**“At its best, stop and search is a vital power in the fight against crime; at its worst, it is a waste of police time and serves to undermine public confidence in the police. It is time to get stop and search right”**

**(Theresa May, Home Secretary in a statement to the House of Commons on the powers of police to stop and search members of the public, July 2013)**

Parliament has enacted legislation that allows police officers to stop and search individuals in order to distinguish between unfounded and grounded suspicions and to reduce the number of arrests[[1]](#footnote-1). Yet, as the Lawrence Enquiry has pointed out, the police are not immune from “*institutional… racis[m*]”[[2]](#footnote-2). A number of academics, for example, have contended that the police discriminate against ethnic minorities and retain too much discretion[[3]](#footnote-3). By contrast, others have maintained that a greater focus on objectivity would not solve the conundrum. In fact, research has proven that a decisive factor is intuition[[4]](#footnote-4).

This essay intends to cast some light on five issues. First, it describes the statutory provisions which set out the aforementioned powers, addressing their chronology and defining their scope. Secondly, it means to juxtapose the approaches that domestic and European courts have taken trying to draw a balance between counter-terrorism and human rights. Thirdly, it presents the criticisms, particularly focusing on the ambiguous relationship between the police and some communities. Fourthly, it deals with the concept of intuition, suggesting that it is the cornerstone of reasonable thinking. Fifthly, it illustrates the government’s course of action and compares it with the European response to terrorism, discussing what can still be improved. Finally, this essay evaluates stop and search powers supporting the view that they can be more effective as long as officers focus on intuition while bearing in mind human rights.

Stop and search powers are distributed in several acts, including the *Police and Criminal Evidence Act (PACE) 1984*[[5]](#footnote-5), the *Misuse of Drugs Act 1971*[[6]](#footnote-6), the *Criminal Justice and Public Order Act (CJPOA) 1994*[[7]](#footnote-7) and the *Terrorism Acts 2000*[[8]](#footnote-8) and *2006*[[9]](#footnote-9). The objective of these provisions was to enable the police to check whether people were acting unlawfully without having to make an arrest[[10]](#footnote-10). The former two allocate stop and search powers to officers who have reasonable grounds to suspect that a person is in possession of stolen or prohibited articles[[11]](#footnote-11), while the latter two grant the same powers to policemen who reasonably believe that the suspect is a terrorist, as expressed by section 43[[12]](#footnote-12). The *CJPOA* *1994[[13]](#footnote-13),* by contrast, empowers an inspector or an officer of higher rank to authorise stops and searches without prior suspicion being required[[14]](#footnote-14). Similarly, section 44 of the *TA 2000*, does not demand reasonable grounds to stop and search potential terrorists[[15]](#footnote-15). These pieces of legislation prove that public bodies have responded to crime, particularly to terrorism, trying to prevent it[[16]](#footnote-16). The Head of the Anti-Terrorist Branch of the Metropolitan Police, for example, stated that “*public safety demands earlier intervention*”[[17]](#footnote-17). However, these statutes do not specify how to punish officers who do not comply with procedures[[18]](#footnote-18), so that, even though an abuse of power should theoretically lead to a charge of assault and allow a citizen to recover damages[[19]](#footnote-19), the lack of well-defined statutory penalties hinders these processes[[20]](#footnote-20). Instead, whoever will not consent to the search is likely to incur criminal liability[[21]](#footnote-21).

As stated by the Council of Europe, democracy is not only synonymous with “*electoral majority*”[[22]](#footnote-22). Democratic countries should enshrine human rights as well as principles expressed by the doctrine of the rule of law[[23]](#footnote-23), while aiming to preserve public safety. Due to this dichotomy, the rights of some might be sacrificed in order to protect the multitude, particularly when serious threats arise. The correctness of this assumption does not seem to be questionable. Yet, the enactment of HRA 1998[[24]](#footnote-24) has somehow limited the executive’s power. On the one hand, some believe that judges should not intervene in policy decisions on the ground that they lack expertise and authority[[25]](#footnote-25). In some instances, judges themselves agree with such statement. For example, Lord Hoffman pointed out that this intrusion would infringe the separation of powers[[26]](#footnote-26). On the other, academics contend that courts should provide their opinion, particularly in matters concerning human rights[[27]](#footnote-27). In fact, judges are to be considered unbiased, as they are not elected and thus do not seek approval[[28]](#footnote-28). Moreover, some deem political interaction to be desirable; it makes branches of government understand that they play complementary roles, therefore fostering balance and moderation[[29]](#footnote-29). However, domestic courts have never issued a declaration of incompatibility concerning stop and search powers, even though the ECtHR has empowered them to do so.

It is evident that domestic courts have been reluctant to protect human rights preferring not to disagree with governmental policies. For instance, Gillan and Quinton’s application for judicial review had been dismissed by the Divisional Court[[30]](#footnote-30). Later, the House of Lords contended that neither article 5 nor 8 had been interfered with[[31]](#footnote-31). Similarly, in ***Roberts***[[32]](#footnote-32), both the Queen Bench and more recently the Court of Appeal[[33]](#footnote-33) maintained that section 60 of the *CJPOA 1994[[34]](#footnote-34)* had not infringed either rights[[35]](#footnote-35) and that it had not been exercised in a discriminatory way. The Court of Appeal, though admitting that article 8 might be engaged[[36]](#footnote-36), held that section 60 did not interfere with article 14 and dismissed the appeal. Furthermore, the High Court in ***Hicks***[[37]](#footnote-37) stated that police officers had acted lawfully in exercising their powers under section 60[[38]](#footnote-38) to search any weapons before and during the royal wedding[[39]](#footnote-39); it dismissed the appeals holding that it was a proportionate interference with article 11[[40]](#footnote-40). The approach that domestic courts have taken is in sharp contrast to that of the ECtHR. In fact, the latter court overruled the House of Lords’ decision in ***Gillan*** on the ground that the stop and search procedure under s. *44 “deprived the appellants of their right to private life under article 8*”[[41]](#footnote-41).

