

## Stop and search involving an injury

*Stop and search of a man and his brother, raising issues about:*

- *Electronic recording of stop and search encounters*
- *Providing people stopped with a record of the stop*
- *Referring complaints of serious injury due to alleged excessive force to the IPCC*

This case is relevant if you work in:

<b>Crime and investigation</b>		<b>Professional standards</b>	
<b>Stop and search</b>			

## Overview of incident

Early in the morning, three brothers and their cousin were walking home when they were stopped by two firearms officers in a car, Police Constable (PC) A and Police Sergeant (PS) B. The officers were patrolling the area because they had intelligence on street robberies that had occurred in the locality. PC A later said the group were acting in a way that roused suspicion by ducking in and out of alleyways and approaching people walking alone on the road. The officers were firearms officers and PC A was carrying a Taser, Pava spray, baton and loaded Glock pistol in a waist holster. The officers' uniform did not display their collar numbers because firearms officers must be anonymous in some circumstances.

PC A asked to search Mr C. Mr C questioned the grounds for this search. Mr C was searched and he alleged that this was conducted in an aggressive manner. He began to walk backwards and alleged that he was pushed causing him to fall to the ground. Mr D approached the officer to remonstrate about his brother's treatment. PC A, alleged he was surrounded and feared that one of the men was trying to take his pistol from its holster. He turned around and used force by striking Mr D in the mouth. Mr D then fell to the ground and lost consciousness for a few seconds. Mr D stated that PC A assaulted him without provocation or good reason.

PS B said he saw a man with a bloodied lip behind two men he was speaking with, but that he did not see how the man was injured. The search of Mr C continued and nothing was found. Mr C declined to give his personal details so was not provided with a record of the search. The force stop and search forms for reporting the use of this power are electronic and are submitted

via the Blackberry system. They require the subject to provide their details before an electronic form can be submitted.

### **PACE Code A**

“For the purposes of completing the search record, there is no requirement to record the name, address and date of birth of the person searched or the person in charge of a vehicle which is searched. The person is under no obligation to provide this information and they should not be asked to provide it for the purpose of completing the record.”

#### **Find out more online:**

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

Mr C said he asked his cousin to take some photographs of the officers and that the officer told his cousin to put the phone down.

PC A provided an account of the incident but PS E did not.

Mr D later went to hospital. He had a swollen lower lip and one of his front teeth had been knocked out.

Mr D made a complaint to the police later that same morning and alleged that he was assaulted and this use of force was unnecessary, the officer stated he would lie about the assault and allege he was assaulted first, the stop and search was unwarranted and the second officer failed to challenge the conduct of the first officer.

No attempts were made to recover CCTV until 8 days later when the complaint was made in writing and by this stage was not recoverable.

The complaint was investigated by the Professional Standards Department who concluded that there was no case to answer in respect of any of the allegations and the complaint was therefore not upheld.

The alleged assaults on Mr C and Mr D were not referred to the Crown Prosecution Service (CPS). Mr C was found to have received no injuries, and there was no independent evidence. No medical information was received regarding Mr D receiving dental work as he did not attend for treatment. Medical staff also commented that there would be no lasting effects. These decisions were recorded and ratified by the appropriate authority.

An appeal about the outcome of this complaint was made to the IPCC and upheld in part. The appeal found that a disciplinary tribunal could find that there was no lawful reason for the use of force and that it was an abuse of the officer's authority. It was also found that the matter was not referred to the IPCC and should have been, because it was a complaint of serious injury following an alleged excessive use of force. Finally, the appeal concluded the force should have referred its investigation report to the Crown Prosecution Service (CPS).

A misconduct hearing was held and a panel including an independent legally qualified chair heard evidence from the officers and Mr C's and Mr D's family.

The panel considered the allegations of assault made against PC A by Mr C and Mr D. It also considered whether PC A had failed to carry out proper enquiries which would have enabled a thorough investigation of the circumstances.

