

Quick reference guide: fair decision making

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The decision to stop and/or search a person must be fair. You must be sure that your decision to stop and search that particular person is made for the right reasons. You must have due regard to the **Code of Ethics** and the **National Decision Model** in reaching your decision.

Applicable to:

- All stop and search powers (whether or not requiring reasonable grounds for suspicion)
- Section 163 of the Road Traffic Act 1988 vehicle stops
- Police community support officer (PCSO) powers to search for and seize alcohol and tobacco under the Police Reform Act 2002
- Stop and account

The decision to stop and/or search a person must never be based on protected characteristics

The public sector equality duty under section 149 of the Equality Act 2010, which applies to all policing activity, makes it unlawful for any police officer or PCSO to base the decision to stop and/or search a person on protected characteristics:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

You may stop and search a person who happens to have a protected characteristic, but that characteristic must never be the **reason** for the stop and/or search.

Check: are you being influenced by a protected characteristic, such as the person's age or race?

Biases in decision making should be recognised and challenged

Be aware of the risk of unconscious bias.

Focus on basing your decisions on objective factors and ensure that you can explain the reasons for your decision, with reference to specific detail. If you can explain your reasoning clearly to someone else, the decision is less likely to be based on unconscious factors.

Applicable to:

- Stop and search powers requiring reasonable grounds for suspicion

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

You must have **reasonable grounds for suspicion** before you stop and search someone.

This means that:

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

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.

Check: do you genuinely suspect that the person is carrying the item and that you will find it if you search them?

- Is the suspicion based on specific information or intelligence?
- Is it based on a specific aspect of how the person is behaving in the particular circumstances?

Check: would a reasonable person also suspect this if they had the same information you have?

- Are you able to explain to someone else, giving specific reasons, why you suspect that you will find the item?
- Is that explanation detailed enough for the person to judge if they would have formed the same suspicion?

Reasonable grounds for suspicion must not be based on personal factors

Personal factors mean:

- physical appearance, including protected characteristics
- previous convictions
- stereotypical images and generalised assumptions about persons belonging to a particular group

Personal factors must play no part in your decision making, unless you have information or intelligence that gives a specific description of a person likely to be carrying a prohibited item with reference to personal factors. In that case, the fact that a person matches the description, not the personal factors themselves, may provide reasonable grounds.

For information or intelligence to provide reasonable grounds, it should be accurate and current, and should relate to articles being carried by a person or in a vehicle in the locality

You should be prepared to probe the relevance and currency of the information or intelligence on a case-by-case basis, and to think about other factors that may strengthen or weaken your grounds.

Where there is **no specific information or intelligence**, reasonable grounds could be based on your observations of a person's behaviour in combination with the circumstances. You 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 you genuinely suspected you would find a particular item on that person.

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 applies where:

- members of the group or gang are known to carry prohibited items
- members can be identified by a distinctive feature, such as jewellery, insignia, an item of clothing, a tattoo or any other mark known to be worn by members

For each individual searched, you should still consider if searching that specific person is necessary and proportionate.

Talking to the person to help decision making

The above principles are about what you can and cannot take into account when deciding if there are reasonable grounds to stop and search someone. They do not prevent you from talking to a person informally or asking them to account for themselves.

Talking with the person can:

- reduce tension
- encourage cooperation
- confirm or dispel your suspicion
- reveal reasonable grounds for suspicion with respect to a different item

You cannot detain someone for the purpose of finding reasonable grounds for suspicion, but you can speak to the person informally, without detaining them. If they agree to voluntarily answer your questions (they are not obliged to) and their answers lead you to form reasonable grounds for suspicion, then you can detain them for a search.

You cannot justify detention retrospectively (you must have reasonable grounds before you detain the person), but discovering new grounds can justify continued detention where initial grounds have ceased.

If your initial grounds for suspicion have ceased – for example, if questioning has dispelled your suspicion – the legal basis for search also ceases at that time unless other grounds have emerged. The person becomes free to leave and must be told so.

Applicable to:

- No-suspicion stop and search powers

Where reasonable suspicion is not required, the decision to stop and search a person should still be applied in an objective way

Although 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) do not require you to have reasonable grounds for suspicion, you should still be objective in how you apply them and able to explain your thought process if challenged.

You should consider the circumstances that have prompted authorisation of the power and limit yourself to searching those likely to be involved. You must not stop people:

- for reasons unrelated to the authorisation or the specific purpose of the power to search persons on premises
- on the grounds of any protected characteristics

Check: Have you considered the reasons for the section 60 authorisation or the purpose of the power to search persons on premises when deciding to search this person.

Tags

Stop and search