Stop and search powers have been criticised for three reasons in particular. First, officers’ behaviour has raised controversy. As Fiztgerald observed, people felt annoyed either when the police seemed to be impolite or arrogant or when the reasons for the stops were either not provided or simply trivial[[42]](#footnote-42). On the one hand, surveys suggest that a number of people considered these powers useful and that they did not mind undergoing the procedure especially if they felt that the powers were used in pursuance of good ends[[43]](#footnote-43). On the other, some perceived that officers were patronising and aggressive in order to cause the suspects to react and arrest them. Secondly, people claim that powers were exercised in a discriminatory way. As a result, ethnic minorities have lost confidence in the police[[44]](#footnote-44). After July 2005, Azad Ali[[45]](#footnote-45) stated that the situation *“… [Did] not look like intelligence-led… [It] is disproportionate on an unacceptable scale”[[46]](#footnote-46)*. It has been estimated that policemen stopped and searched more than one million citizens between 2007 and 2008[[47]](#footnote-47). About 85% of the operations were carried out relying on section 1 of the Pace Code A, whereas a mere 117.000 individuals were stopped or searched under section 44[[48]](#footnote-48). As the population was circa 55 million in 2008[[49]](#footnote-49), this means that less than 2% of the citizenry faced the procedure. However, white people were almost eight time less likely to be stopped than black people[[50]](#footnote-50). Taking into account resident population numbers are extremely disproportionate, whereas figures compared with the available populace provide more reasonable results. In fact, the criterion of availability includes factors such as unemployment, homelessness and crime rates[[51]](#footnote-51). Nonetheless, minorities are still more exposed and discrimination should simply not occur[[52]](#footnote-52), as it is prohibited both under the RRA 1976[[53]](#footnote-53) and under the HRA 1998[[54]](#footnote-54). Similarly, it is common knowledge that minorities should be treated cautiously[[55]](#footnote-55). Thirdly, statistics showed that these powers were quite ineffective and thus time-consuming. In 2004, for instance, only five people[[56]](#footnote-56) were arrested as *terrorists* and they were all white[[57]](#footnote-57). In fact, Lord Carlile[[58]](#footnote-58) criticised section 44[[59]](#footnote-59) claiming that it had not augmented the chances of discovering terrorists though not requiring reasonableness as a standard. While it could be argued that citizens have a civic duty to collaborate with the police to prevent crime[[60]](#footnote-60), it is unquestionable that officers should behave politely. In practice, when they provided genuine and fair reasons people were more inclined to help[[61]](#footnote-61). Equally, the stops were more effective when people felt that policemen were not abusing power[[62]](#footnote-62). Moreover, it was unfair to blame officers if people were not willing to help[[63]](#footnote-63), nor could the good faith and hard work of most of them be questioned just because some abused power. Moreover, the fact that some had positive memories of being stopped prompted the government to retain and improve these powers since they had sometimes increased confidence in the police[[64]](#footnote-64).

However, the government should have enacted legislation clarifying how officers who do not comply with codes of practice are to be punished since laws concerning penalties for those who obstruct policemen on duty exist[[65]](#footnote-65). In addition, the executive could have tried to support the concept of intuition rather than limiting police’s discretion. In fact, at present officers are required to focus exclusively on reasonable grounds of suspicion. Yet, research has proven that reasonable thoughts stem from non-conscious forms of reasoning and that the two cannot be divorced[[66]](#footnote-66). In particular, this dichotomisation is unrealistic considering that officers are required to make decisions in few seconds. Therefore, they must rely on stereotypes[[67]](#footnote-67). While nowadays this term has assumed a negative connotation[[68]](#footnote-68), its original meaning was *solid impression*. In order to form an objective judgment a human brain has to draw upon information which it has collected over years. Consequently, since a considerable proportion of the intuition process happens at a non-conscious level, policemen find it hard to provide valid motivations for their actions[[69]](#footnote-69). Although judges favour those who manage to convey their feelings and insist on expecting sophisticated answers for policy and accountability reasons, their attitude turns out to increase policemen’s verbiage rather than reduce discrimination[[70]](#footnote-70). As sixth sense is a crucial factor in the police’s success some maintain that the government should invest on training officers in order to eradicate cultural influences leading to racism from their minds[[71]](#footnote-71).

Although the arguments supporting a more intuitive approach seem strong, the government has not taken them into account. In contrast, it has tried to regulate stops and searches powers by heightening awareness and limiting officers’ discretion. First, it has designed several pilots across the country which tested the use of and the reactions to the written forms that officers were obliged to give to people[[72]](#footnote-72). Indeed,this measure seemed to work as citizens understood their rights and therefore how to behave[[73]](#footnote-73). This was also achieved thanks to the APA[[74]](#footnote-74) which distributed leaflets and publicity materials. In addition, people were satisfied that they could keep these papers especially if they intended to file a complaint[[75]](#footnote-75). However, although they seemed more professional, policemen lamented that forms were time-consuming[[76]](#footnote-76). Secondly, the government favoured the creation of neighbourhood policies between police and communities which appeared to work[[77]](#footnote-77). Thirdly, more people belonging to minorities were employed, reaching a peak in 2009 of 2.6 percent[[78]](#footnote-78). As far as legislation is concerned, the executive and legislative branches have introduced statutes in order to comply with HRA 1998[[79]](#footnote-79), particularly after the ruling in ***Gillan***[[80]](#footnote-80). For instance, the *Terrorism (Remedial) Order Act[[81]](#footnote-81)* was issued in 2011 and ceased to be in force when the *Protection of Freedoms Act 2012[[82]](#footnote-82)*received royal assent. As outlined by Brokenshire[[83]](#footnote-83), the *PoFA 2012[[84]](#footnote-84)* “*places the powers provided by the Terrorism Act 2000 Remedial Order 2011 on a permanent footing*”[[85]](#footnote-85). The former act repeals sections 44 to 47 of the *Terrorism Act*[[86]](#footnote-86) and requires the criterion of reasonable suspicion to be applied even when dealing with potential terrorists. Moreover, some of the Code of Practices contained in *PACE 1984*[[87]](#footnote-87) were subject to revision. Code H concerning detention and treatment of suspects, for example, was radically altered[[88]](#footnote-88).

