'The Life and Death of Section 44 (Stop and Search) Terrorism Act 2000'

by

Michael C. McDonagh

London Metropolitan University

Submitted to the Faculty of the London Metropolitan University
in total fulfillment of the requirements of a Professional Doctorate
in Policing, Security and Community Safety

June 2013

THE FOLLOWING ITEMS HAVE BEEN EXCLUDED UNDER INSTRUCTION FROM THE UNIVERSITY

Pages 163 and 166

THIS PROFESSIONAL DOCTORATE HAS BEEN APPROVED BY:

Professor Norman Ginsburg

Director of Studies

Professor Simon Hallsworth

1st Supervisor

Doctor Liz Davies

2nd Supervisor

DEDICATION

There are a number of people without whom this professional doctorate might not have been written, and to whom I am greatly indebted.

This professional doctorate is dedicated to my wonderful wife Christine, who continues to be a source of encouragement and inspiration to me throughout my life, a very special thank you to you Christine for providing a 'writing space' and for nurturing me through the many months of writing.

To my beautiful talented daughter Holly and my wise son Cameron for their patience and support.

To David Anderson for his assistance over the years working on the Section 44 TACT research with me and lastly, to the Police Officers and Police Staff of the Metropolitan Police Service, I hope this work helps them in their work to protect our communities from terrorism.

ABSTRACT

Abstract. This professional doctorate is about the ***life*** (inception), the ***utilisation*** (implementation) and ultimately the ***death*** (repeal) of a highly controversial and unpopular counter terrorism stop and search power (Section 44 of the Terrorism Act 2000) that was deployed within the United Kingdom.

At the time of writing this professional doctorate the United Kingdom (UK) threat level stands at SUBSTANTIAL. This means that the Joint Terrorism Analysis Centre (JTAC), MI5 have assessed the intelligence that it holds and has reported to the Home Secretary that ***'A TERRORIST ATTACK IS A STRONG POSSIBILITY'***. However, at the peak of the utilisation in 2005, following the horrific terrorist attacks in London on the 7th July (7/7) the threat was raised to ***SEVERE***, which meant that JTAC assessed the treat as: ***'AN ATTACK IS HIGHLY LIKELY'***. It must be acknowledged that the concept of utilising exceptional, reconfigured and controversial counter terrorism stop and search powers in a largely conservative society that prides itself on its freedom of speech, freedom of movement and freedom to protest was always going to be a delicate balancing act for the UK Government, Police and Police Authorities. This professional doctorate is about that balancing act and ultimately why the Government and the Metropolitan Police Service (MPS) got it so badly wrong.

This professional doctorate makes a contribution to the body of knowledge in the field of stop and search by providing an insight into how the wider Policing Service managed and deployed those counter terrorism powers, whilst attempting to reassure the community. The problems encountered, when overlaying such controversial tactics and the importance of winning, gaining and maintaining the trust and confidence in those tactics from all communities. This professional doctorate has reviewed, examined and analysed past and present thinking and practices within the counter terrorism environment surrounding the use of counter terrorism stop and search powers, in particular the Metropolitan Police Service. The author of this professional doctorate is in a unique position as he is the Commanding Officer for the Metropolitan Police Service Counter Terrorism Protective Security Command (SO20) and was for four years the operational lead for Section 44. He remains the Senior National User (SNU) on terrorism stop and search and the MPS lead for the development and introduction of the new Section 47A Terrorism Act 2000 (TACT) legislation.

DECLARATION

This is to certify that:

(1) the submission comprises only of my original work towards the Professional Doctorate (PD) except where indicated,

(2) due acknowledgement has been made in the text to all material used,

(3) the professional doctorate is less than 70,000 words in length, exclusive of tables, maps, bibliographies, footnotes and endnotes, in line with the guidelines of the Professional Doctorate.

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Michael Christopher McDonagh

ACKNOWLEDGEMENTS

The journey towards a doctoral perspective would not have been possible without the help and support of my many friends at London Metropolitan University. Professor Norman Ginsburg my Director of Study and Professor Simon Hallsworth my doctorate supervisor, who challenged my thinking from the beginning, kept me on target, and gave excellent advice that helped the project and my writing come to life.

To Dr Liz Davies, my second supervisor who gave sound advice, critical insights and assistance throughout the entire journey. A special thanks need to be given to the officers, staff and colleagues of the Metropolitan Police Service (MPS) for their support of this project and to all of the MPS staff who attended the focus groups, answered my calls and took the time to completed the questions on my questionnaire, your patience, enthusiasm and participation in the study was appreciated greatly.

Table of Content Page No

List of Appendices

LIST OF TABLES AND FIGURES

INTRODUCTION

This professional doctorate is about three critical things, in chapter four it discusses ***the life*** (the inception) of a highly controversial and unpopular counter terrorism stop and search power (Section 44 of the Terrorism Act 2000) in response to the ongoing *'terrorist troubles'* in Northern Ireland, the *Good Friday (Belfast) Agreement* (10th April 1998) which was on the verge of collapse, the Omagh bombing (1998), the Deal bombing (1998) in Kent and the resulting public outcry and why, after the 2000 Act had been drafted to include domestic and international terrorism. Chapter five, discusses ***the utilisation*** (the implementation), guidance and rolling out of the power to police forces across the United Kingdom (UK). Then importantly, chapter six describes the strategic and operational use and overt deployment of the stop and search power against legitimate demonstrators and ultimately ***the death*** (the repeal) of the power.

This professional doctorate aimed to question the very relationship between counter terrorism legislation, state security and public freedom (liberty of the citizen) and how any agreed and sanctioned 'trade-off's' in human rights have impacted on life, freedom and movement in the United Kingdom (UK) in terms of its stop and search legislation, public policies and police procedures. In order to achieve the three key points (***life, utilisation and death***), this professional doctorate is structured around the exploration of utilising exceptional powers and laws by the UK Government utilising counter terrorism legislation in the late 1990's early 2000 that has since been referred to as *antagonistic and highly intrusive,* even *draconian* in its reach and outlook[1]. This professional doctorate set out to identify, examine, demystify and make sense of the recorded and proffered rationale for creating such modern day counter terrorism legislation (Section 44) that has allowed a security conscious government to override common principles and legal oversight of established, well tried and tested laws, such as *The Police and Criminal Evidence Act* (PACE)[2] and to replace critical aspects of counter terrorism legislation onto an insecure society, with legislation that have now been shown to be fatally flawed stop and search powers at the European Court of Human Rights (ECtHR).

It has researched the recorded concerns over the breadth (deployment) of section 44 and allegations of overuse and misuse, reviewing the work of Hillyard (1993), around transforming identified minority communities into *'suspect communities'* whilst mindful of current thinking of Pantazis and Pemberton (2009)[3] and not forgetting the counter argument of Greer's (2010) article. The increase in use of section 44 from around **42,000** in 06/07 to over **250,000** in 08/09, before falling back to just over **100,000** in 09/10 and the nature of its use, which led to concerns that there were no effective constraints on the use of the power[4]. Leaving aside the literature review momentarily, the majority of

the research material came from a series of one-to-one interviews, conversations, focus groups and questionnaires that centred on key opinion formers, strategic government and police leaders and front-line borough police officers that have, over the past six years been engaged in this critical area of protective security, counter terrorism legislation and community policing. In short this professional doctorate reviewed the reasons behind the creation of the power, examined the case study of Quinton and Gillan (the persons stopped and searched in 2003), the subsequent high profile utilisation (operational deployment) of the powers pre and post the 2005 terrorist attacks on London (7/7), the '*rolling out*' of the power to the entire Metropolitan Police Service (MPS) area by the author and his staff and ultimately the death (repeal) of the powers in 2010 by the Home Secretary Theresa May.

This professional doctorate is important on several key fronts firstly, the literature on the use of Section 44 counter terrorism stop and search within a UK policing context to date is limited, secondly the project makes a contribution to the body of knowledge in this field by providing a *senior practitioners*' insight into how the wider Policing Service managed and deployed those counter terrorism powers, whilst attempting to reassure the community and attempting to create a hostile environment for terrorists. Thirdly, documenting the many problems encountered, when overlaying such tactics on such a large scale and whilst being mindful of the importance of winning, gaining and maintaining the trust and confidence in those tactics and the utilisation of such controversial powers.

Lastly, the subsequent learning has provided a number of strategic and operational recommendations that are listed in chapter Seven of which fourteen have already been adopted and circulated as best practice in the latest version of the counter terrorism stop and search legislation guidance under the new Section 47A Terrorism Act 2000. One cannot fail to acknowledge that the concept of utilising exceptional, reconfigured and highly controversial counter terrorism stop and search powers in a largely conservative society that prides itself on its freedom of speech, freedom of movement and freedom to protest was always going to be a delicate balancing act for the UK Government, Police and Police Authorities. This professional doctorate is about that balancing act, was it legitimate to sanction the creation of such a power, the proportionality of its use, was an act of this nature required or even necessary taking into account the counter terrorism legislation that was in existence and ultimately why the Government and the Metropolitan Police Service (MPS) misjudged the message it was sending to the community at large and the European Court of Human Rights (ECtHR).

Chapter 1.

Why Create the Terrorism Act 2000

1.1 The Irish Troubles

This chapter will explore the history of *'the Irish Troubles'* in Northern Ireland, then discuss the stop and search legislation within the Terrorism Act 2000 (TACT), the rationale behind why the United Kingdom (UK) Government decided it needed new and enhanced legislation to tackle Irish terrorism and why, after the 2000 Act had been drafted to include domestic and international terrorism. Most importantly this professional doctorate will explore the counter terrorism environment in the Capital at the Government, police and community nexus, how the Metropolitan Police Service delivers vital and at times controversial counter-terrorism policies, and how individuals and communities receive that activity. Prior to examining and deconstructing the actual legislation in question (the Terrorism Act 2000), it is vital to look back at the relevant time period prior to its inception, the political backdrop and social events in recent history that directly shaped this legislation and the terrible events that this legislation was aimed at reducing or preventing (*The Irish Troubles*).

