

Case 4 | Issue 33 – Stop and search

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Racial profiling

Interaction with two men in a vehicle, raising issues about:

- *Explaining how intelligence informs decisions to stop people.*

This case is relevant if you work in:

Stop and search



Overview of incident

PC A, PC B and PC C were on routine patrol in the city centre. The officers were in uniform and travelling in a marked police car. PC B was the driver, and PC A was the operator. The third officer PC C was a probationary constable being guided by the other officers.

Around midnight, PC B saw a car being driven with the roof down. It was a cold night and this struck the officer as odd. The car was also moving between lanes at traffic lights without indicating, and was being driven erratically.

PC B decided to follow the car and speak to the driver about his driving. The intention was also to use this as a learning opportunity for PC C.

While they were following the car, PC B saw the passenger of the car lift his arms up and start taking photos of the area using a small hand-held device.

In light of the terrorist threat level, officers had been encouraged to consider hostile reconnaissance and be alert for people who were taking an unusual or excessive interest in features of a building, and taking photographs, filming, or making notes or sketches. Officers were also advised to trust their instincts and challenge suspicious behaviour.

PC A checked the Police National Computer (PNC) and found that the car was registered to a car dealership.

Officers continued to follow the vehicle, looking for a safe place to stop it. At one point, PC B turned on their vehicle's blue lights. He continued to follow the car, before turning off its lights.

They stopped in stationary traffic behind the car. The passenger in the car they were following, Mr D, got out of the car and spoke to PC A through the window of the police car.

Although the officers intended to stop the vehicle under section 163 of the *Road Traffic Act 1988*, they did not actually enact the stop because Mr D approached them first. Officers did, however, consider it to be a stop under the *Road Traffic Act*.

Both vehicles pulled to the side of the road. The driver (Mr E) and passenger (Mr D) and PCs A and C got out of their cars.

PC B remained in the police car for a few minutes. He radioed the police control room and asked them to open a computer-generated record (CAD) for a vehicle stop.

Each officer activated their body worn video (BWV) camera when they got out of the police car.

PC B stood back away from the group so the stop didn't feel overbearing.

PCs A and C asked for the driver's ID and asked if he owned the vehicle. Mr E was unable to provide ID. He confirmed that the vehicle belonged to a car dealership. PC A advised them that the vehicle was showing up as registered to a car dealership, rather than as a hire car. He explained that this was part of the reason why they had been stopped.

PC A asked the men if either of them had any paperwork to confirm the car rental, but they were unable to provide anything.

PC A said, "We just need you to help us to help you, you know? I'm not saying you're doing anything illegitimate, but we just need to prove it, you understand?"

PC A explained the rationale for the stop, and referred to the terrorist threat, and the possibility that tourists taking pictures and hostile reconnaissance could look similar. Mr D could be heard to say, "Fair enough," in response.

Mr D went on to describe how he had been stopped by the police earlier that day in his own car.

PC B and PC A then continued to explain their rationale for the vehicle stop. They discussed how having the vehicle hood down in the cold weather could be considered unusual and how the vehicle moved between the lanes erratically. Mr D said, "Yeah I understand, I understand . . . To be fair, that's why I'm not giving you grief . . . To be fair, we don't drive round here".

In reference to his earlier stop, Mr D said, "If it was my car, for example, when I usually get stopped in my car . . . Like, I get harassed . . . so there's no other reason for you. Unless they've got a warrant marker on my name. Or my car has got a marker on it. If I'm not doing anything, why are you harassing me?" PC A and PC B nodded in response and PC A said, "I wouldn't take it as harassment."

PC B then stepped to the side and spoke with Mr E and PC C separately. PC A remained with Mr D.

PC A then said to Mr D, "I know what you're saying. And people like to say that it's because, we're racist and all this". Mr D spoke over PC A at this point and said "I get that. Don't get me wrong . . . You got a reason, and I'd rather you were doing that".

PC A then said, "Let me put it this way. Let me twist that round then. You are saying about a reason right. All round here, there is a big problem with robberies and I'll tell you now. This isn't racist, this is a fact. Predominantly, the criminal profile, the people that do it, are black people."

PC A went on to say that if he saw a “car full of black lads” and they were dressed in a particular way, they are likely to be stopped.

PC A added “Now it’s not harassment, you might not see that as a reason”.

As PC A spoke, Mr D occasionally tried to interject, but then allowed PC A to continue speaking.

Authorised Professional Practice (APP) on stop and search

“Procedural justice, ie, fair decision making and respectful treatment, should help ensure that the police use of stop and search powers is seen by the public as legitimate. Doing so will involve officers adopting a professional and unbiased approach that complies with standards of conduct.

Respectful treatment is a key element of the procedural justice approach. It centres on how the person’s experience of contact makes them feel and applies as much to what officers do as how they do it. The effect on the person of being searched depends, to a large extent, on how the officer interacts with them, how their individual needs are responded to, whether they have an opportunity to participate and whether they understand the reasons for the officer’s actions. These elements significantly influence whether a person perceives the experience of being stopped and searched as negative or neutral.”

Find out more online:

<https://www.app.college.police.uk/app-content/stop-and-search/professional/>

PC A’s comments about criminal profiling could be interpreted as suggesting that he considered an individual’s ethnicity as a relevant factor when deciding whether to stop a vehicle. PC A confirmed in interview that he was aware that police cannot carry out a vehicle stop on the basis of someone’s ethnicity.