The European response to terrorism, though being efficient, has been quite weak for two reasons. First, the threat has not been as serious as in the US[[89]](#footnote-89). Secondly, neither academics nor single countries have requested the creation of a European Intelligence Agency as the exchange of data across countries which at present Europol favours seems sufficient and efficient[[90]](#footnote-90). Yet, what could possibly be improved is the adoption of more sophisticated devices[[91]](#footnote-91). This also applies to police forces in the UK[[92]](#footnote-92). Additionally, at domestic level, a larger number of officers could be deployed on the streets rather than having them sitting at a desk[[93]](#footnote-93). Furthermore, citizens suggest that the government should publicise the results stops and searches have achieved[[94]](#footnote-94). Other surveys emphasise the importance of profilers, claiming that they can provide accurate predictions and support the fight against terrorism[[95]](#footnote-95). Not only should officers focus on looks but also on behavioural and psychological factors. For example, intelligence-led operations have been extremely successful in the US[[96]](#footnote-96). This seems to be relevant considering that evidence shows that terrorists do adapt to situations improving their skills. For instance, they now increasingly rely on children and women as well as converts[[97]](#footnote-97) in order to avoid stops and searches. Even though stopping people belonging to minorities seems ineffective and discriminatory, random searches might prove to be useful for deterring new terrorist[[98]](#footnote-98).

It seems clear that the government’s attempt to fight criminality and, in particular, terrorism has raised controversy[[99]](#footnote-99). In fact, some have deemed stop and search powers necessary and effective, others discriminatory and excessive. This contraposition is also reflected in the different approaches that domestic courts and the ECtHR have taken, Gillan being a striking example. With regards to the balance that these provisions were intended to draw between public safety and human rights, evidence shows that this was not achieved. In fact, surveys suggested that although citizens approved of the reasons why stops and searches were carried out, the majority did not like officers’ behaviour. In addition, figures proved that counter-terrorism powers were discriminatory. As a result, the government responded to the pressure by repealing sections 44, 45, 46 and 47[[100]](#footnote-100). At present officers must rely on section 43, which requires reasonable grounds of suspicion when they stop or search potential terrorists. This approach is in accordance with the European response to terrorism that manages to be extremely respectful of human rights and simultaneously quite effective, though lacking the latest technology. The British government has not provided the police with sophisticated devices either. Nor has it endorsed the concept of intuition, although research has proved that sixth sense and reasonable thoughts cannot be divorced. Thus this essay, although admitting that the government has partially improved stop and search powers, propounds that they could be more effective by fostering hunches and profiling techniques. Similarly, disproportionality and complaints could be reduced if racist policemen were punished more thoroughly and the unskilled ones trained.

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6. Police and Criminal Evidence Act 1984 (PACE) (s. 1)
7. Protection of Freedoms Act 2012 (ss. 59, 62)
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3. *R (European* Roma Rights *Centre) v Immigration Officer at Prague Airport [2004] UKHL 55*
4. *R (on the application of Gillan and another) v. Commissioner of Police for the Metropolis [2006] UKHL 12*
5. *R (on the application of Roberts) v The Commissioner of the Metropolitan Police [2012] EWHC 1977 (Admin)*
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7. *Secretary of State for the Home Department v Rehman [2001] UKHL 47*

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RESEARCH TRAIL

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| **Legislation**  **(primary source)** | Relevance | Reliability | Weight of Authority |
| **Criminal Justice and Public Order Act 1994 (s. 60)** | In force |  |  |
| **European Convention on Human Rights 1950 art. 5, 8, 10, 11** | In force |  |  |
| **Human Rights Act 1998** | In force |  |  |
| **Misuse of Drugs Act 1971 (s. 23)** | In force |  |  |
| **Police Act 1996, s 89(2)** | In force |  |  |
| **Police and Criminal Evidence Act 1984 (PACE) (s. 1)** | In force |  |  |
| **Protection of Freedoms Act 2012 (ss. 59, 62)** | In force |  |  |
| **Race Relations Act 1976** | In force |  |  |
| **Terrorism Act 2000 (ss. 43-47)** | Sections 44-47 repealed by sections 59 and 62 of the PoFA 2012 |  |  |
| **Terrorism Act 2006** | In force |  |  |
| **Terrorism Act (Remedial) Order 2011** | Ceased to be in force when PoFA 2012 received Royal Assent |  |  |

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| **Cases**  **(primary source)** | Relevance | Reliability | Weight of Authority |
| ***Gillan and Quinton v. The United Kingdom (Application no. 4158/05) (available online)*** | This case is extremely relevant to the topic in that it proves that the ECtHR has taken a different approach from domestic courts in matters concerning human rights. In addition, it explains why the government enacted the PoFA 2012 |  | European Court of Human Rights is very authoritative. It can overturn decisions made by domestic courts. However, it cannot impose anything on the UK. In fact, it is up to the government to enact legislation which is compatible with ECHR. If not, the courts can issue a declaration of incompatibility. As the essay suggests, domestic courts have not issued such declaration. |
| ***R (on the application of Hicks) v Metropolitan Police Comr [2012] EWHC 1947 (Admin), [2012] All ER (D) 232 (Jul)***  ***(available online)*** | This case is relevant because it shows the approach that domestic courts have taken, in this case the High Court dealing with s.60 of the CJPOA 1994. Once again, the verdict is consistent with that of higher courts. | Even though the Court of Appeal ([2014] EWCA Civ 3) considered this case a couple of months ago, it dismissed the appeal and upheld the HC’s decision. | The High Court is quite authoritative since its decisions can be overruled only by the Court of Appeal and the Supreme Court. As in Roberts, the CoA has recently (2014) upheld the HC’s decision. The question, which refers to Roberts as well, is: what will happen if it reaches the ECtHR stage? |
| ***R (European Roma Rights Centre) v Immigration Officer at Prague Airport [2004] UKHL 55*** | This case is not too relevant since it is an asylum case. However, I found Baroness Hale’s comment concerning minorities extremely pertinent to the “discrimination” issue which stop and search powers have raised. |  | The case is extremely authoritative since it was decided by the House of Lords and it has still not reached the European stage. Baroness Hale’s view, besides being quite popular, is also influential and eminent. |
| ***R (on the application of Gillan and another) v. Commissioner of Police for the Metropolis [2006] UKHL 12 (available online)*** | This is probably the most important (domestic) case since it shows that the HoL agreed with lower courts and with the executive and legislative branches. |  | The court in question (the HoL) is the most authoritative of the UK. Therefore, at domestic level, no court is allowed to challenge its decisions. However, the ratio decidendi of the case was disregarded by the ECtHR which, by contrast, held that stop and search powers under s. 44-47 interfered with article 8. |
| ***R (on the application of Roberts) v The Commissioner of the Metropolitan Police [2012] EWHC 1977 (Admin) (available online)*** | This case is very relevant as it illustrates that the High Court, despite the ECtHR’s ruling in Gillan, held that section 60 of the CJPOA 1994 did not interfere with articles 5 and 8 and that it was not discriminatory, dismissing Roberts’ appeal. |  | The Queen Bench Division is as authoritative as the High Court, therefore it can only be overruled by Court of Appeal and Supreme Court. |
| ***R (on the application of Roberts) v Commissioner of Police of the Metropolis and others [2014] All ER (D) 58***  ***(available online)*** | Hicks and Roberts’ situations are quite similar. Both were judged by High Court/ QBD in 2012 and both were recently heard by the Court of Appeal. Their appeals were both dismissed and they both concern section 60. This case helped me support the argument that domestic courts are taking consistent approach regardless of the ruling in Gillan. |  | A Court of Appeal decision is definitely authoritative. What if this case is appealed to the SC (same applies to Hicks)? What if it reaches the Court in Strasbourg? Will domestic courts try to comply with the ECtHR? Will they change their attitude as the executive and legislative have started doing? |
| ***Secretary of State for the Home Department v Rehman [2001] UKHL 47***  ***(available online)*** | This case is a national security one, therefore it is quite relevant to the topic of the essay. However, it provides some interesting observations with regards to the separation of powers and the role of the judiciary when human rights matters arise. Lord Hoffman’s judgment was particularly helpful in this respect [para 50] |  | The House of Lords was the most authoritative court in the UK. Lord Hoffman’s view, though not being universally shared (as pointed out in the essay) is absolutely authoritative and provides an informed opinion on the British constitution. |

