

# Fair

This page is from APP, the official source of professional practice for policing.

First published 29 September 2016 Updated 29 September 2016

Written by College of Policing

16 mins read

The decision to stop and/or search a person must be fair. When an officer decides to stop and search a person, they must be sure that their decision to stop and search that particular person is made for the right reasons. It must be impartial and based on the facts.

Officers must not consciously use their powers in an unfair or discriminatory way. They should also be mindful of the potential influence of unconscious (implicit) bias on their decision making.

## Why does fair matter?

Fair decision making in stop and search matters because it affects how people perceive the police – not just the individual who is searched, but also groups and wider communities of which that individual is a member<sup>1</sup>.

The presence or absence of procedural justice (fair decision making and respectful treatment) during stop and search can affect whether people perceive the police to be legitimate<sup>2</sup>. When a person or particular group does not understand the reason for the police stopping or searching them, or feels unfairly singled out, it can damage their trust in the police and increase resentment<sup>3</sup>.

People are more likely to be satisfied with a stop and search when they believe there is a good and credible reason for the encounter and do not feel unfairly targeted<sup>4</sup>. It is, therefore, important that officers are neutral in their decision making and explain their decisions to the person being searched. People may not want to be stopped and searched, but are more likely to accept it if they understand why it is necessary.

In addition, searches where the grounds for suspicion are strong are more likely to have a positive outcome<sup>5</sup>, and more likely to be seen as 'good' and 'credible' by the person being searched, thereby strengthening their legitimacy<sup>6</sup>.

Code A ([paragraph 1.1](#)) says:

*Stop and search powers must be used fairly (...) and without unlawful discrimination.*

*Police officers must have due regard to the need to eliminate unlawful discrimination, harassment and victimisation.*

## What does fair mean in the context of stop and search?

Fair means that the officer's decision to stop and search a person must be based only on appropriate factors.

### It is never appropriate to stop and/or search a person on the basis of protected characteristics

[Section 149 of the Equality Act 2010](#) (the Act) sets out the public sector equality duty, which applies to any public authority in the exercise of its functions. It therefore applies to any police officer or PCSO exercising a power to stop and/or search.

Under section 149, when using a stop and search power, police officers and PCSOs must have due regard to the need to:

1. Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by, or under, the Act.
2. Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
3. Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

As the duty prohibits discrimination, harassment or victimisation based on protected characteristics, it is unlawful for an officer to base the decision to stop and/or search a person on protected characteristics. Protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

This duty applies to all stop and search powers, including those that do not require reasonable suspicion (**'no suspicion' search powers** under **section 60 of the Criminal Justice and Public Order Act 1998** (CJPOA) and in connection with certain powers to search premises). It also applies to vehicle stops under **section 163** of the Road Traffic Act 1988 and **Police Reform Act 2002** powers to search for and seize alcohol and tobacco. Stopping a person and asking them to account for themselves, although not a formal power, is also subject to the public sector equality duty, and individuals stopped must not be selected on the basis of protected characteristics, such as membership or presumed membership of a racial group.

## The decision to stop and search a person must be based on objective factors

Code A (**paragraph 2.8A**) says:

*Search is more likely to be effective, legitimate and secure public confidence if reasonable grounds for suspicion are based on a range of objective factors.*

### Reasonable grounds for suspicion

The only way to be certain of treating everyone fairly, irrespective of personal factors, is to apply an objective test as the trigger for exercising stop and search powers.

Unless exercising a specific 'no suspicion' stop and search power – the circumstances of which are strictly limited – the officer must have reasonable grounds for suspicion before they stop and search someone. This means that:

- the officer must **genuinely suspect** that they will find the item searched for
- it must be **objectively reasonable** for them to suspect this, given the information available to them

This is an objective test, in that it expects that a reasonable person given the same information would also suspect that the individual is carrying the item.

The suspicion should relate to the likelihood of the person being in possession of the item, not the likelihood that they are committing an offence. For example, a search may still be justified where a person is in innocent possession of an item or below the age of criminal responsibility.