When police, scholars and politicians talk of *'the Troubles'* in Northern Ireland, they are referring to a thirty year window or period commencing in 1969 that relates to the bombings, murder and violence between elements of Northern Ireland's nationalist community (Catholics) and its unionist community (identified as Protestant and/or British). The subsequent violence is characterised by commentators as armed campaigns between Irish Republican and Ulster Loyalist paramilitary groups. This included the Provisional Irish Republican Army (IRA) campaign of 1969–1997, whose stated aims were to stop British rule in Northern Ireland and secondly to reunite the whole of the island of Ireland under one political system, creating a thirty two county Irish Republic. During this thirty year period, it was reported that **3,557** deaths in Ireland were directly attributed to terrorist activity (Sutton Index of Deaths)[5]. In the introduction, this professional doctorate briefly touched upon the history and uses of exceptional powers however, moving to the United Kingdom's recent past, to a time and place that effectively shaped all of the UK's current and (some would say) future counter terrorism legislation, Northern Ireland. The UK has a long and not always a distinguished history of fighting the threat of terrorism and serious protest from several arenas of conflict, the most notable being the threat from Dissident Irish Republicans (DIR) or as is more commonly referred to as Irish Republican Terrorism (IRT).

In order to understand why the 2000 Act was drafted as it was, perhaps it is necessary to understand the backdrop of the troubles in Northern Ireland. In 1922, Ireland entered what was described as its national development phase (Fraser 2000). The Parliamentary Union with Britain, which came into being in 1801, came to an end in 1920 with the creation of the Irish Free State. Although the Irish Free State was not accepted by everyone and the terms of the Government of Ireland Act in 1920 had already ensured that the remaining six 'Ulster' counties were secure, it set in motion a form of partition that would see the disaffected struggle to reunite Ireland for the next ninety years, their fight as is well documented continues today. To this end much government, police and academic time, thought and effort has been utilised looking at the sources of conflict, impact on the communities and possible solutions (counter terrorism laws) in order to maintain a situation that the protestant majority voted for and that certain groups of the catholic minority aim to overthrow. (Hillyard 1993; Pantazis and Pemberton 2009; Greer 2009; Pantazis and Perberton 2010).

In terms of legislative necessity and why the British Government of the day (early 1922) considered it appropriate and proportionate to agree to the use of anti-terror powers, one has to look at the rising tide of sectarian violence that was taking place across Ireland both north and south of the border, in particular in Belfast. Initially the Irish Treaty seemed to hold but then there was a huge increase in killings across the six counties. The Prime Minister Lloyd George asked one of the most senior military figure of the time, Field Marshall Sir Henry Wilson (then Unionist MP for North Down) to form a committee to examine the security needs of Northern Ireland and to recommend a way forward in terms of establishing a police service that could bring both Protestants and Catholics together to fight the common cause, this being the growing Irish republican terrorism. The force merged officers from both the 'Special Constabulary' and the 'Royal Irish Constabulary' and Wilson formed a new force, named the Royal Ulster Constabulary (RUC).

Due in part to the almost uncontrollable murder rate, between July 1920 and July 1922 the death toll had been 557 men, women and children – 303 Catholics, 172 Protestants and 82 members of the security forces. In Belfast, 236 people had been killed in the first months of 1922 alone,[6] the Government turned its attention to drafting urgent anti terror powers, which included detention without trial, searching of private dwellings and forced removal from homes. The reporting at the time indicated that there was a real crisis unfolding all along the newly formed border region, small units of men belonging to the Irish Republican Army (IRA) set up strongholds to the west of Fermanagh, which was known locally as the 'Pettigo-Belleek Triangle. These strongholds were seen to be overtly supporting the Catholics in Belfast. The UK Government decided to take action and legislated on the 7th April 1922 a new framework to support law and order. This resulted in *'The Civil Authorities (Special Powers) Act.* Shortly after the Act came into being 11 members of the security forces were

killed and the Unionist MP for Woodvale (W.J.Waddell) was murdered on the way to a local meeting. Politicians in London considered this situation to be wholly unacceptable and sent a full infantry brigade to reinforce the border with the South.

On the 22nd of June 1922, the fight and the violence that had been restricted mainly to Ireland came to the mainland of the UK and to Sir Henry Wilson (the architect of the 1922 Act). At 2.20pm, two London-based volunteers of the Irish Republican Army, (Reginald Dunne and Joseph O'Sullivan), waited for Wilson outside his home address at No 36 Eaton Square, London. Dunne and O'Sullivan fired multiple shots, hitting Wilson six times, two of which hit him in the chest, fatally wounding him, he died where he fell. This outright attack on the UK and importantly the UK establishment was seen as a *'freelance operation'* led by local IRA hard-line supporters and was carried out as a way of demonstrating the IRA's capability (reach) and utter contempt for the UK terror legislative and its executive powers. Arguably this single act was the turning point in the use of anti terrorism legislation linking political killings to the use of new and wide ranging powers which are still in use to this day (in one form or another). The intervening years witnessed a greater; more violent war raging across the island of Ireland with the various UK Governments resorting to anti terror legislation to deal with the perceived deadly threat.

Moving some sixty seven years later, 1989 saw the Omagh bombing in Northern Ireland and the Deal bombing at the Royal Marine barracks on the mainland, in which 11 marines were killed and another 21 injured. As a young in service detective constable, the author recalls an equally horrified and frightened British public demanded something more be done to protect the United Kingdom against Irish Republican Terrorism. The MPS was put on increased vigilance and additional counter terrorism patrols (high visibility patrols) were the order of the day. The Prime Minister Margaret Thatcher made a statement from Moscow, where she was on an official visit, denouncing the violence and stating that she was extremely shocked and saddened by the attacks and loss of life. The leader of the opposition, Neil Kinnock, described the attack as an "*awful atrocity*" and said, "*Even the people who say they support what the IRA calls its cause must be sickened by the way in which such death and injury is mercilessly inflicted*".[7] The British Government responding to this overpowering public sentiment and to the enormous sense of vulnerability (an indirect attack on the people of the UK), scrambled to put in place a set of measures that would not only answer public outcry and concerns, support the Peace Accord (British Peace Agreement) but would improve the UK's ability to cope with Irish terrorism. This action consisted of mass arrests, internment and the use of indiscriminate stop and search tactics targeting, in the main, the catholic community. At this time the Labour Party were openly against the ongoing use of the existing anti-terror laws in Northern Ireland and were constantly calling for the Thatcher Government to review or repeal the anti-terror acts. Bowyer-Bell (1993) examined both the

background and the events of the day with an analytical localised understanding, a psychological sympathy towards the violence and painted a historical, albeit backwards looking review, which indicated that an attack of this nature (Omagh) was always a possibility. Still, his findings show that the attack took everyone especially the British Security Services (BSS) by surprise and found nobody prepared. This was equally true of the Stormont Government, the Governments in London and Dublin and the principal religious and social organisations within Northern Ireland itself. The complex agenda of counter terrorism steps and measures that followed were regarded as a programme for 'British Home Security' a programme that was regarded, at least initially, as a major national priority by the Conservative Government.

The late nineties also witnessed a change in the very '*nature of terrorism*' away solely from the troubles in Northern Ireland and a move that seemed to focus on international terror attacks, such as those documented by Laqueur (2000) et al such as the first attack on the World Trade Centre Towers, the Oklahoma City bombings and the American Embassy attack in Africa. Laqueur highlighted that this new terrorism was very different from anything that the UK or the US had known in respect of Irish terrorism. In the 1999 edition of the book, there is no mention of Al Qaeda (AQ) or any affiliates. AQ and its affiliates / extended networks are only mentioned in the revised 2000 edition following further international terror attacks. Laqueur expanded his theories on '*New Terrorism*' and supported the need for the world to have ever increasing terrorism legislation to deal with the ever increasing technological advances taking place in terms of development and aspirations of terrorist groups to construct and deploy weapons of mass destruction. Since the terrorist attacks in 2001, terrorism and in particular new terrorism has been the subject of intense media interest, political discourse and public scrutiny. Laqueur further supported these theories by citing the Japanese cult '*Aum Shinri Kyo*' (Supreme Truth) who on the 20th March 1995 placed five *sarin* poison gas containers on five trains on the Tokyo underground system resulting in twelve dead and five thousand and five hundred people injured. To evidence and explain this emerging view of the world at the UK's front door, one only has to read careful the few opening lines of the CONTEST Strategy to see the move to include worldwide terrorism as a real threat to be cognisant of.

The latest version of the '*CONTEST:* The United Kingdom's Strategy for Countering Terrorism'[8] dated July 2011 stated that in 2010 over 10,000 people were killed by terrorists around the world and that international law enforcement and military collaboration was urgently needed to face the changing global threats. The threat level in the UK from international terrorism has been SEVERE for much of the period, meaning that we judge a terrorist attack to be 'highly likely'. Placing aside the number of 10,000 deaths for a moment, with the above paragraphs as the critical introduction piece to the strategy, the posture and positioning within the UK Governments strategy is clear for all to see

and is how they imagine the current and future demands in terms of security and protection are being placed upon them, i.e. being placed upon the security services and the police. The research clearly demonstrates that States, senior politicians (Straw) and police leaders (Assistant Commissioner's Hayman, Clarke and Yates) do believe they need exceptional counter terrorism powers that exceed those normally in place for traditional serious and major crimes and this is best articulated by Sir David Omand, who was the Head of GCHQ and Intelligence and Security Co-ordinator in the UK Cabinet Office from 2002 – 2005. At a recent conference in London on the 8th June 2010, Omand discussed the state of security, intelligence and the issues relating to freedom and liberty. In his speech he tackled head on the future threats that face the UK[9]. As a member of the audience that day, the author noted that the talk centred around the main theme that security can never be 100% and that security rests on the realistic management of '*risk*'. In his role as the head of the protective security command for the MPS, the author spends much of his time conducting risk assessments and briefings to agencies and partners attempting to ensure that appropriate risk mitigation practices are in place and that they have a realistic expectation around security matters. Since 2000, the UK has introduced a series (eight thus far) of wide ranging laws[10] to deal with the perceived changing terrorist threat to the UK, its citizens and its assets overseas. Whilst this new legislation has assisted the agencies that are charged with protecting the state and its people, it has also generated much debate about the balance between security and civil liberties. The Coalition Government's *Justice and Security Bill* is their latest attempt to address many of the issues raised in these debates.[11] Much effort and time has been spent on reviewing; updating, merging and ratifying anti terrorism laws into the modern day counter terrorism legislation.