The panel found that the evidence provided by the men's family was not entirely consistent either with each other or with the statements they had given much closer to the time of the incident. In their judgement they document the specific aspects of the evidence that caused the panel concern.

PC A told the panel that he had felt force applied to his equipment in the area of his right hip, where his pistol was secure. He immediately formed the belief that an attempt was being made to acquire his firearm. He reacted instinctively to that and applied force in a manner consistent with the training he has received. The panel were provided with training records and lesson plans in relation to weapon retention. The panel found that the appropriate authority was right in their view to concede that the force applied by PC A was entirely consistent with the training he had received eleven days prior to the incident in question.

On the balance of probabilities the panel found that PC A formed an honest and genuine belief that an attempt was being made to acquire his firearm and that his use of force was necessary, proportionate and reasonable in the circumstances as he perceived them to be.

In relation to the second allegation, the panel found that there could be no proper investigation of the actions taken by PC A.

## **Type of investigation**

IPCC investigation appeal.

## **Findings and recommendations**

### ***Local recommendations***

#### **Finding 1**

1. The force stop and search forms for reporting the use of this power are electronic and require the subject to give their details before the form can be submitted.

#### **Local recommendation 1**

2. The force should review the procedure of only electronically recording information regarding stop and searches if the subject provides their personal details.

#### **Finding 2**

3. Mr B refused to supply any details and as the force stop and search forms require the subject to provide their details the stop and search was not recorded.

#### **Local recommendation 2**

4. The force should electronically record all stop and searches and ensure they can be accessed centrally. This would make sure all stop and search data is auditable and can be monitored by supervisors.

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## **Finding 3**

5. The officers' stop and search record and complaint histories were not looked at as part of the force investigation.

### **Local recommendation 3**

6. To ensure police investigators routinely consider reviewing stop and search records where proportionate and relevant to the complaint. This could be added to complaint investigation guidance.

The importance of making all CCTV enquiries as soon as practicable was also highlighted as was the need to make a contemporaneous note of all conversations which contribute to the findings of the investigation.

## **Response to the recommendations**

### ***Local recommendations***

#### **Local recommendation 1**

1. The force has introduced a new mobile device to record all stop and searches. The application on this device has been upgraded to include all elements of the Government's Best Use of Stop and Search Scheme. Electronic recording without the person's details is made much simpler for the operator.

#### **Local recommendation 2**

2. All stop and search records are electronically recorded and can be accessed centrally. The new mobile device enables supervisors to quality assure all their officers stop and search records upon submission. An external scrutiny panel made up of members of the public is also randomly sampling stop and search records and providing appropriate feedback so that any lessons can be learnt.

#### **Local recommendation 3**

3. All investigating officers have been briefed on this recommendation.

## Outcomes for officers and staff

### PC D

1. PC D, the officer who carried out the stop and search and who used force on one of the men, was found to have a case to answer for gross misconduct in respect of the allegation that the force used was excessive.
2. PC D attended a misconduct hearing. No misconduct was found.

### PS E

3. PS E, the officer who was with PC D, who carried out the stop and search, had a case to answer for misconduct in respect of his failure to report the incident and make a contemporaneous note.
4. PS E received management action.

## Questions to consider

### Questions for policy makers and managers

1. If you use electronic forms or mobile devices to record stop and search encounters, do these allow officers to record details of a stop even where the person stopped does not provide any personal information (such as name)?
2. Does your force encourage investigating officers who are dealing with complaints about stop and search to routinely consider officers' stop and search records and complaint histories as part of the investigation?
3. Does your force routinely equip officers with body-worn video and require them to record all stop and search encounters?
4. Are you aware of the criteria for referring matters to the IOPC and the process that should be followed?

### Questions for police officers and police staff

5. Are you aware of the circumstances in which members of the public are permitted to record police activity using mobile phones or other devices and the circumstances in which you are allowed to ask them to stop recording?
6. Are you aware that CCTV footage should be secured without delay to preserve evidence?