The officer must be able to give a specific explanation for suspecting the person of being in possession of the item. This should be based on specific information or intelligence, or some particular behaviour by the person. A hunch, gut feeling or general suspicion about a person can never provide sufficient grounds for a search, even for an experienced officer, unless it can be explained or justified to an objective observer (Code A, [paragraph 2.6B](#)). The explanation must be articulated in full and be detailed enough to make it possible for someone else to judge if a reasonable person would also have suspected the individual of carrying the item.

#### **Personal factors can never support reasonable grounds for suspicion**

Code A ([paragraph 2.2B](#)) says:

*A person's physical appearance, the fact that they are known to have a previous conviction, and assumptions about the likelihood of certain groups of people being involved in criminal activity cannot be used as the reason for stopping and searching them or any vehicle they are in, unless there is information or intelligence giving a specific description of a person suspected of carrying an item for which there is a power to search.*

Personal factors include the following.

#### **Physical appearance**

This includes, but is not limited to, protected characteristics under [section 4 of the Equality Act 2010](#) (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation). Other examples might include hairstyle, facial hair or items of clothing, including dress associated with a particular religion or faith.

#### **Previous convictions**

Officers cannot stop and/or search someone just because they know the person has a previous conviction. This is a Code A requirement, [paragraph 2.2B](#).

#### **Stereotypical images and generalised assumptions about persons belonging to a particular group**

Assumptions based on **generalisations** or **stereotypes** would include, for example, the notion that people belonging to a particular ethnic, social or age group, or wearing a particular hairstyle or item of clothing are likely to be involved in offending or commit a particular type of offence<sup>7</sup>.

Code A paragraph 2.2B specifies that personal factors cannot be used as **the reason** for stopping and searching a person, alone or in combination with each other, or in combination with any other factor. This means that combining multiple personal factors cannot provide reasonable grounds any more than a single personal factor can. For example, you cannot stop and search a person because they are Black **and** happen to have previous convictions. A personal factor cannot be used as **the reason** for stopping and searching in combination with other (non-personal) factors either.

In practice, this means that an officer **cannot**:

- decide to stop and/or search a person **because of** their physical appearance
- decide to stop and/or search a person **because** the officer knows they have been in trouble before, whether or not they have previous convictions
- assume that **because** a person, for example, lives on a particular street, adopts a specific lifestyle or is a young person wearing a hoodie, they are likely to be carrying a prohibited item

This does not mean that officers can never stop and search individuals with protected characteristics, who have previous convictions or who belong to a particular group. It just means that those personal factors cannot be (in whole or part) **the reason** for stopping and searching them.

Where there is information or intelligence giving a **specific description** of a person likely to be carrying an unlawful item, with reference to personal factors, the fact that a person matches the description, not the personal factors themselves, can provide reasonable grounds to stop and/or search them.

For example, information from a member of the public that a pregnant teenage girl with red hair wearing a black coat has been seen slipping a knife into her pocket while sitting on a park bench may provide reasonable grounds to stop and search a pregnant teenage girl carrying a black coat and standing near the entrance to the same park – not because she is young and pregnant but because she matches the description of the girl who was seen in possession of a knife. It is how the

girl described was behaving (slipping the knife into her pocket) that provides the grounds, not the fact that she happens to be young and pregnant.

The guiding principle is that personal factors must play no part in an officer's decision making unless the police have information or intelligence that gives a **specific description** of a person likely to be carrying a prohibited item with reference to personal factors. Personal factors must be treated as irrelevant to the decision of whether or not to stop and/or search the person.

A personal factor **other than a protected characteristic** could be a factor in an officer's decision to stop and hold a person to account. For example, if a person with convictions for theft from motor vehicle is found looking in car windows at night in an area where there have been reports of recent thefts from motor vehicles, the previous convictions may be a factor in deciding to ask the person to account for their presence and behaviour. The outcome of that conversation may lead the officer to form reasonable grounds for suspicion based on the behaviour observed and the person's inability to account satisfactorily for their actions. The previous convictions may play a role in the stop and account, but cannot be the reason for proceeding to stop and search.