1.2 The Terrorism Act 2000 (TACT)

Firstly, the Terrorism Act 2000 superseded and repealed the Prevention of Terrorism (Temporary Provisions) Act 1989 and the Northern Ireland (Emergency Provisions) Act 1996. The author located several articles and court reports, stating that the Terrorism Act 2000 was a '*rushed*' and or '*ill thought-out*' piece of legislation, due in part to the fatal and tragic events of 9/11, evidence of extensive consultation (detailed in chapter four) shows this not to be the case, in fact in many ways this was a model of good '*Statecraft*'[12] albeit in an authoritarian manner. In order to set this question, into context at one of the meetings the author had with Lord Carlile of Berwiew QC the former 'Independent Reviewer of Terrorism legislation' (2001 to 2010), Carlile reiterated that senior police officers must stay within the law, use the powers they have to maintain the peace and ensure that their actions were clear, understood, could be justified at the time of an incident and could withstand a robust challenge in a criminal court or human rights hearing, should it be required. Carlile, in the many meetings with the author constantly referred the author to his foreword to the Blackstone's

Counter Terrorism Handbook (which the author issued to each of his staff within his Command as a guidance document) in which Carlile explains that his mantra is that terrorism law should be used only for terrorism purposes only and that every step outside those purposes provides terrorists with an argument. In order to maintain this feature within the overall context, the author has ensured that in the recommendations and policy documents provided, that all in authority (authorising officers and counter signing officers) are required never to forget that such dedicated counter terrorism laws are a step outside the norms of criminal justice legislation. The right to stop and search in the street in a way different from that of a non-terrorism intervention is a power to be exercised with extreme caution.

Returning to 1999 and in an effort to place the proposed changes in the legislation within a UK setting, the Right Honourable Lord Patten of Barnes (Chris Patten), was asked to chair the Royal Commission on the Royal Ulster Constabulary (RUC), policing within Northern Ireland and to recommend a way forward, in his 1999 report '*A New Beginning: Policing in Northern Ireland*' articulated that the issues were plenty in Northern Ireland, *Sinn Féin* at the time represented a quarter of the Northern Ireland voters, and the Party membership refused to endorse Pattern's recommendations, unless they were implemented in full. However after much debate and discussions with its members, *Sinn Féin* agreed to support the creation of a new force in 2007. The new force with the 50/50[13] clause came into force and became the Police Service of Northern Ireland (PSNI). The main thrust of the report centred on the previous use of anti terror legislation, stop and search of the community and human rights. In chapter 4 of the Patten report (page 18) it commenced with a clear declaration of how the committee saw its role in the formation of any and all future legislation, powers, regulation and recommendations.

In terms of international terrorism, little of the 2000 Act was initially focused towards this aspect and the potential impact of this legislation was not realized until after the terrorist attacks on 11th September 2001 (9/11). Only then did the increasing awareness and threat of international terrorism begin to refocus the use of the 2000 Act. In this instance, as in other cases most counter terrorism legislation has evolved in parallel to state criminal laws in that the executive has decided that the perceived threat from one terrorist entity is greater than can be dealt with within the existing legal framework. This has therefore required the creation (or in some cases extension) of new powers to deal with a new and emerging threat. This is by no means a new phenomenon and mention of exceptional or special laws can be found in articles dating back to hundreds of years. In fact, much of our current laws, do have clauses that allow for a '*standstill*' or '*suspension*' in one form or another. This type of suspension or standstill can also be found in legal documents relating to the French Revolution, more recently following the Second World War (WWII) in Europe where states when

faced with a governance and security 'void' turned to special laws, declarations of emergency (suspending Civil Rights) and the introduction of travel restrictions. This professional doctorate will explore issues relating to sovereignty and dictatorship. Giorgio Agamben pointed out that the introduction of emergency rules and laws on a permanent basis allows sovereignty to manifest itself in its most powerful form, through the designation of the enemy to be excluded and the subsequent creation of identity borders. (Agamben 1997; 2002). This particular issue will be discussed in further chapters.

The counter terrorism stop and search powers referred to as Section 44 of the Terrorism Act 2000 (TACT), were the first of their kind in mainland United Kingdom (UK), in that they provided a '*without reasonable grounds*' power that could be exercised by any police officer or police community support officer (PCSO) on the basis of an authority provided by an officer of at least the rank of a Assistant Chief Constable or a Commander within the Metropolitan Police Service (MPS). In practice within the MPS, this has always been undertaken at a more senior level, normally by the Assistant Commissioner of Specialist Operations (ACSO). Section 44 provided police with the power to stop and search persons for articles of a kind that could be used in connection with terrorism, whether or not the officer had grounds to suspect the presence of such articles (no '*reasonable grounds*' were required). This was a unique feature of the power and the main focus of public concern in relation to its use.[14] Once authorised by ACSO, Section 44 stop and search powers were then considered by the Secretary of State who reviewed the documented intelligence assessment/evidence, before confirming the actual authority within 48 hours of its application. The authority was granted for a maximum period of 28 days at any one time and each refreshed request required a new submission by a police officer of the rank of a Commander or above. The only oversight built in was that the Secretary of State did have power to withdraw the authority at any time during that period of authorisation. The author cannot find any occasions on which this oversight clause (to withdraw the power) were ever utilised.

Throughout this project, an underlying current emerged in the aspects of security versus liberty and how a society that prides itself on the twin pillars of freedom of speech and movement supports and manages these issues in a democratic, justifiable and acceptable manner (normalisation of an emergency) and the requirement to sacrifice some long held beliefs of the democratic substance (Donohue 2007). The reason that this professional doctorate is of such importance is that counter terrorism (CT) stop and search powers (legislation) are seen by the Executive as being critically important to the UK Government, police and the community. This professional doctorate went onto explore the implications around social cohesion and the effects that are felt by communities that these laws / powers impact upon. The author wanted to take brief albeit reflective look at both the Irish communities and the Muslim communities to compare and contrast the implications of utilising

counter terrorism legislative measures on what is commonly referred to in the media as *'suspect communities'*.

1.3 Suspect Communities (similarities and differences)

The concept of *'suspect community'* initially appeared in Hillyard's work (1993) on the growth of the secret state and the effects of the Prevention of Terrorism Act (PTA) on the Irish community. His study of the functions of the PTA focused on individuals being subjected by the police and security services to anti terrorism measures in England, Wales and Scotland between 1978 and 1991. Hillyard's 'suspect community' concept referred to the process of identification of a threat and of a sign of abnormality which exemplified and legitimated the politics of exception put in place by the state. The crux of Hillyard's argument surrounded the notion that any person that is being investigated or proceeded against by the criminal justice system under a terrorism power is not a suspect in the traditional or normal sense of the word and that whether they are proved guilty or not they are then labeled as an *'Irish suspect'*.

Following on from Hillyard's 1993 and 2003 work and bringing the concept up to date in respect of the Muslim community in London, Professor Mary J Hickman and Professor Lyn Thomas (2011) argued: that terrorism still remains a major security concern for the UK Government and its recorded responses continues to be embedded within the theory of emergency, risk and threat, all this is despite the apparent 'everydayness' of terrorism with the Terrorism Act 2000, through which counter-terrorism laws were made permanent, and despite pressures on the Government to respect the rights of the citizen under Human Rights legislation. Their work looked at the similarities and the differences between the two groups in the period 1972 to 2007 in terms of political violence and how the UK government has justified the passage of a series of further counter-terrorism measures during the 2000's. They maintain there are three main reasons why the groups and their particular periods are seen as distinctive: firstly, the current political violence is said to be motivated by ideology in a way the IRA were not, secondly, the methods used in the current phase of political violence are described as more indiscriminate, including 'suicide' bombers and thirdly, the 'Irish' threat was viewed ultimately as negotiable compared with what is viewed as the absence of concrete demands of current perpetrators of violence.

However, there are five striking commonalities between the two eras: a) the main counter-terrorism measures employed today stem directly from the period of IRA violence, b) the experiences of many Irish and Muslims both at the hands of the police and in their everyday lives are similar, c) both these populations result from post - 1945 migrations in the 1950s and 1960s, plus their children and grandchildren; and of subsequent significant immigrations of both Irish and Muslims since the 1980s, d) both Irish communities and Muslim communities form part of the complex cultural, religious and

ethnic pluralism that characterises Britain's urban space and e) the religious dimension constitutes both a similarity and a difference in the experiences of the two sets of communities: although in both religion can be an important dimension of identity, it is only perceived as an ideological motive in relation to Muslim communities in Britain. Hickman and Thomas' research challenges the official position of discontinuities between the two periods. They concluded that the way the Irish communities had been represented and treated by the various agencies, military and the media (to some extent) had set a precedent for how the modern day Muslim communities are being treated today. This mistreatment or mislabeling is in spite of the various anti-discrimination legislation in place today. Hickman and Thomas (2011:5) maintain that the Muslim communities are subject to similar processes of discrimination that the Irish community was / are subjected to and that the UK Government and other agencies should be aware of the lessons learned from researching these two eras of political violence.