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| **Journals**  **(secondary sources)** | Relevance | Reliability | Weight of Authority |
| **B Bowling & C Phillips, “Disproportionate and Discriminatory: Reviewing the Evidence on Police Stop and Search” (2007) 70 MLR 936 (available online)** | This academic journal is extremely relevant to the topic since it discusses stop and search powers. In doing so, it provides statistical material and some strong arguments in order to demonstrate that the aforementioned powers are indeed discriminatory. | Although the authors try to present a balanced view they tend to focus mostly on the criticisms and on the negative aspects of stop and search powers. They should have probably provided more counter-arguments. I found this article extremely useful as it helped me balance (or try to) my essay. | The authors are extremely authoritative since they have published several articles on different journals. In addition, this article was published on the MLR -which is recognised as very authoritative- and draws information upon reliable sources. |
| **D Ellis, “Stop and search: Disproportionality, Discretion and Generalisations” (2010) 83(3) The Police Journal 199 (available online)** | This academic journal is extremely relevant as it deals with stop and search powers discussing in depth the concept of intuition, which is central to my essay. Though not being too careful to legal principles and doctrines, this article presents expert opinion on subjects such as psychology which I believe to be strictly linked to Law. | The article is worth reading only because of its bibliography. It provides several examples of research carried out in the last forty years and learnt opinions on intuition. I found it extremely useful and must admit that if I managed to write a paragraph about intuition it is thanks to this article and its bibliography. | The police journal might sound biased but is nonetheless quite authoritative. In fact, the author is a leading expert in his subject, which is proved by the fact that he managed to synthesise twenty years of research in his article. |
| **S J Ellmann, “Racial Profiling and Terrorism” (2003) 46 N.Y. Law School Review 675 (available online)** | The article is not too relevant. I read it only because I found it in the bibliography of another one. Being written by an American it focuses on the American response to terrorism which is completely different from that of the UK/Europe. However, I thought one point that this author made to be extremely relevant. | This article is probably one of the most unbalanced I have ever read. It is an open attack to terrorists. On the one hand, at first I thought that this article would be useless. On the other, after considering the circumstances in which it was written I reached the conclusion that it would be unfair to judge someone else’s work without knowing the reasons why they decided to write. However, the author could have been more balanced. | The NYLSR is a very authoritative journal in the US. It would be easy to underrate this article just because it is quite unbalanced. Although the author could have presented more counter-arguments, the content of this article should make people meditate on the seriousness of the threat that terrorism posed in the US. It could be argued that European institutions are more careful of human rights because terrorism has not caused many problems, whereas Americans are more concerned with public safety because of 9/11. |
| **D Feldman, “Human rights, terrorism and risk: the roles of politicians and judges” (2006) Public Law 364 (available online)** | This article is not strictly linked to stop and search powers. Yet, the fact that domestic and European courts have taken different approaches is intriguing. Since I found this article mentioned in the bibliography of one of those related to stop and search, I decided to read it. Domestic judges could have issued a declaration of incompatibility, but the question is: should they retain the power to do so? Should they be able to question the executive’s decisions? | This article is nicely balanced; at first it presents the view of those who believe that judges lack the expertise to interfere with the executive, then it takes the view of those who believe that judges should intervene, especially in matters concerning human rights. It is an extremely interesting article, logically constructed and clearly written. In addition, it is more recent than other sources and this debate is quite up to date. It draws on numerous authoritative sources, presenting balanced views. | This article was published on a very prestigious academic journal. It was written by an eminent author who teaches at Cambridge University and has written several articles. |
| **R N Kocsis, “Criminal Psychological Profiling: Validities and Abilities” (2003) 47(2) International Journal Offender Therapy and Comparative Criminology 126 (available online)** | This article is not too relevant to the topic. However, it provides expert opinion on a technique which is developing quickly and is strictly linked to stop and search. In fact, profiling has been quite successful in the US and might help reduce discrimination. | Since many have complained that focusing exclusively on looks is ineffective, I tried to understand what criminologists consider as a feasible solution to this problem. This article discusses profiling techniques in great depth and is quite easy to understand. However, it might be a bit outdated. | The article was published on an authoritative academic journal. In addition, the author is quite well-known. In fact, he published many articles and books, besides being an expert in sociology and psychology. |
| **C Lerner “Reasonable Suspicion and Mere Hunches” (2006) 59 (2) Vanderbilt Law Review 405** | This article is extremely relevant to the topic in that it deals with the concept of intuition, explaining its relation with reasonable thoughts. I found it extremely useful as it cast some light on Ellis’ article. | It is cited by Ellis more than once, tough being American. In my opinion, it lacks some counter-arguments. In addition, it is almost ten years old. Yet, it manages to gather the views of many authoritative researches. | The author, who is a Harvard graduate, is quite well-known in the US as he has published many articles. |
| **D Moeckli “Stop and Search Under the Terrorism Act 2000: A Comment on R (Gillan) v Commissioner of Police for the Metropolis” (2007) 70(4) The Modern Law Review 659** | This article provides some interesting material both concerning stop and search powers and the case of Gillan. It evaluates the judges’ reasoning in the case. | The structure of the article is quite clear. In fact, the introduction outlines statutory powers, while the main body discusses Gillan. The solutions which it proposes in its conclusion have been extremely helpful. The range of sources makes the article seem extremely reliable. The statistical material which the author provides is accurate and supports his arguments extremely well. | The author draws upon a large number of sources. For example, the article cites newspapers, internet sites and several legal cases. In addition, the article was published on the Modern Law Review. Similarly, the author is both a professor in Zurich and a Fellow at Nottingham University. Although it was written before the ECtHR heard Gillan’s case, it nonetheless managed to anticipate many of the issues that would arise. |
| **B Muller-Wille, “The Effect of International Terrorism on EU Intelligence Co-operation” (2008) 46 JCMS 49** | The article is extremely relevant to the topic since it presents the response from European countries and the EU as an institution. The European approach is compared with the American one and helps understand why the ECtHR is more concerned than the US with human rights. | The article is fairly recent and it can be considered quite up to date taking into account that –fingers crossed- terrorism has not affected Europe after 2008. Although the author’s view is quite evident, the article presents information in a balanced way. | The author is a leading expert in European polices and intelligence. In fact, he has published many articles on several different reviews. In addition, the Journal of Common Market Studies is the most up to date as far as European integration matters are concerned. |
| **K Reid, “Race Issues and Stop and Search: Looking behind the Statistics” (2009) 73(2) The Journal of Criminal Law 165** | This academic journal is extremely relevant to the topic. It addresses stop and search powers providing arguments which are quite recent and focus on the improvements that the government has tried to bring about. It discusses feelings rather than numbers. | The article is quite reliable as tries to draw a balance between negative and positive aspects of stop and search powers. Even though it focuses mostly on the improvements, it was very useful as it allowed to find some flaws in Bowling’s article. | The author seems quite authoritative since he has written several articles on different journals and currently teaches at Liverpool University. In addition, his article was published on a very well-known academic journal. Together with Bowling’s article, this was recommended in many stop and search reading lists. |
| **P. A. J. Waddington and others “In proportion: race, and police stop and search” (2004) 44 (6) British Journal of Criminology 889** | This article is extremely relevant since it discusses stop and search powers, focusing on the relation between minorities and policemen. Although it tries to explain why disproportionality arises, it does not deny that stop and search powers are discriminatory. It also provides useful statistical material. | The authors manage to present a balanced opinion and use a wide range of sources, which make seem the article very reliable. The article is more recent than many governmental publications, therefore illustrating more up to date figures. | Once again, the author, though not being a Law Lecturer, is an expert in his field who has published lots of articles. Similarly, the British Journal of Criminology is probably the most authoritative as far as this topic is concerned. Besides, I believe Law and Criminology/Sociology are intertwined. |
| **C Warbrick “The European Response to Terrorism in an Age of Human Rights” (2004) 15(5) Eur J Int Law 989** | This article is not strictly linked to stop and search powers. However, since –in my opinion- stop and search powers have an impact on the relationship between the public and the individual, I thought that public law should be addressed. This article discusses public law issues from a European perspective. | This article is extremely reliable because of the wide range of sources which it uses. For example, it often cites the Council of Europe’s publications. The article is quite balanced and puts a great focus on fundamental rights and doctrines. It is interesting because it was written before the July 2005 attacks, whereas Muller-Wille’s article was published three years after they had taken place. I could have drawn a comparison between these two “European” articles. | The article is quite authoritative as it was published on the European Journal of International Law. The author is also a well-known Professor of the University or Birmingham who has written books and articles. It is therefore intriguing to find out the view of a British lecturer who is an expert in Human Rights and European Law. |

