence of the type of occurrences that would warrant it.

104. Further, care must be taken to ensure that any concerns reported by the local community, used as the basis for an increase in stop and search, relate to matters which could amount to criminality and not just to behaviour that is considered anti-social or otherwise an annoyance. The police already have a number of other powers for the purpose of addressing anti-social behaviour, which do not require the use of stop and search. The idea that stop and search should be used to stop anti-social behaviour links to the idea of searching as a preventative measure; this is not its purpose, and there is no evidence of its effectiveness when used in this way.

105. We therefore consider that community involvement, rather than directly setting priorities or targets for the use of stop and search (although these should of course be decided bearing in mind specific local concerns about crime), should be aimed at monitoring those stops and searches that are carried out by the police to ensure that the powers are being used effectively.

QUESTION 15: In your view, how might local communities be directly involved in decisions concerning the use of stop and search powers? Please give reasons.

106. Bearing in mind the concerns outlined in response to question 14, we submit that considerable care must be taken to ensure that the involvement of local communities takes into account the views of broad sections of any local populace. It would certainly be problematic to try and gauge community opinion simply by arranging local meetings attended by (and thus likely to be dominated by) police representatives, as these are generally unlikely to be attended by those directly affected by stop and search. Even the parents / guardians and other family members of young people arrested by the police may be less likely to participate as their trust in police may well have been undermined by any negative interaction.

107. To this end, we consider that the methods of community engagement employed must themselves be determined by the wishes of the various sections of the community. This is not to relieve the burden on the police of ensuring community

engagement, but instead to ensure that the mechanism for engagement is relevant to the intended recipients, and fit for purpose. It is imperative that the involvement of communities is not reduced to the provision of a forum by which the police strive to justify their practices, and that the police instead demonstrate a true receptiveness to concerns expressed.

108. We agree with HMIC's recommendation that scrutiny of stop and search records "should be done in a way that involves those people who are stopped and searched, for example, young people" and consider that more general meetings about stop and search priorities should similarly seek to involve those who have been subject to stop and search. Younger people could be engaged by focus groups in local schools, colleges and / or workplaces where the impact of stop and search is discussed as well as priorities for fighting crime.
109. One way of ensuring that relevant views are heard is to invite individuals who have made complaints arising from stop and search to participate in research specific to stop and search in their locality. This should seek to identify the factors driving dissatisfaction with the stop and search process in the area (e.g. lack of explanation of grounds, rudeness, use of handcuffs and / or other force unnecessarily to carry out the search).
110. Such research would need to be distinct from the outcome of the person's complaint, which would only determine whether the individuals officers involved are the subject of disciplinary or management action. Many complaints arising from this type of scenario are not upheld purely or primarily on the basis that it is the complainant's word against the officers' such that misconduct cannot be proven to the required standard, the balance of probabilities. Notwithstanding our other concerns about the way this test is applied, we consider that surveying complainants could be helpful because, if numerous separate complainants are raising similar concerns about the same officers or local forces, trends can be identified and steps taken to address these issues.
111. However, as noted in the HMIC Report, many people who are stopped and searched and find the experience unsatisfactory never go on to make a formal complaint. Those who are subject to stop and search often face considerable difficulty finding legal representation to bring complaints / claims arising from stop and search except in particular circumstances e.g. where an unlawful arrest has

resulted, force has been used or the stop is part of a series of incidents which could be seen to amount to harassment; without these additional factors, the level of damages to be gained is too low for legal aid funding to be granted. A complaint can, of course, be made without legal advice but the procedure can be bewildering and may involve a face-to-face meeting with officers, whether to give a statement or be involved in local resolution, which will often be difficult for complainants; discouraging their engagement in the complaints process.

112. Many of those who have been affected will decide not to go through this process and it is important that other ways are found to ensure their views are heard, especially in respect of individuals who have been subject to multiple searches, none of which result in an arrest. This could include, for example, the insertion of a section on the stop and search slip for individuals to provide feedback on the quality of their encounter. This would mean that even if they do not choose to formally complain there is scope to establish concerns.
113. We also consider that local community groups, as well as monitoring the use of stop and search retrospectively, could be involved directly in training police officers on the use of their stop and search powers. This could include role plays of negative scenarios that have led to complaints and / or non-compliance with searches. HMIC's research as summarised in their report found that in many forces training focussed predominantly on conducting a search safely, rather than effectively and fairly. Whilst officer safety is clearly important, it should not be presented as the only consideration, particularly as it can lead to premature use of handcuffs or other "restraint." In any event, this is a false dichotomy as threats to officer safety are less likely to arise where the search is being conducted fairly and with respect for the person being searched. We consider that such training should be periodical for any officers that are still involved with "beat" patrols, and should not take place only when an officer first joins the police force.
114. Finally, we again echo the proposal by the organisation Stopwatch to develop an independent stop and search monitoring scheme based on the Home Office funded Independent Custody Visiting Scheme. This would increase the availability of volunteers to take part in patrols and directly monitor the use of stop and search powers by officers to ensure it is carried out lawfully and with appropriate respect for the rights of the person being searched.