At the end of the Hickman and Thomas research 'key informers' were asked to state what they thought the benefits of making comparisons between the Irish and Muslim communities were, two of the more interesting and thought provoking responses were: Firstly, from a Chair of an Islamic organisation who stated that there were clearly benefits of looking at the two communities and comparing their treatment by the police and security services but the chair felt that it was vital that each of the parties learned from the research and actually engaged with one another to ensure past mistakes are not made again. The chair then went onto state that it is vital that the agencies involved in this environment treat the communities as they would with any other community and not as a community that everyone is engaged with criminality. Furthermore that the agencies should never associate the whole community with a particular criminality (terrorism) and that the agencies need to actively create a sense in society to demonstrate that everybody in every community is a stakeholder. Secondly, from a chair of a catholic organisation, that spokesperson reiterated that it was possible and not wholly surprising that members of the Muslim community felt marginalised and perhaps felt that the rest of society may be suspicious of them. The catholic spokesperson wanted to further express that they (the Muslims) may find it very interesting and a perhaps in a supportive way, to hear from another community who are now thought of as being part of the main, the majority society, that they at one time went through a period of a hundred years or so when they went through something very similar.

In support of these thoughts and as a person who served in Northern Ireland in the military in the 70's and early 80's, and later (1986) with the MPS, the author can identify with the notion that sections of the Irish catholic community were seen as suspects and were dealt with in a harsh manner that was not always appropriate or justified. Constant fears over the abuse and misuse of stop and search powers by British Security Forces (BSF) were repeated by many who lived through this period and they

viewed this as having been a widespread problem that also particularly impacted upon the young. The experience of wide-ranging powers of stop, search and incarceration was also acknowledged as having been a particular issue for the Irish in Britain, where such measures were often employed to trawl for low-level intelligence and render the community 'suspect' (McGovern 2009)[15]. Moving forward to the present, it would be interesting to re-run the research and discover how those sections of the community now feel about the current use of this legislation. In order to provide further analysis around the consultees above and the work of Hickman and Thomas, the author would suggest that this professional doctorate not only refer to some of the recommendations emanating from this latest work, but takes account of the key five recommendations which have assisted in this professional doctorate and are integral to the author's own recommendations in one form or another. These are that any current and future operational deployments should be evaluated and an historical awareness of past deployments and their effectiveness needs to be taken account of. That any awareness needs to include any issues or sensitivities that have been highlighted or experienced around any impacts across the target community / communities. Consideration as to the use of or engagement with the media, local and national government agencies to counter any allegations of negative stereotyping of members of the community or sections therein. Further consideration needs to be taken around the use of language when utilising terms such as evil, perverse, barbaric etc in case these negative stereotypes are associated with a section or parts of a particular community and lastly it is vital that any deployments or policies are robust against negative language but encourage the positive aspect of communities and promote and foster the practices of multiculturalism based on knowledge of a community and promoting social cohesion and a solution to politically motivated violence, for if as a society we don't work together then we could see an upward trend of UK based self-radicalization (Lambert 2010)[16].

In terms of stop and search powers, when the fear of terrorism, reporting via the media and civil liberties are stripped away from the discussion, the power provided an officer or police community support officer (PCSO) to stop a member of the public in the street. The stop is usually in front of other members of the public, possibly depriving the person of their liberty, running through a series of probing and personal questions and then searching them, looking into pockets, bags or their vehicles (in certain instances) and if necessary using force, all under the watchfulness of others. When carried out in a professional, non-judgemental and informed manner (taking that nothing is found or further suspected) and the person walks away content and satisfied that she/he is being protected by the 'state' and trust, confidence and public safety is maintained, the UK should seem to be a safer more secure place for everyone concerned. However, this is just a small part of the wider use of the powers and not the whole story. This professional doctorate aims to understand 'out of the ordinary' or 'difficult stop and searches' and why they are different and what can be done to reduce the numbers

of challenging encounters. It is critical to note that this single 'engagement' maybe the only ever interaction with the police for that person and could then affect that persons perception/views for some period of time or until a more positive encounter takes place.

The focus of this professional doctorate is the creation of Section 44 stop and search powers of the Terrorism Act 2000 (TACT), the context of why it was legislated, introduced and why the architects (the law makers) felt the need to innovate on past anti terror legislation. How the Metropolitan Police Service (MPS) made use of this highly contentious new power within the counter terrorism environment (2001 to 2010), particularly the impact of the overuse and over deployment has had on London communities, community trust and confidence with particular focus on the MPS practices. Of real importance for the future of any police stop and search deployments, is the process of information/policy/guidance dissemination and the effectiveness of rolling out such a power out across the thirty two boroughs of London. The professional doctorate examines the costs and consequences of such a piece of legislation, in terms of police/community relations, tensions, furthering the authoritarian state and whether there was any erosion of due legal process or belief in a system that is there to protect and serve its citizens. This professional doctorate further attempted to understand why in 1999, the Right Honourable Jack Straw MP[17] felt that legislating in this area was extremely challenging but necessary and furthermore felt that the Government of the day had to ensure that the right balance between defending the public from acts of organised terror, sanctioning the move from accepted legal practices to one of a 'state of exception' was worth the political and personal fallout and condemnation from other political actors. Worthy of note at this point that the main disagreement was not between political parties but between the Labour Government of the day and pressure groups such as Liberty (John Wadham)[18], I'm a photographer not a terrorist and Big Brother Watch.

As part of the initial political manoeuvring to getting the Act through parliament, Straw continued to announce in parliament at every available opportunity that there had been for a long time the recognition that because of the escalation of terrorist violence, special laws to prevent and ultimately to deal with this particular threat. In order to further support his case and to provide further justification Straw routinely spoke of the success of other legislation covering serious fraud and drug trafficking offences. Straw reiterated that the new terrorism bill, would move away from the piecemeal and temporary approach that characterised and reflected the previous anti-terrorism legislation that had been running for a quarter of a century (The Prevention of Terrorism Act) which had been introduced by one of his more liberal predecessors, Roy Jenkins. Interestingly, whilst in opposition, the Labour Party objected to three parts of that particular act, the 2000 Terrorism bill dealt with each of them. This debate was seen as so central at this time that Jack Straw took it upon himself to write a lengthy and very detailed article on the matter in the Guardian newspaper (Straw 1999)[19]

mid way through the actual *'Terrorism Bill'* consultation phase and entitled it *'I'm simply protecting democracy'*. Interestingly some ten years later, again in the Guardian newspaper (Straw 2009), Tory MP's accused Straw of undergoing a *"Damascene conversion"* since his days in opposition when he voted against the Prevention of Terrorism Act[20]. Therefore, in order to understand the feelings of that time and having spoken to Straw's private secretary, it would seem fit to reproduce this key article in full as it neatly sets out the history and tone of the interplay between Straw, Wadham and the wider political audience (see Appendix K). Straw in the cited article concentrated upon the suggested changes to the terrorist landscape and how it was critical to move away from the previous 'piecemeal and temporary approach' and not produce a sticking plaster solution. In his articles in the Guardian newspaper, he continues to build on the points around balancing defending the public from acts of terror and protecting human rights. When one looks at the wider policing environment this attempt at 'centre-line' politics sounds plausible but in reality proves to be incredibility difficult to justify, implement and police.

Mindful of the dilemma that Straw faced in 1999, Straw utilised the term *serious violence*, when discussing judicial classifications and that terrorists if arrested and charged would continue to face criminal charges such as murder and causing explosions and not the introduction of similar offences under the terrorism legislation. This is clearly an attempt at pacifying certain sections of the media and community activists who had raised concerns at stigmatising members of the community as terrorists. However, Straw does acknowledge that the Bill did widen the scope in that offences committed or threats to commit were extended to domestic and International offences. In Hallsworth and Lea's (2011) article *'Reconstructing Leviathan: Emerging contours of the security state'*[21] they touched upon the many crossovers and blurring of how warfare and criminality is infecting policing, which is leading to the militarisation of police training, terminology and technology. This can be seen in media articles of the day (January 2012) regarding overt high profile military style operational training exercises, community and business seminars following the attacks in Mumbai and in relation to the London 2012 Olympics, in particular the overt appearance of Special Forces and naval units exercising on the streets and Thames waterways in London[22].

1.4 Access at the heart of the debate

In terms of senior level MPS access, the author had been the 'Chief of Staff' (COS) to Assistant Commissioner Andy Hayman and for a short time Assistant Commissioner John Yates. In essence that meant he had day to day access to their thoughts, concerns and directions surrounding the Section 44 authority process, the inner workings of the requirement for such requests, as well as the principle role of drafting and briefing the three key figures over the past five years. Regarding national meetings, the author worked alongside Deputy Commissioner Craig Mackey for over two years on the

National stop and search programme of events with the Home Office, as the National Senior user for counter terrorism stop and search. Key to this professional doctorate was how it [the legislation] was received, packaged and implemented across the MPS and the United Kingdom (UK). In addition were there any impediments or opposition and what community engagement or consultation was undertaken. The professional doctorate went onto examine the European Court of Human Rights Case of Gillan & Quinton and how this landmark case has transformed and severely restrict the use of counter terrorism powers across the UK and in the MPS (AC Yates 2011).