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| **Halsbury**  **(secondary source)** | Relevance | Reliability | Weight of Authority |
| **Halsbury’s Laws of England (5th Edition, 2013) vol 88A, para 4(11), (available online, LexisLibrary)** | This source is extremely relevant as it allows to refine one’s search more and more. In fact, it is possible to read general information about the statutory provisions regulating stop and search powers and their chronology as well as finding more specific information. Accessing Halsbury helped me understand better what statutory provisions were no longer in force and how they had been replaced. | Halsbury is extremely reliable, since it is the most up to date legal encyclopaedia. Although it exists both on hard copy and online, it is not easy to find. | It is the most authoritative legal encyclopaedia. |

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| **Textbooks**  **(secondary sources)** | Relevance | Reliability | Weight of Authority |
| **C Elliott & F Quinn, English Legal System (11th edition, Pearson Education Ltd, Harlow, 2010)** | This textbook is relevant to the topic since it devotes quite a few pages to stop and search powers and outlines the chronology of the statutory provisions. | The textbook provides a well-organised overview of the facts relating to stop and search powers. However, it is slightly out of date though being only for years old. For example, there is no mention of the PoFA 2012. That is why up to date encyclopaedia such as Halsbury must be consulted, otherwise one risks missing out some crucial facts which have taken place after textbooks were published. Yet, textbooks are still important because they give unbiased information, unlike most journals. | The textbook is extremely authoritative since both authors are extremely renowned and have published several books and articles together. |
| **R. Stone, Textbook on Civil Liberties and Human Rights (6th edition, Oxford University Press, Oxford: 2006)** | The textbook is not extremely relevant to the topic. However, it discusses matters which relate to stop and search powers such as human and civil rights along with police powers. | The textbook is quite reliable as it uses a wide range of persuasive sources. However, it is out of date with regard to some issue since there are some more recent editions. | The author is a leading expert in human rights and has published several textbooks. |