These rules are about what an officer can and cannot take into account when deciding if there are reasonable grounds to stop and search someone. They do not prevent an officer from talking to a person informally or asking them to account for themselves. There are good and valid reasons why the police may want to talk positively with people from excluded or minority groups to build trust and understand their concerns.

#### **Reasonable grounds for suspicion based on information or intelligence**

Searches based on strong grounds and prompted by specific information or intelligence are more likely to result in the relevant item being found<sup>8</sup>.

The information or intelligence should:

- be accurate and current
- relate to articles being carried by a person or in a vehicle in the locality

The information may be received from members of the public or other officers and may describe:

- a person or vehicle seen to be carrying the item

- a crime committed for which the item would be relevant evidence, such as property from a burglary

Senior officers and supervisors have a duty to ensure that officers using stop and search powers have access to up-to-date and accurate intelligence and information about local crime patterns. Senior officers may also authorise the deployment of tactical options – for example, passive drugs dogs or knife arches – based on detailed, specific and accurate intelligence. In this instance, the senior officer is responsible for ensuring that officers are fully briefed on the intelligence that supports the specific deployment. Where there is specific information, an indication by a passive drugs dog or a knife arch alarm combined with the intelligence may be sufficient to establish reasonable grounds for suspicion.

Individual officers have a duty to familiarise themselves with the information made available to them. They should also be prepared to probe the relevance and currency of intelligence on a case-by-case basis, and to think about what other factors might strengthen or weaken their grounds.

- If a vehicle is flagged with a drugs marker, the officer should check when that marker was put on and for what reason, to ensure that the information is up to date and genuinely gives rise to reasonable grounds for suspicion at the time of the stop.
- If a suspect description is vague, the officer should check whether a more detailed description is available before deciding whether to search a person because they ‘match’ the initial description that has been given.
- If an incident occurred some time ago or distance away, the officer should consider how reliable a suspect description given at the time of incident now is before deciding whether to search a person because they match that description<sup>9</sup>.

#### Groups

Reliable information or intelligence relating to a group may justify searching any member of the group, as long as it is necessary and proportionate to do so. This includes organised crime groups.

This applies where:

- members of the group or gang are known to carry prohibited items **and**

- members can be identified by a distinctive feature, such as jewellery, insignia, item of clothing, tattoo or any other mark known to be worn by members

For a distinctive feature such as an item of clothing to contribute to reasonable grounds for suspicion, it must be a specific item closely associated with unlawful behaviour – for example, members of a criminal teenage gang who are known to carry knives are also known to style their hair in a particular way, or wear a particular colour or brand of hoodie or bandana that clearly distinguishes them from other people.

In the case of organised protest groups, this applies where:

- the group holds meetings to which articles are brought for the purpose of causing criminal damage or injury to further its aims
- criminal damage or injury has actually been caused by these articles during at least one previous meeting **and**
- one or more members of the group have brought an article with similar intentions on this particular occasion

Each stop and search prompted by such information must still be justifiable in its own right. This means that the officer must consider whether searching a specific person is a **necessary** and **proportionate** measure, taking into account the:

- circumstances applicable at the time of the encounter
- number of items suspected of being carried
- nature of those items and the risk they pose **and**
- number of people to be searched

#### **Reasonable grounds for suspicion not based on information or intelligence**

An officer can have reasonable grounds for a stop and search where there is no specific information or intelligence about the person to be searched.

This could be based on the observed behaviour of a person in combination with the circumstances – for example, a person with oily hands and a large hold-all seen crouching behind a car in the early hours of the morning close to where several catalytic converters have been reported stolen earlier that evening.

For the above to amount to reasonable grounds for suspicion, the officer must be able to provide a clear, full and sufficiently detailed explanation as to what it was about the person's specific behaviour that meant they genuinely suspected they would find a particular item on that person.