This professional doctorate aimed to make an evidenced based contribution to the body of knowledge in this field, by providing an insight into how the British Government felt about introducing new and more powerful legislation, how the Metropolitan Police Service (MPS) managed the introduction, how the MPS utilises, deploys counter terrorism stop and search and how it *presents* the powers and tactics. The author researched how police forces attempt to do this through a *'values-based'* approach/methodology, optimistically by attempting to understand their communities, the issues involved when overlaying such tactics and the importance of winning, gaining and maintaining the trust and confidence in those tactics and the utilisation of such crucial powers. This is all set against a backdrop of attempting to provide public security, safety and reassurance. In order to establish the true costs and consequences of introducing such powerful, potentially permanent legislation and how people experience counter terrorism (CT) stop and search operations across the Metropolitan Police Service area, the author interviewed key figures in the Police Service, the Metropolitan Police Authority (MPA) and the community lead Bennett Obong (2010)[23]. Furthermore, by way of conducting secondary analysis of surveys, questionnaires and research papers/studies from the MPS, NPIA and the Home Office. The author has benchmarked those findings against the findings of the project to examine what has changed over the past nine years, since 2003. This professional doctorate has already assisted the Metropolitan Police Service in evaluating/re-evaluating its philosophy, practices, procedures and protocols on counter terrorism stop and search techniques, by identifying areas of weakness in its community engagement, training, leadership practices, tasking and deployment regimes, with a view to changes in tactical reforms. The findings of this work have informed both the strategic direction and the practical operational guidance and briefing notes for deployments across the MPS and beyond. It has also assisted in shaping the national policing agenda in response to this challenging yet captivating area of policing.

It is widely accepted by police and government that this area of policing (CT stop and search) is highly contentious within the local and national media and within our diverse communities. On the 8th July 2010 Home Secretary Theresa May announced in the House of Commons that the ECtHR in Strasbourg had found against the United Kingdom, in that the use of Section 44 had amounted to the

violation of the right to a private life. The court went onto to state that they had found the Act (Section 44) had been drawn too broadly at the time of their initial authorisation and when they were utilised they lacked sufficient safeguards to protect civil liberties. May then announced that she wanted these points that were raised to be part of the Governments review of counter-terrorism legislation. May then further announced that she would not allow the continued use of Section 44 in contravention of the European Court's ruling and, more importantly, in contravention of our civil liberties.[24] During the course of the professional doctorate other factors in the context of UK policing have been taken into account, namely the 'politicisation' of policing in general and the counter terrorism functions within the MPS and the high profile resignations of several ACPO police officers who directly impacted on the stop and search deployments used throughout the past ten years AC's Hayman (2007) and Yates (2010). Such assessment will be made in the context and guidelines of the works of Bayley (1990); Brogden and Nijhar (2005) *et al.*

In his current role the author oversaw the London wide deployment of the power in 2007, the 2009 review of the use of Section 44 TACT legislation, the operational development of the revised Section 47A Terrorism Act (TACT) legislation (a replacement in part for Section 44) and how this amended piece of legislation addresses the key issues of accountability, transparency and perceived lack of public trust with UK stop and search powers. The author has (whilst running in parallel) reviewed at how the relevant parts of the United Kingdom's Counter Terrorism Strategy (CONTEST III) has impacted on UK Policing and the tactics now employed to tackle Domestic Extremism (DE) as well as International Terrorism. Before moving on, it is of note that CONTEST, is the UK's strategy for countering terrorism and has recently been reviewed and presented to the UK Parliament in July 2011. In order to understand how this strategy has morphed over the past years it is worthy of spending a moment in appreciating that since 2006 (when first published), each new Prime Minister has reviewed and updated the strategy as he has taken power. Gordon Brown was in power for less than two years and decided that several additions were required, whereas David Cameron was in power for less than twelve months and he decided that a major revision was needed.[25] Interestingly, as each new version was agreed so has additional funding been sanctioned by parliament. The current CT budget for policing England and Wales will exceed £560 Million per annum over the next four years and this does not take into account the £600 Million set aside for the Olympic policing bill.[26]

In respect of the latest update on the CT legislation and strategy, Deputy Assistant Commissioner (DAC) Stuart Osborne, the Senior National Coordinator of Counter Terrorism for the UK decided to reiterate the current threat in the foreword for Blackstone's Counter Terrorism Handbook (2009) stating that the publication of the second edition served as a timely reminder that we as a nation remain under a severe threat from Al-Qaeda inspired terrorism. Throughout the book, the threat of

international terrorism is made abundantly clear and that the main threat comes from a global network of affiliated groups, that are resilient, well organised, well funded, in the main and are becoming increasingly independent, mobile and unpredictable. Therefore in order to protect the public and meet the operational challenges posed by this local and global phenomenon, the UK police service have invested greatly in new resources and have had to implement new ways of working. The new threat has required the growth of a new model workforce which had to multiply exponentially in size, scale, skills and scope. The new model workforce mentioned by DAC Osborne has had to prepare and equip itself to counter the tactics of contemporary terrorist organisations who have proved their operational expertise of recruiting in one location, training in a second, attack planning in a third, deploying and delivering mass murder in a fourth location. With this statement in mind, one can see that the utilisation of such CT legislation is still very much seen as critical in deterring and protecting against any potential attacks. As mentioned previously the intention of this project has always been to utilise the findings / learning / outcomes to improve the strategic understanding of counter terrorism legislation, improve the tactical counter terrorism deployments across the Metropolitan Police Service and improve the overall confidence, trust and satisfaction of the communities, businesses and the public of London. As part of the rationale and initial justification for embarking upon this research is that terrorism in all its many diverse forms (religious, nationalist or ideological) affects every component part of our lives, and it is incredibly hard to impact against without undertaking a major policy and cultural shift (reducing the fear from society), to which many in government are hesitant to take.

That said the fear of terrorism and its pervasive nature reaches into every facet of our work, families and communities and demands that the UK Government and Law Enforcement Agencies spend much of their time, effort and allocated resources upon dealing and countering the daily threat. It is the standpoint of many that it [terrorism] is the one crime that has not only victims and perpetrators but seeks to take those activities (political murder, fear and serious violence) to a wider; some would say more 'eager' audience to achieve its aims. For examples of this, one only needs to think about the sheer scale of the 2012 London Olympics and Paralympic Games preparations and the vast security operation that was undertaken. Mottram (2009:46) wrote, *"The terrorist attacks in London on 7 July 2005 brought home the risk of suicide attacks by British Citizens, and the potential scale of the attacks we face"*. Despite access to a colossal amount of data, newsprint articles, journals, websites and documents on global terrorism, there did not appear to be a great deal of academic material or papers written from a United Kingdom (UK) law enforcement perspective in particular from the Metropolitan Police Service (MPS), regarding strategies and tactics on dealing with the use of stop and search powers and practices and whether one strategy or tactic was more successful than others. With all of the above in mind, when discussing and researching modern terrorism[27], acts of terror and

the impact these bring to our communities, economy and our way of life, it is essential to remember one solitary and well observed fact: terrorism is not a new trend or phenomenon and to many in the Western World[28] particularly in the UK, it [terrorism] is an ever present constant in an ever changing world.

In order to demonstrate this simple yet challenging statement it is useful to quote a leading politician and Home Secretary: *"This is not a temporary emergency requiring a momentary remedy, this will last far beyond the term of my life and must be met by a permanent organisation to detect and control it".*[29] This uncomplicated yet authoritative statement above was not made by a recently elected politician, although it does sound very similar to the speech and subsequent foreword by Tony Blair in the Government's CONTEST strategy in 2007. It was actually presented to The House of Commons by Sir William Vernon Harcourt, the then Home Secretary in 1883 when discussing the nature of the threat that was facing the population of the day. That being the rising terrorist activities of the Irish Republicans, who had just carried out a series of disruptive and murderous bombings in London. Sir William went on to suggest that a specialist unit be formed to combat the threat of terrorism, to take the fight back to the terrorists and to ensure that the public and London was free from the fear of terrorism. The unit that he was referring to was created under the auspices of the Government and called the Irish Special Branch, the forerunner of the Special Branch (SB). At the time of writing this professional doctorate (November 2012) and to place in a threat context, the United Kingdom (UK) threat level stands at Substantial. This means that the Joint Terrorism Analysis Centre (JTAC) MI5, has assessed the intelligence that it holds (access to) and has reported to the Home Office / Home Secretary that they believe that *'An attack is a strong possibility'*. The United Kingdom Threat levels are:

- **Critical :** An attack is expected imminently.
- **Severe :** An attack is highly likely.
- **Substantial : An attack is a strong possibility.**
- **Moderate :** An attack is possible, but not likely.
- **Low :** An attack is unlikely.

The UK Government and most of the mainstream media outlets continue to inform the populace on an almost daily basis that we, as a nation are faced with an ever-present and ever increasing deadly threat from terrorism involving 'home grown terrorists'[30] from the Domestic Right/Left Wing Extremists, Republican Irish Dissidents, Real Irish Republican Army (RIRA), Continuity Irish Republican Army (CIRA) and more other UK based persons linked to International Terrorists networks/groups such as Al-Qaeda (AQ), therefore the concept of utilising exceptional and highly

controversial counter terrorism stop and search powers in a largely conservative society that prides itself on its freedom of speech, freedom of movement and freedom to protest was always going to be a delicate balancing act for the UK Government, Police and Police Authorities to achieve. The professional doctorate seeks to fill several of those 'information/intelligence voids' around counter terrorism stop and search and to shade in that colourful community picture, whilst shining the disinfectant of sunlight over existing protocols/processes and challenges. It is important to set stop and search tactics into a real-life context, following the legal exchange in the European Courts of Human Rights (ECHR), around the overuse of Section 44 and following seven years of continuous use and approximately **269,000** plus stops and searches, the Home Secretary Theresa May announced in Parliament on the 8th July 2010 the suspension of Stop and Search Powers under Section 44 TACT.

To conclude this chapter, in January 2011, Theresa May, presented to Parliament the review of counter-terrorism legislation. The review highlighted the identified tensions between the ECtHR's judgment and the continual affirmation of the United Kingdom's police forces that there remained an urgent operational requirement for a counter terrorism stop and search power which does not require reasonable (or any) suspicion[31]. Additionally, the review considered two options, namely repeal or replacement. It was recommended that the Section 44 powers were replaced with a more circumscribed power based on the conclusion that a power to stop and search individuals and vehicles without reasonable suspicion in exceptional circumstances was operationally justified.[32] The review went onto require that a senior police officer must reasonably suspect that a terrorist act will take place and that authorisation should only be made where the powers are considered necessary[33]. Many saw this as a welcomed departure from the prior requirement for expediency. Critically, Section 47A replaced Section 44 TACT and is now in place and police forces throughout the UK are actively considering what (if any) incidents and or circumstances would evoke such tightly defined and regulated powers to be authorised. It remains to be seen if any senior ACPO officer would decide that s/he has sufficient intelligence to warrant such an application and authority process.