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| Government Publications  **(secondary sources)** | Relevance | Reliability | Weight of Authority |
| **N Bland, J Miller, P Quinton (2000) Upping the PACE? An Evaluation of the Stephen Lawrence Inquiry on Stops and Searches Police Research Series Paper No. 128. London: Home Office**  **(available online)** | This paper is extremely relevant since it illustrates the research that the government conducted in order to understand the citizens’ view and to try and improve stop and search powers. | Overall, the paper seems to present balanced views, focusing both on criticisms and positive aspects. However, it is a governmental publication and information might be slightly biased, even though some of the sources that the paper draws upon are non-governmental. Yet, the publication is almost fifteen years old. | The authors belong to the Policing and Reducing Crime Unit. They have published quite few articles together. The scope of the paper was to describe the research and evaluate its result. The fact that many academics have cited this paper suggests that it is unbiased and authoritative. |
| **Fitzgerald, M. (1999) Final Report into Stop and Search. London: Metropolitan Police Service (available online)** | This paper is extremely relevant since it illustrates the citizens’ view concerning positive and negative aspects of stop and search powers. | Once again, the paper seems to present balanced opinions and is a bit out of date. | The author has conducted many survey amongst the populace and published many papers. In addition, many academics have cited her work. |
| **Home Office, Code of Practice for the Exercise by Police Officers of Statutory Powers of Stop and Search, Code A (London: Home Office, 2005) (available online)** | This publication is extremely relevant to stop and search powers in that it outlines how officers should behave when carrying out these operations. | Codes of practice are quite reliable, though it can be argued that they do some injustice. In fact, they do not specify how officers who misbehave are to be punished. | Codes of practice are extremely authoritative, although some were modified due to the enactment of the PoFA 2012 and others are likely to be changed very soon, according to Theresa May (30 April 2014). |
| **Home Office, Statistics on Race and the Criminal Justice System - 2004 (2005), 35 (available online)** | This publication is relevant to stop and search powers since it provides figures concerning the effectiveness of the aforementioned measures. The fact that in 2004 those who were accused of terrorism were all white is a strong argument against discrimination. | They should be quite reliable since other academics draw upon them. | These publications are extremely authoritative as they illustrate official figures. |
| **House of Commons Home Affairs Committee, Fourth Report of Session 2005-06: Terrorism Detention Powers HC 910-1/54 (available online)** | This publication is extremely relevant as it illustrates how the government reacted to the London bombings. In addition, it shows that the executive has supported the adoption of preventive measures. | This is extremely reliable because it presents the various MP’s speeches verbatim. | The speech was quite authoritative as it was delivered by The Head of the Anti-Terrorist Branch of the Metropolitan Police. |
| **House of Commons Deb, 10 May 2012, Column 9WS (available online)** | Once again, this publication is extremely relevant since it tells us what was discussed in the House of Commons. | This is extremely reliable because it presents the various MP’s speeches verbatim. | The speech was quite authoritative as it was delivered by The Parliamentary Under-Secretary of State for the Home Department. |
| **J Miller, N Bland, P Quinton, (2000) The Impact of Stops and Searches on Crime and the Community, Police Research Series Paper 127 London: Home Office (available online)** | This paper is extremely relevant since it deals with survey which the government conducted amongst the population, particularly among minorities, in order to understand their points of view. | Overall, the paper seems to present balanced views, focusing both on criticisms and positive aspects. | The fact that many academics have cited this paper suggests that it is unbiased and authoritative. In fact, the three authors have worked together for some time and belonged to the PRCU. |
| **W Macpherson, The Stephen Lawrence Inquiry, Report of an Inquiry by Sir William Macpherson of Cluny (London: Home Office, 1999)** | This report is not too relevant to stop and search powers. However, it denounced the police as institutionally racist and has opened people’s eyes to some discriminatory culture. | It is quite reliable since it was requested by the Home Secretary after Lawrence was murdered. | This enquiry is authoritative for two reasons. First, Sir Macpherson is an expert in his field. Secondly, it has been cited by an extremely large number of academics. Yet, sometimes it seems too harsh with the police. |

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| Newspaper  **(secondary source)** | Relevance | Reliability | Weight of Authority |
| **Vikram Dodd, “Asian men targeted in stop and search” The Guardian (17 August 2005) (available online)** | This newspaper article is extremely relevant to the topic since it gives voice to some people who were affected by these measures and provides information in a very descriptive way. In particular, this article is relevant because it was written roughly one month later the bombings in London. | Since a newspaper’s aim is to deliver news to as many people as possible, the language of the article cannot be as refined and complex as that of a journal. Even though the Guardian is one of the most prestigious British newspapers, it is common knowledge that its journalists are sometimes quite biased. | Vikram Dodd is a very renowned journalist and is a senior crime reporter. However, a newspaper article is not very authoritative, as far as legal essays are concerned. Yet, it can be useful for providing some examples and for presenting what the general opinion is.  Overall, one must be wary of newspapers because they tend to sensationalise issues, but can use them in order to have a general idea on the topic. |