Where tactical options such as passive drugs dogs or knife arches are deployed without specific intelligence – for example, in the context of high-profile operations aimed at prevention – they do not in themselves provide sufficient grounds to justify a stop and search. In those circumstances, an indication by a passive drugs dog, the triggering of a screen arch alarm or a refusal to go through the arch may be treated as an indicator of the need for a stop and account. The stop and account may reveal information that, combined with the initial indication and any other observed behaviour, may provide reasonable grounds for suspicion.

#### Examples of reasonable grounds not based on information or intelligence

- An officer hears glass smashing at 4am. They turn a corner and see a person in front of a jeweller's window who runs off on seeing them. The officer gives chase and sees jewellery items on the floor.

Based on what they have seen and heard, the officer could reasonably stop the person to search for stolen items or items for use in theft (going equipped) or criminal damage.

If there had been two people outside the window when the officer turned the corner, one running away and the other staying (an unconnected passer-by), the officer could reasonably stop and search either person for stolen articles or items for use in theft or criminal damage.

- An officer sees a person outside a residential property, shouting that they are going to stab someone if they do not come out the house. The officer would have reasonable suspicion that the person making the threats may have a knife on them.
- During a fail to stop pursuit, officers see the occupants of the fleeing vehicle discard a bag of white powder out of a window.

Despite the bag not being found, officers could reasonably stop and search the occupants and the car for controlled substances based on the combination of the escape attempt and the discarded bag of white powder.

## Applying no suspicion search powers in an objective way

'No suspicion' search powers (search powers not requiring officers to have reasonable grounds for suspicion, under section 60 of the CJPOA and in connection with certain powers to search

premises) are not a licence to search people without reason. Officers should consider the circumstances that have prompted authorisation of the 'no suspicion' power and limit their searches to people likely to be involved. They **must not** stop people:

- for reasons unrelated to the [section 60 authorisation](#) or the specific purpose of the power to search persons on premises
- on the grounds of any of the protected characteristics of the [Equality Act 2010](#)

Although there is no minimum threshold for suspicion when using these powers, officers should still be able to explain their thought process if challenged. They should remember that it is not the person who is suspicious, but their behaviour.

## **Biases in decision making should be recognised and challenged**

Biases can have discriminatory effects, whether that bias is conscious (explicit) or unconscious (implicit).

Conscious bias is a prejudice of which the person who holds it is aware – for example, an officer who has a negative or positive view of a particular group. If the officer acts on that prejudice by treating that particular group differently to others, whether to the person's advantage or disadvantage, the result is overt discrimination.

Unconscious bias and stereotyping are more difficult to identify and address, because people are often unaware of using mental shortcuts to make sense of people and situations that might be new, different or unfamiliar<sup>10</sup>. As these tacit processes are influenced by the person's experiences and background, they will vary between people but may reflect the biases and stereotypes that exist in wider society<sup>11</sup>.

Where a quick decision is required, people jump to conclusions based on prior similar experiences without realising it, instead of carrying out a step-by-step evaluation of the circumstances as they exist. This process affects people's judgements and decisions in all areas of life, with more or less significant impact. It is particularly important to be aware of it in a profession like policing because of its potential impact on individual liberties<sup>12</sup>.

Officers can complete awareness-raising exercises to help them identify some of their personal biases and anticipate how these may affect their decision making. One of the better known ones is the **Harvard implicit association test**.

At a practical level, when using stop and search powers, officers should focus on basing their decisions on objective factors and ensuring that they can explain why they have made the decision, with reference to specific detail. If they can explain their reasoning clearly to someone else, the decision is less likely to be based on unconscious factors.

At a more strategic level, senior officers should reflect on how biases and stereotypes may influence their own decision making – for example, when authorising the use of section 60 powers or the use of passive drugs dogs or knife arches in high-profile operations aimed at prevention. Senior officers should consider the objective basis and potential consequences of their decisions, particularly in terms of officers' practice and the public's experience. Strategic decisions have the potential to produce disproportionate outcomes due to wider societal factors and structural inequalities outside the control of the police<sup>13</sup>.

## Tags

Stop and search