Chapter 2.

Review of counter terrorism stop and search related literature

2.1 Initial Professional Doctorate Aim

This chapter will firstly, discuss the scope of the literature review, the mechanics of that review and how the initial research range proved too wide in producing the specific research material required. Secondly, how the review was tailored and redefined to critique, review and summarise the identifiable literature in the field of counter terrorism stop and search legislation, related police and governmental advice/guidance, leadership, social and media reporting/writing around the above subject matter areas and challenge the validity of it and how it could be used to assist the professional doctorate. At the beginning of this professional doctorate, the author wrote out a simple statement as an aim, vision and/or directive as to where he saw this work heading. Within a short time it became apparent that the initial aim and research parameters were too vague, too wide and incapable of being delivered in the timeframe allocated for this project. Instead the author recalibrated the initial parameters of the project utilising three questions. The three questions enabled the author to generate a conceptual framework for the project that framed the overall analysis, setting the professional doctorate in the context of relevant (socio-legal, policing) academic theory and research. The questions were:

Q1. In terms of legal precedence, if any, where do such exceptional powers derive?

Q2. Why did the United Kingdom (UK) Government, Police and Security Services believe they needed exceptional counter terrorism powers and what is the case for and against such powers/legislation?

Q3. What are the dangers, concerns or possible infringements against Human Rights and Civil Liberties?

Utilising these three questions as the basis for a conceptual framework for the professional doctorate, the research parameters moved slightly away from much of the initial philosophy and reading material that was collated, and concentrated on the refreshed questions posed above. However, in order to show depth and breadth, the professional doctorate decided to retain much of the core reading material and to utilise it as background and informative material to enrich the overall submission. To

this end, it is important to recognise that the information/data/literature reviewed for this professional doctorate has been gathered over the past five or six years and not just accumulated during the actual research phase of this project. An example of this surrounds the ongoing development of Section 44 (now 47A) and its overt deployments. Whilst researching the available academic guidance on the most appropriate way forward in terms of crafting and developing a comprehensive review, the author was aware of the wide variance of advice provided freely or via published books/articles on this particular area of thesis construction (the review of literature). In the end, it was decided that a simple literature review model pioneered by Machi and McEvoy (2009) would be utilised as it seemed to be 'fit for purpose' in this particular professional doctorate and mode of research, study and data collection, i.e. the author was familiar with the data collection, analysis and evaluation model. Machi talks about making the review structure simple yet comprehensive, summarising and evaluating the existing knowledge on a particular topic and utilising that knowledge to form the basis of a directed or focused enquiry framework to assist the professional doctorate, thus the use of three key directive questions, that maintains the project remit focused on exceptional powers.

As the literature review phase commenced, it soon became apparent that the key word descriptors 'terror, Irish troubles, IRA, Irish Republican Terrorism, Bush, Blair, terrorism, stop and search, counter terrorism, counter law, anti-terrorism, terrorism policy, procedures, terrorism essays, terror debate, exceptional powers, counter terrorism legislation was hampered by the sheer volume of available data, publications and articles. When searching for information around the particular area of interest/concern (Terrorism Bill / Act 1999/2000), the work took a significant time in discriminating the meaningful and relevant articles/publications from the wider subject matter in question. Many if not most of the articles found were purporting to debate/discuss/enlighten around the 1999/2000 area but did in fact relate or referred to the issues surrounding 9/11, the USA Patriot Act or the UK Anti-Terrorism, Crime and Security Act 2001. That said, in terms of the material utilised, there is a distinguished yet unsurprising time-line linked with the attacks on the World Trade Centre (9/11), that appears to have rekindled or reignited a worldwide debate on terrorism, societal freedoms and human rights by experts and specialists in counter terrorism and international affairs. There is a dominance of writing and articles by eminent scholars with an unexpected impact being that whilst there is a great deal of opinion, many suffer from an underdevelopment of argument, utilising out of date data and viewpoints, many of which are not necessarily supported by reliable intelligence, published crime figures, clear, definable empirical data/research sets or findings.

With these issues taken into consideration there are several key publications, legislative documents and academic articles that have been critical to understanding the dilemma of legislative vagueness (Skolnick 1996; Reiner 1978; Loftus 2009), that have aided the success of the project and has

informed and shaped and triangulated the overall outcome of the project. These documents were utilised extensively in the one-to-one interviews with key actors who were instrumental in the development of the Bill/Act (Rt Hon Jack Straw and Lord Alex Carlile), the use and deployment of the final power (Chief Constable Andy Trotter, Deputy Commissioner Craig Mackey, Assistant Commissioner John Yates and Commander Tony Eastaugh) and the fall out of the use of the power (Pennie Quinton and Bennett Obong). Due to the subjective nature of one-to-one interviews and their personal accounts phenomena (Wilson 2004:3), this professional doctorate decided to support any findings utilising a qualitative case study approach as it main data collection method as detailed extensively in chapter two.

In addition to the above and in terms of historical reference data points or data periods to concentrate upon, the author decided to separate this literature review into three separate time frames to assist with data capture and data analysis. These were, firstly around 1922 to the late 1990's in terms of the Irish terrorism backdrop, this being to explain and explore the issues surrounding why the UK Government considered it necessary to create the 2000 Act. Secondly, 1998 to 2000 in respect of the actual Terrorism Act 2000, in order to explain the parliamentary context, initial supporting evidence and factors for the inception and creation of the Act and thirdly, from 2003 to the present day, thus moving from the Irish background history of the Act, through the creation period and finally bringing the professional doctorate up to date (2012), looking at the introduction of New Terrorism (Lacquer et al) and where we are today in respect of a replacement for Section 44.

2.2 Q1. In terms of legal precedence, if any, where do such exceptional powers derive?

In order to appreciate, understand and constructively look at the present UK laws and legislation, one needs to look backwards into recent history. In Giorgio Agamben's State of Exception,[34] Agamben points out that the principles in his state of exception construct is a paradigm of government, in that the very nature of this particular concept is one of necessity rather than a '*normal*' political state problem. Agamben continues to explain that this is a point that is between politics and law and it is a widely held belief that the state of exception constitutes a point or moment in time where there is an imbalance between public law (criminal or common law) and political fact (Saint-Bonnet 2001:28). Examples of that moment or point of imbalance would be a civil war, insurrection or a resistance movement, albeit an ambiguous, uncertain, borderline fringe, moment / point at the intersection of the legal and political nexus. In an attempt to define what a '*state of exception*' is for the purpose of this chapter and the professional doctorate as a whole. Schnur (1983) defined 'state of exception' or '*state of emergency*' as being from the French translation (expression) as '*état de siège*' which originated in the French Revolution, as that being established with the Constituent Assembly's decree of July,

1791. The term was also used in the Directorial law of 27th August 1797 and in Napoleon's decree of 24th December, 1811, taking the forms of '*état de siège fictif*' or '*état de siège politique*', as oppose to the military state of siege. *Siège* (siege) deriving from the Old French *sege* which means '*seat, throne*', from the Latin '*sedere*' meaning '*sit*'. In the military sense, from the 14th century, the notion is from an army "sitting down" before a fortress. It means, in short, the suspension of the Constitution or of the juridical law by a sovereign power, a head of state or the Parliament. Schnur went further and also referred to a '*state of exception*' as a '*legal civil war*', linking his theories around the Nazi state of 1933 when Adolf Hitler took power and proclaimed a '*Decree for the protection of the people and state*', which immediately suspended the Weimar Constitution concerning personal liberties of the German people. In an effort to refocus and to move this chapter back on, one must move from historical references to very recent modern history to understand where the 2000 Act grew out of and where the issues of a modern day crisis ultimately forced the hand of a Labour Government. As part of the initial research '*topic area*' gathering phase, the author decided to research the area of legislation development, formation and how the role of intelligence agencies, secret and non published information, features in the aspect of law making. In the UK, Hennessey (2007) highlighted the challenges that the British intelligence agencies and other government supporting agencies/bodies (police, DVLA, Tax and housing), had surrounding the collection, analysis and usage of private and personal information, especially around the difficult topic of national and international security and having to move from a secret state to a protective state. Mottram in his essay within the same book went on to question the impact and significance of the new protective state and how Whitehall has utilised this data to bring about 'sweeping' changes in law and government (protecting the citizens in the twenty-first century). As detailed in the previous question (1), Omand questioned how the UK now and in the future would respect the future of ethics, democracy, human rights and the dilemmas of using secret intelligence for public security.

In terms of additional terrorism legislation, the early part of the twenty first century, did see a *consolidation* of previous anti terrorism legislation under the Terrorism Act 2000, which saw many of the existing sections comprehensively extended to cover all forms of terrorism, not only Irish terrorism. This allowed the law makers to reinforce the benefits of enhanced legislation, demonstrating that the UK needed a more robust and strengthened counter terrorism response as the previous legislation was insufficient to cope with a terroristic world risk society. Beck (2002). In 2000 the Act was quickly followed by the substantial Anti Terrorism, Crime and Security Act 2001 which was speedily passed into law by the UK Parliament in the aftermath of 9/11. This enhanced the powers that the police and security services were given in respect of freezing assets, persons being suspected of belonging to a terrorist organisation and most controversially allowing the detention of foreign terrorist suspect indefinitely, once certified by the Secretary of State (Home Secretary). This

particular clause has received immerse publicity in the recent case of Abu Qatarda and the fear of returning him to his native Jordan and the possibility that he may be tortured should he be returned. In response to a growing uneasiness in the UK media surrounding the case of Gillan and Quinton, the British police under the guidance of the Association of Chief Police Officers (ACPO), commissioned and sponsored a comprehensive rewrite of the practical advice on stop and search for the UK police forces. This revised advice (Practice Advice on stop and search) was published and adopted by all forces in 2006; it included a dedicated section on Section 44 counter terrorism stop and search. As mentioned this was further supported some three years later by the updated version of the United Kingdom's Strategy for Countering International Terrorism (CONTEST), published in March 2009.