1. Home Office, Code of Practice for the Exercise by Police Officers of Statutory Powers of Stop and Search, Code A (London: Home Office, 2005) [↑](#footnote-ref-1)
2. W Macpherson, The Stephen Lawrence Inquiry, Report of an Inquiry by Sir William Macpherson of Cluny (London: Home Office, 1999) [↑](#footnote-ref-2)
3. B Bowling & C Phillips, “Disproportionate and Discriminatory: Reviewing the Evidence on Police Stop and Search” (2007) 70 MLR 936 [↑](#footnote-ref-3)
4. D Ellis, “Stop and search: Disproportionality, Discretion and Generalisations” 83(3) The Police Journal 199 [↑](#footnote-ref-4)
5. (s. 1) [↑](#footnote-ref-5)
6. (s. 23) [↑](#footnote-ref-6)
7. (s. 60) [↑](#footnote-ref-7)
8. (ss. 44-47) [↑](#footnote-ref-8)
9. Terrorism Act 2006 [↑](#footnote-ref-9)
10. Home Office, Code of Practice for the Exercise by Police Officers of Statutory Powers of Stop and Search, Code A (London: Home Office, 2005) [↑](#footnote-ref-10)
11. B Bowling & C Phillips, “Disproportionate and Discriminatory: Reviewing the Evidence on Police Stop and Search” (2007) 70 MLR 936 [↑](#footnote-ref-11)
12. Terrorism Act 2000 (s. 43) [↑](#footnote-ref-12)
13. Criminal Justice and Public Order Act 1994 (s. 60) [↑](#footnote-ref-13)
14. C Elliott & F Quinn, English Legal System (11th edition, Pearson Education Ltd, Harlow, 2010) [↑](#footnote-ref-14)
15. K Reid, “Race Issues and Stop and Search: Looking behind the Statistics” (2009) 73(2) The Journal of Criminal Law 165 [↑](#footnote-ref-15)
16. D Moeckli, “Stop and Search under the Terrorism Act 2000: A Comment on R (Gillan) v Commissioner of Police for the Metropolis” (2007) 70 (4) Modern Law Review 659 [↑](#footnote-ref-16)
17. House of Commons Home Affairs Committee*, Fourth Report of Session 2005-06: Terrorism Detention Powers* HC 910-1/54 [↑](#footnote-ref-17)
18. B Bowling & C Phillips, “Disproportionate and Discriminatory: Reviewing the Evidence on Police Stop and Search” (2007) 70 MLR 936 [↑](#footnote-ref-18)
19. R. Stone, Textbook on Civil Liberties and Human Rights (6th edition, Oxford University Press, Oxford: 2006) [↑](#footnote-ref-19)
20. B Bowling & C Phillips, “Disproportionate and Discriminatory: Reviewing the Evidence on Police Stop and Search” (2007) 70 MLR 936 [↑](#footnote-ref-20)
21. Police Act 1996, s 89(2), setting out these types of offences might result in £1,000 fine and/or one month of imprisonment [↑](#footnote-ref-21)
22. C Warbrick “The European Response to Terrorism in an Age of Human Rights” (2004) 15(5) Eur J Int Law 989 [↑](#footnote-ref-22)
23. Ibid [↑](#footnote-ref-23)
24. Human Rights Act 1998 [↑](#footnote-ref-24)
25. D Feldman, “Human rights, terrorism and risk: the roles of politicians and judges” (2006) Public Law 364 [↑](#footnote-ref-25)
26. Secretary of State for the Home Department v Rehman [2001] UKHL 47 [para 50] [↑](#footnote-ref-26)
27. D Feldman, “Human rights, terrorism and risk: the roles of politicians and judges” (2006) Public Law 364 [↑](#footnote-ref-27)
28. Ibid [↑](#footnote-ref-28)
29. See footnote 25 [↑](#footnote-ref-29)
30. R (on the application of Gillan and another) v. Commissioner of Police for the Metropolis [2006] UKHL 12 para 13 [↑](#footnote-ref-30)
31. R (on the application of Gillan and another) v. Commissioner of Police for the Metropolis [2006] UKHL 12. The Lords avoided mentioning that s. 44 to 47 might raise an issue of discrimination, even though clarification on this issue was needed. [↑](#footnote-ref-31)
32. R (on the application of Roberts) v The Commissioner of the Metropolitan Police [2012] EWHC 1977 (Admin) [↑](#footnote-ref-32)
33. R (on the application of Roberts) v Commissioner of Police of the Metropolis and others [2014] All ER (D) 58 [↑](#footnote-ref-33)
34. Criminal Justice and Public Order Act 1994 (s. 60), which does not require any reasonable suspicion [↑](#footnote-ref-34)
35. European Convention on Human Rights 1950: Right to Liberty and Security under Article 5 and Right to Private and Family Life under Article 8 of the ECHR [↑](#footnote-ref-35)
36. R (on the application of Roberts) v Commissioner of Police of the Metropolis and others [2014] All ER (D) 58. The Court of Appeal, however, claimed that the interference with Article 8 was legitimate under Article 8(2) [↑](#footnote-ref-36)
37. R (on the application of Hicks) v Metropolitan Police Comr [2012] EWHC 1947 (Admin), [2012] All ER (D) 232 (Jul) [↑](#footnote-ref-37)
38. CJPOA 1994 [↑](#footnote-ref-38)
39. Halsbury’s Laws of England (5th Edition, 2013) vol 88A, para 4(11) <LexisLibrary> accessed 12 April 2014 [↑](#footnote-ref-39)
40. European Convention on Human Rights 1950, 11 [↑](#footnote-ref-40)
41. Gillan and Quinton v. The United Kingdom (Application no. 4158/05), para 63 [↑](#footnote-ref-41)
42. Fitzgerald, M. (1999) Final Report into Stop and Search. London: Metropolitan Police Service. [↑](#footnote-ref-42)
43. B Bowling & C Phillips, “Disproportionate and Discriminatory: Reviewing the Evidence on Police Stop and Search” (2007) 70 MLR 936 [↑](#footnote-ref-43)
44. K Reid, “Race Issues and Stop and Search: Looking behind the Statistics” (2009) 73(2) The Journal of Criminal Law 165 [↑](#footnote-ref-44)
45. Chairman of the Muslim Safety Forum [↑](#footnote-ref-45)
46. Vikram Dodd, “Asian men targeted in stop and search” The Guardian (17 August 2005) [↑](#footnote-ref-46)
47. D Ellis, “Stop and search: disproportionality, discretion and generalisations” 83(3) The Police Journal 199 [↑](#footnote-ref-47)
48. Ibid [↑](#footnote-ref-48)
49. D Ellis, “Stop and search: disproportionality, discretion and generalisations” 83(3) The Police Journal 199, Office for National Statistics [↑](#footnote-ref-49)