Although body-worn video footage confirms that Mr D did not explicitly mention his race when describing the earlier vehicle stop, PC A said he assumed he was referring to racial discrimination. He said this is what prompted him to start talking about the use of race within criminal profiling.

PC A also made comments about clothing, despite this not being mentioned by the man. This could be considered evidence of negative stereotyping.

PC A said, “Some people are scared to say that, but it’s a fact. We work on like a criminal profile. Unfortunately, here the criminal profile of robberies, robbery suspects is IC3 males. A gentleman from Somalia and . . .” Mr E then asked Mr D a question about the vehicle and the conversation stopped.

Later, PC A said he felt his interaction with Mr D was an example of him trying to educate people on the rationale used to stop people, and to show him how police stops are not racist.

PC A went on to explain that there was a problem with robberies in the area where the man had been stopped and that the criminal profile of those involved was predominantly black men. PC A said that, “By eluding to local issues in the area where [he] had been stopped, I was trying to explain to him a scenario whereby someone matching the description of offenders for certain crimes in the areas, behaving in certain ways could be stopped in response to dealing with such offences, in order to try and give him a sense of perspective which he could maybe relate to the

negative experience he eluded to having had previously. The reason I entered into this conversation is because it does not sit right with me to walk away from any person who makes me feel they are of the opinion that I myself, or the [force], are racist, without attempting to explain to them how we are not racist and maintain public confidence”.

PC B asked Mr D further questions about documentation to prove that he was allowed to use the vehicle, and Mr D showed him some emails on his phone, which confirmed he had been corresponding with the car dealership.

PC B and PC C deactivated their body-worn cameras around this time, but PC A’s camera continued recording.

Footage shows that Mr D then started to walk towards the vehicle and PC A asked him if they could continue their previous conversation, to which Mr D said, “Carry on, carry on”.

PC A went on to say, “Criminal profile of a robber, round here, is a black person.” Mr D commented, “That’s fair enough”. PC A continued, “Now, if you go to where I’m from...” and Mr D interrupted and said, “It’s going to be white people innit. Yeah, yeah, to be fair”.

PC A then said, “We’ve got statistics. Every night there’s robberies here and the suspects are predominantly, the criminal profile is black people. So why am I going to stop a white person? I wouldn’t be doing my job properly, would I?” Mr D said, “Like that is proof, statistics. Like that’s a fact there”.

PACE Code A 2015

“Personal factors can never support reasonable grounds for suspicion

Reasonable suspicion can never be supported on the basis of personal factors. This means that unless the police have information or intelligence which provides a description of the person suspected of carrying an article for which there is a power to stop and search, the following cannot be used, alone or in combination with each other, or in combination with any other factor, as the reason for stopping and searching any individual, including any vehicle which they are driving or are being carried in:

- (a) A person’s physical appearance with regard, for example, to any of the ‘relevant protected characteristics’ set out in the Equality Act 2010, section 149, which are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation (see paragraph 1.1 and Note 1A), or the fact that the person is known to have a previous conviction; and
- (b) Generalisations or stereotypical images that certain groups or categories of people are more likely to be involved in criminal activity.”

Find out more online:

<https://www.gov.uk/government/publications/pace-code-a-2015>

Statistics used in daily briefings show that the area was a robbery hotspot. When questioned, PC A stated his views about the criminal profile were informed by his own experience not statistics.

Footage then shows Mr D then said, “Don’t get me wrong, us black people, we are hard to work with as well . . .” PC A interrupted him at this point. “Some white people are. Some Chinese

people, you know". Mr D nodded in response and went on to say, "I know that if you said that to another black person, they would take it the wrong way . . . So for example, even with that statistics and whatnot like. It's hard because like, in a way, like black people, who actually have done the crime, so like, that's what they've done. But then there's the other minority that haven't done anything . . ." PC A interrupted Mr D and said, "No, the majority. Most of them haven't done anything".

Mr D's comments could be interpreted to suggest that he did not find PC A's comments offensive, but could equally suggest that this was still unwelcome conduct, which could be found offensive by others.

Later, PC A said to Mr D, "Do you know where I'm coming from?" and Mr D responded, "I completely get you". PC A went on to say, "It's just nice to explain sometimes because it's nice to have everyone on side".

Footage then shows Mr D saying, "The thing is though, is like, if you said that how you said it to me, and I know for a fact, if I told another black person how you said it word-for-word, they would be like, yeah that's racist. That's exactly how they'd take it." PC A responded with, "Yeah, well that's fine . . . That's fine but that's ignorance because if it was white people committing robberies here all the time, we wouldn't be stopping black people because that's just stupid. If you go and see, like I say, where I live, the robbery suspects are white people. So white people get stopped. You know?"

At the end of their conversation the tone was friendly, PC A deactivated his body-worn video camera and updated the CAD with, "Satisfactory stop".

Edited footage of the incident was posted on YouTube. However, no formal complaint was made.

Type of investigation

IPCC independent investigation.

Outcomes for officers and staff

PC A

1. PC A was found to have a case to answer for misconduct in relation to his comments about using racial profiling as part of the rationale for stopping vehicles. The force decided to deal with the officer outside the formal disciplinary process by way of unsatisfactory performance procedures. No meeting or hearing was convened as the officer received management action and additional training immediately after the incident.

Questions to consider

Questions for policy makers and managers

1. Does your training for officers on stop and search make clear that racial profiling is unlawful?

2. What preparation does your force give to officers to help them respond to questions or challenges about the use of stop and search powers?
3. How does your force check officers' understanding of stop and search powers?