As to what benefits has this enhanced legislation given to the Government, police and the community is dependent on what side of the political divide you decide to place yourself, the Government side would state that their current legislative approach has revisited and revised Labour's attempts at strengthening our terrorism laws, whilst being aware of the fundamental principles laid down in Lord Lloyd of Berwick's report in 1996. The UK Government supported the concept that all legislation against terrorism should approximate as closely as possible to the ordinary criminal law and procedure, any additional statutory offences and powers may be justified, but only if they are necessary to meet the anticipated threat. That they (laws) must then strike the right balance between the needs of security and the rights and liberties of the individual, critically for the need that additional safeguards should be considered alongside additional powers and the law should comply with the UK's obligations in international law. Taking all of the above in mind, Labour does overtly claim the credit for being tough on the causes of terrorism and not being afraid to be unpopular.

Whilst researching the Royal United Services Institute for Defence and Security Studies (RUSI) paper entitled 'Re-Balancing Security and Justice, the reform of UK Counter Terrorism Legislation', the author noted that the report also reiterated that the flood of new CT powers that have took place during the 2000's has been met with unyielding condemnation from various aspects of British society, especially from solicitors and legal analysts who felt that these new laws were serving to alienate certain parts of our society, eroding our civil liberties and creating an environment in which we as a nation were too security oriented. It is sometimes overlooked that these legislative measures were introduced in order to enable the police and security services to do their job in facing an entirely new threat, and there were evidenced operational requirements that made these laws necessary. As a leading commentator on this subject, the author felt that although many others felt that these powers were not appropriate, he felt that these powers provided practitioners with a framework of how to use these new and wide-ranging powers, the use of utilising high profile case studies, practical scenarios and checklists, worked effectively in the MPS. Moving onto the latest stop and search powers, Section

47A (the replacement for Section 44) the UK Government has raised the threshold to a level that is extremely high and most if not all commentators agree that it would take an act of terrorism that is actually in progress before the current Senior Police Commanders and Government Ministers would risk authorising use of such stop and search powers again. Therefore, some senior figures (Hayman) maintain that the current enhancements and changes to the 2000 Act have left the UK Police without a robust deterrent or operational tactic to an act of terrorism within the UK.

2.3 Q2. Why did the United Kingdom (UK) Government, Police and Security Services believe they needed exceptional counter terrorism powers and what is the case for and against such powers/legislation?

Before moving onto the main thrust of this particular question, one must remember that in terms any reduction of UK citizens liberty and human rights, we should take a moment to remember that the issues surrounding question of liberty of the citizen go way back to 1215 and the signing of the Magna Carta. The *'rights of the person'* not to be subject to arbitrary arrest (*Habeas Corpus*)[35] has been part of English law since the late seventeenth century. These principles are part of a wider complex historical route of rendering the executive accountable to Parliament and through the latter to the actual people of this country. There are many examples of these rights and liberties being challenged by past Governments. In the late eighteenth century, William Pitt's Government arrested and charged several men suspected of dangerous sympathies with the anti-republican ideals of the French Revolution with treason. Thankfully, the unsuccessful court hearings that followed were all conducted in the name of national security. The level of fear of Napoleon Bonaparte, and the Irish rebellion in 1871, saw wide spread suspension of *habeas corpus* and also the use of *detention* without trial respectively. Slightly, more recently, the *Defence of the Realm Act of 1914* allowed for harsh powers of internment and of restrictions of liberty. Just prior to World War II, *the Emergency Powers (Defence) Act* allowed for the Home Secretary to authorise the imprisonment of persons on the basis of the Home Secretary's belief that a person was *'of hostile origin or associations'*. Those identified as sympathising with fascism (most notably was Oswald Mosley)[36] was interned during the war.

The so-called *'troubles'* in Northern Ireland from the 1960s to the 1990s has claimed the lives of over 3000 people, saw the abandonment of trial by jury, the authorisation of detention without trial, the introduction of internment and the passage of the Prevention of Terrorism Act 1974, which was renewed annually. The perception that recent anti-terrorism legislation undermines civil liberties has its own motives and method (and there are new and distinct characteristics to the threats that the government has based its justification for legislation upon), but there is a rich historical context into which all of the current debates fit (Bindman 2005)[37]. In recent years, concerns over the undermining

of civil liberties and human rights reductions under the Tony Blair government, as outlined by Feakin, Wilkinson, Carlile et al (2012), centred upon counter terrorism powers but those concerns and indictments, are often expressed in respect to other policies of the government, notably around immigration, asylum seekers (legal and illegal) and national identity cards. Legal and illegal immigration has become a major political issue not only in the UK but across the European Union and other non-member states. These were seen as matters of civil rights, along with concerns about the deportation of failed asylum seekers to countries where they may face danger (Abu Qatarda et al). Although this is noted by many as a very difficult and different issue, when policing the new extremism (Gregory 2009), it is nevertheless on occasion linked to asylum seeking, anti-terrorism legislation and the government's proposal to introduce identity cards for UK citizens. *The Identity Cards Bill of 2005* was seen by the UK Government as a viable means to combat illegal immigration, fraud, terrorism, organized crime and theft of identity.

However, the mainstream media and liberal critics alike raised apprehension about actually what information would be retained on the identity cards (biometric data), what else it would be utilised for and concerns grew that their introduction could lead to the criminalisation of many who refused to carry them. Many politicians and detractors of the system viewed the introduction of ID cards as potentially undermining the basic liberties of UK citizens. Moving closer to the present day, many commentators talk (and write extensively) of the transformation or realignment of ordinary criminal legislation and the criminal justice systems, Hillyard, Agamben, Ericson et al, maintain this is in part due to the suggestion (mediatisation)[38] of a state of crisis or exception circumstances (normally following a terrorist incident of some kind). In which the Government of the day reduces, diminishes or legislates the ordinary common criminal laws to one of Agamben's *'State of Exception'*. An example of this can be seen within the legislative justice system framework of Northern Ireland. Anti-terror laws and measures relating to Northern Ireland have always been seen as highly controversial and anti human rights.

The system in Northern Ireland has been fundamentally changed in order to deal with the rising terrorist activities, increase in sectarian homicides and the constant attacks on the law enforcement agencies in the Province. In order to support this move away from utilising the normal legal framework, juries were abolished and the established 'rules of evidence' were substantially changed with limitations placed on the right to silence, the lowering of the standard or burden of proof and an acceptance that in certain circumstances (exceptional circumstances) methods of obtaining evidence, robust interrogation techniques, the widespread use of informants (Super Grasses) was seen as necessary to counter the perceived threat. To this day many refer to there being a two tier or separate criminal justice system in Northern Ireland in that if a person is suspected of being involved in a

criminal offence, then he/she will be dealt with in a completely different manner than if they are suspected of involvement of a terrorist offence. It is widely accepted that this alternative criminal route albeit in parallel, deals with acts of political violence in a very different manner. This move away from a single criminal justice system can be seen in several ways, firstly through the introduction of specialist legal powers and procedures, length of detention (in many cases without charge), access to witnesses and secure separate custody locations, albeit that the detention times and methodology of custody rules have now morphed into the criminal procedures and policy side. Secondly, due in part to the success of prosecutions of terrorist crimes many of the powers and techniques have now been incorporated into the wider criminal justice system. Many commentators have recorded their thoughts and state that the entire system was discredited when the rule of law was replaced by the need for political expediency.

Lastly, a case could also be made that one of the aims of any terrorist organisation is precisely to provoke states to respond disproportionately, thus revealing their true nature, that is, willing to utilise oppressive unjust tactics/powers to impose their rule/wishes on others. In Hillyard's (2005) essay, in which he writes about the lessons learned from Ireland,[39] one can see that the analysis gained from his extensive research on this topic appears to show widespread violation of human rights and that his studies suggested that over use of certain tactics, such as stop and search, detention and house searches by the British Army were counterproductive. He goes further and maintains that the continued use of such tactics over a long period grind downs the democratic processes by undermining the principles on which our social norms are based and in many cases disaffect the communities from whom the authorities need support in dealing with terrorist violence. In respect of these claims, the author spent a great deal of time and research effort in attempting to understand how these actions (deployments) could be seen by members of the community and in particular communities in the Capital, in an effort to ensure any lessons learned from this work could be represented in the final recommendations of this professional doctorate.

In chapter six the case of study of Gillan and Quinton, one can see that where exceptional powers are utilised in a traditional public order setting, even if a terrorist undercurrent is present, there is an enormous potential for the overriding terrorism powers to be used in a time and place that there were never developed to deal with. Assistant Commissioner (AC) Hayman when asked around the problematic issue of counter terrorism legislation stated that he believed that '*we needed fewer but more focused laws*' and that much of the issues surrounding the 2000 Act stemmed from the extended debates that went on around the legislative programme. This extended period of debate had not only dogged the Labour Government but had impacted on the law and intelligence services. AC Hayman maintained that these laws were designed and created to prevent further attacks and to ultimately

punish those responsible for the attacks, unfortunately the UK does not have a good reputation for delivery of such powers. AC Hayman went on to state *'And while the politicians and judges struggle to find laws that worked, the threat increased'*. The author in his many interviews and conversations with senior officers observed that there appeared to be a growing anxiety among many in policing circles that they were not being listened to in respect of the increasing threat. This led to the police feeling isolated on many issues in respect of the use of stop and search powers and the need to ensure that the Capital was protected. Whilst Lacquer et al argued that there was a 'new' terrorist threat (which was very different from Irish terrorism); it was this new emerging threat that was seen on both sides of the Atlantic by those in power as needing to be combated by new legislative powers and new CT techniques which has also prompted theorists to try to explain these developments. Hayman kept referring to a central theme of *'the threat was real, and that since 2001 it had not declined, if anything it has increased'* (2009). Before moving off the subject of new terrorism, mention must be made of the emerging right-wing extremist groups such as the English Defence League (EDL), as it has be accepted for a long time that several of the organised right-wing groups pose a very real threat to social cohesion and community wellbeing.