50. D Ellis, “Stop and search: disproportionality, discretion and generalisations” 83(3) The Police Journal 199 [↑](#footnote-ref-50)
51. B Bowling & C Phillips, “Disproportionate and Discriminatory: Reviewing the Evidence on Police Stop and Search” (2007) 70 MLR 936 [↑](#footnote-ref-51)
52. P. A. J. Waddington and others “In proportion: race, and police stop and search” (2004) 44 (6) British Journal of Criminology 889 [↑](#footnote-ref-52)
53. Race Relations Act 1976, as amended in 2000 [↑](#footnote-ref-53)
54. Human Rights Act 1998, which incorporated a substantial number of the Articles under the ECHR 1950 [↑](#footnote-ref-54)
55. R (European Roma Rights Centre) v Immigration Officer at Prague Airport [2004] UKHL 55, Baroness Hale [↑](#footnote-ref-55)
56. The 0,06 percent [↑](#footnote-ref-56)
57. Home Office, Statistics on Race and the Criminal Justice System - 2004 (2005), 35 [↑](#footnote-ref-57)
58. The Government’s “Terrorism Watchdog” [↑](#footnote-ref-58)
59. Terrorism Act 2000 [↑](#footnote-ref-59)
60. B Bowling & C Phillips, “Disproportionate and Discriminatory: Reviewing the Evidence on Police Stop and Search” (2007) 70 MLR 936 [↑](#footnote-ref-60)
61. N Bland, J Miller, P Quinton (2000) Upping the PACE? An Evaluation of the Stephen Lawrence Inquiry on Stops and Searches Police Research Series Paper No. 128. London: Home Office [↑](#footnote-ref-61)
62. J Miller, N Bland, P Quinton, (2000) The Impact of Stops and Searches on Crime and the Community, Police Research Series Paper 127 London: Home Office [↑](#footnote-ref-62)
63. J Miller, N Bland, P Quinton, (2000) The Impact of Stops and Searches on Crime and the Community, Police Research Series Paper 127 London: Home Office [↑](#footnote-ref-63)
64. J Miller, N Bland, P Quinton, (2000) The Impact of Stops and Searches on Crime and the Community, Police Research Series Paper 127 London: Home Office [↑](#footnote-ref-64)
65. Police Act 1996, s 89(2) [↑](#footnote-ref-65)
66. D Ellis, “Stop and search: Disproportionality, Discretion and Generalisations” 83(3) The Police Journal 199 [↑](#footnote-ref-66)
67. C Lerner “Reasonable Suspicion and Mere Hunches” (2006) 59 (2) Vanderbilt Law Review 405 [↑](#footnote-ref-67)
68. D Ellis, “Stop and search: Disproportionality, Discretion and Generalisations” 83(3) The Police Journal 199 [↑](#footnote-ref-68)
69. C Lerner “Reasonable Suspicion and Mere Hunches” (2006) 59 (2) Vanderbilt Law Review 405 [↑](#footnote-ref-69)
70. D Ellis, “Stop and search: Disproportionality, Discretion and Generalisations” 83(3) The Police Journal 199 [↑](#footnote-ref-70)
71. D Ellis, “Stop and search: disproportionality, discretion and generalisations” 83(3) The Police Journal 199 [↑](#footnote-ref-71)
72. N Bland, J Miller, P Quinton (2000) Upping the PACE? An Evaluation of the Stephen Lawrence Inquiry on Stops and Searches Police Research Series Paper No. 128. London: Home Office [↑](#footnote-ref-72)
73. Ibid [↑](#footnote-ref-73)
74. Association of Police Authorities [↑](#footnote-ref-74)
75. N Bland, J Miller, P Quinton (2000) Upping the PACE? An Evaluation of the Stephen Lawrence Inquiry on Stops and Searches Police Research Series Paper No. 128. London: Home Office [↑](#footnote-ref-75)
76. Ibid [↑](#footnote-ref-76)
77. K Reid, “Race Issues and Stop and Search: Looking behind the Statistics” (2009) 73(2) The Journal of Criminal Law 165 [↑](#footnote-ref-77)
78. C Elliott & F Quinn, English Legal System (11th edition, Pearson Education Ltd, Harlow, 2010) [↑](#footnote-ref-78)
79. Human Rights Act 1998 [↑](#footnote-ref-79)
80. Gillan and Quinton v. The United Kingdom (Application no. 4158/05) [↑](#footnote-ref-80)
81. Terrorism Act (Remedial) Order 2011 [↑](#footnote-ref-81)
82. Protection of Freedoms Act 2012 [↑](#footnote-ref-82)
83. The Parliamentary Under-Secretary of State for the Home Department [↑](#footnote-ref-83)
84. Ibid [↑](#footnote-ref-84)
85. House of Commons Deb, 10 May 2012, Column 9WS [↑](#footnote-ref-85)
86. Protection of Freedoms Act 2012 (s. 59) [↑](#footnote-ref-86)
87. Police and Criminal Evidence Act 1984 (PACE) [↑](#footnote-ref-87)
88. Protection of Freedoms Act 2012 (s. 62) [↑](#footnote-ref-88)
89. B Muller-Wille, “The Effect of International Terrorism on EU Intelligence Co-operation” (2008) 46 JCMS 49 [↑](#footnote-ref-89)
90. Ibid [↑](#footnote-ref-90)
91. B Muller-Wille, “The Effect of International Terrorism on EU Intelligence Co-operation” (2008) 46 JCMS 49 [↑](#footnote-ref-91)
92. K Reid, “Race Issues and Stop and Search: Looking behind the Statistics” (2009) 73(2) The Journal of Criminal Law. 165 [↑](#footnote-ref-92)
93. Ibid [↑](#footnote-ref-93)
94. N Bland, J Miller, P Quinton (2000) Upping the PACE? An Evaluation of the Stephen Lawrence Inquiry on Stops and Searches Police Research Series Paper No. 128. London: Home Office [↑](#footnote-ref-94)
95. R N Kocsis, “Criminal Psychological Profiling: Validities and Abilities” (2003) 47(2) International Journal Offender Therapy and Comparative Criminology 126 [↑](#footnote-ref-95)
96. D Moeckli, “Stop and Search under the Terrorism Act 2000: A Comment on R (Gillan) v Commissioner of Police for the Metropolis” (2007) 70(4) Modern Law Review, 659 [↑](#footnote-ref-96)
97. Ibid [↑](#footnote-ref-97)
98. S J Ellmann, “Racial Profiling and Terrorism” (2003) 46 N.Y. Law School Review 675 [↑](#footnote-ref-98)
99. P. A. J. Waddington and others “In proportion: race, and police stop and search” (2004) 44 (6) British Journal of Criminology 889 [↑](#footnote-ref-99)
100. Terrorism Act 2000 [↑](#footnote-ref-100)