This heralded a very controversial and difficult time for the MPS and the security services and in order to compare and identify useful comparisons as to how different countries have interpreted this *need* for additional, enhanced or strengthened terrorist legislation, it is worthy of taking a few moments to look at five different yet similar countries and how they have reviewed the *need* (UK, USA, Canada, Australia and Norway). The UK, USA and Canada have all three decided that they require separate and immensely powerful (in some cases draconian) counter terrorism powers, with additional supporting legislation for the prosecutors, the courts and their criminal justice systems. Whereas, following in the wake of the 9/11 attacks, the Australian Government introduced a wide ranging collection of new counter-terrorism laws. Although these laws are set within a terrorism context, they form additional laws sitting under the existing criminal justice system and have created new criminal offences, new detention and new questioning (interrogation) powers for the Australian Security and Intelligence Office (ASIO) and the Australian Federal police, new powers for the Attorney-General to proscribe terrorist organisations, new ways to control people's movement and activities without criminal convictions (control orders), and new investigative powers for police and security agencies. These new laws are seen by many as unprecedented in their history. Utilising Australia as a brief case study, the concerns initially raised were around the heightened risks of domestic terrorist attacks and the Australian legislative agreed that although they did require new and innovative measures to protect their citizens and to support their national counter terrorism strategy, they did not feel it necessary to move away from the existing legal framework.

The fundamental challenge facing the UK today is how to effectively deal or respond to the increased threat of terrorism without abandoning human rights legislation that the UK have signed up to as a free and democratic society. In any society it is always going to be a challenge to strike a balance between protecting the citizens, maintaining a commitment to human rights legislation and enforcing/supporting national security. In many of the long standing debates about national CT security versus human rights, it is often cited or characterised as an dispute between the realists, who on one hand appreciate the need for robust and strong CT powers and the liberals who are out of touch with the seriousness of the current situation. Whilst there is a plethora of community-based models of policing and many have gained increasing prominence within the counter-terrorism arena, human rights are an area that has traditionally been dominated by high visibility uniformed centered models of policing. In order to move forward aspects of this debate the notion of trust within a counter-terrorism context will rest upon the wider understanding and importance of cultural intelligence for policing within a counter-terror context, a context marked by suspicion, distrust and secrecy. (Spalek 2009)[40].

2.4 The Concept of Counter Law

One argument against the utilisation of exceptional legislation comes from the scholar and author Richard Ericson. Ericson (2007) proffered that actually the majority of our fears are based not on the true probability of something terrible happening to us, but is a result of what he called the *catastrophic imagination*, which is an irrational fear based on what could possibly happen, despite the true probability of dangerous events actually occurring. Our fears can partially be attributed to a miscalculation of risk or as risk mitigation professionals call it, we are immensely risk adverse. Ericson maintained that because we live in insecure times, with the issue of national security, threats of terrorism and the (at times) overwhelming media coverage of terrorism and terrorist attacks, domestic insecurity, protesters seen everywhere (anti-social behavior), social security at the top of the political agenda. This awareness of terror, terrorism and growing social unrest forces the government and corporations to spend an enormous amount of tax payers' money and the nation's security budgets on risk assessment and risk management solutions. Ironically, this activity reveals the limits of risk-based reasoning and if anything intensifies the wider feeling of insecurity. Constant media images of catastrophe are fuelling the ever growing fear of terrorism, which makes precautionary behaviour pervasive, and therefore extreme security measures are institutionalised in the form of counter-law. The notion of counter-law includes both law against law and surveillance. New laws are enacted, and new uses of existing law are invented, to erode or eliminate traditional principles, standards and procedures of criminal justice. Ericson maintained that these types of counter-laws have the effect of treating everyone as if they are guilty of criminal intent. Such counter laws,

criminalise not only those who actually want to cause harm / or cause harm but in the overall process include those merely suspected of being harmful or dangerous.

When discussing fears whether rational or irrational, a common example cited within this phenomenon is the statement around the fear of being attacked or assaulted by a complete stranger in one's own home, when in fact statistically the reality in the UK is that the majority of assaults that occur happen at the hands of someone who is known to the victim. Ericson directed much of his work on the area of *'what feeds our fears'* and why are we not living in a world in which we can accurately calculate risk and danger, thus responding appropriately to these identified risks. He pointed out that the more fearful that society becomes, then the more society relies on the state for domestic security and protection from a number of unknown or unseen threats. The counter argument against this position is that we are now relying heavily on the state to reduce the danger (or certainly our fear of a catastrophic incident, 9/11, 7/7 etc) by creating environmental and political initiatives to change our perceptions of the world around us. Even though many of the original ideas or concepts of fear (security assessments / alerts) are predicated by the state and the media. In order to take this concept of fear forward, one needs to look at the four components of Ericson's theory. He maintained that what feeds the catastrophic imagination in our society is that society is continually being presented with a perceived threat through official channels such as the state approved newspapers, television and radio outlets (the media), that these threats result in the creation of rational and sometimes irrational fears, that once these fears have been highlighted and projected upon society the perceived danger becomes an accepted reality by mainstream society and that lastly, society is either presented with a solution to the perceived threat, or is subjected to a reduction of the fear though various state initiatives, one such solution is the use of new or exceptional laws, the reduction of freedoms, movement, ID card requirements, communication and association monitoring/surveillance. Not dissimilar to the treatment of the Irish community in the early 70's and 80's.

It's clear that as a society (albeit communities within communities) the average person spends a great deal of time fearing the known's and the unknown[41]. However, this may not be an entirely bad thing. As a society we have learnt a lot from our history and when preparing for the unknown catastrophes, this mindset actually helps us (society) to deal with those uncertainties, in many ways this allows us at the very least to manage our fear and ultimately to justify our responses. Ericson's 2007 theory of *Counter law* (the use of exceptional laws) states that this type of stepping aside from the norm, allows governments, their security and police agencies to employ laws to limit or eliminate the prescribed rights that exist in their countries. Counter-law provides government the power to stop or limit activities of their citizens, who they feel are threatening or undertaking activities that are anti-state. This action (to identify a threat or possible dangerous offenders) can go against the long held principle

in law of identifying the *mens rea* and *actus reus* of a criminal act (normal criminal law requirements) and therefore allows for exceptions to the laws, which means identifying a possible threatening act does not need the proof of *mens rea* and *actus reus,* instead, it uses the principle of *finus reus.* This is the idea that if a threat is occurring within a domestic security setting, normal typical procedures and practices of criminal law can be exempt.

2.5 Terrorism and the politics of uncertainty

Following on from his thoughts of counter law, Ericson also talked of *'terrorism is the politics of uncertainty'* in which he spoke of *'Jihadist terrorism'* and the targeting of western values, science, technology and law. He spoke of Jihadists seeking to undermine aspects of our society and creating an undercurrent of uncertainty, praying on citizen's irrational fears and anticipation of terrorist attacks. He continued to point out that their tactics seek to monopolise the ungovernability of modern societies and their tactics are highly effective and in comparison to our policing and defence budgets are extremely cost effective (cheap to train, maintain and deploy). Furthermore terrorist stage destruction events that ensure they will live on in the in the *'vast metaphorical spectator spaces'* of mass media (Taylor 2004:170). These events strike at the western liberal valorisation of life at all costs and an orderly death. They do so by making death unpredictable, irrational and highly symbolic (Bayatrizi 2005). The ultimate example of this type of fear of uncertainty must remain with suicide bombers, as anyone who has examined this phenomenon will be aware. Suicide bombers exploit and capitalise our obsession with uncertainty, AQ and other terrorist organisation that favour this tactic see our fear of death as a weakness and even cowardice, juxtaposed to their fearless embracing of death (Reuter 2004:15). Often supported by family and community, theirs is a spiritual mission in which martyrdom and the afterlife rise above any desire to survive. In reflecting on this form of terrorism, Reuter (2004:16) proffered the notion that terrorists obliterate or step outside of perceived logic, since no creditable legal threat of threat of capture or prosecution can be made against someone who has no desire to live.

All our current concepts of security and penalties are based on this accepted assumption. For example, consider the recent moves to increase airport security, until now, the one precaution that was thought necessary was ensuring that every piece of luggage is matched to a passenger that is on-board, thus the conceptual security framework of the past would suggest that no sane or rational person would ever think of blowing themselves up in mid air, well this was the accepted thinking. The presumption of individual self-interest and fear of death underpins the purpose of the market economy and the power of the state, any form of self sacrifice or suicide bombers cancel this agreement out. Therefore any traditional sense of self management, state protection, deterrence, state or criminal punishment, and ultimately and form of retaliation all become meaningless when faced with an attacker who will

impose the extreme penalty for him or herself at the very moment of his/her victory (Reuter 2004:3). Ericson also talked of the changes to the historical remits of police and the merging of their policing, intelligence and surveillance roles, throughout his career he was interested in how these changes in role has changed their outlook to one of overall security and intelligence personnel, that is on the lookout for a wrongdoer/terrorist in every situation (loss of an age of innocence).

2.6 Q3) What are the dangers, concerns or possible infringements against Human Rights and Civil Liberties?

When reflecting on these dangers, concerns and other issues related to human rights it is perhaps important to observe that if a society compromises on human rights, this action could facilitate the wider terrorist objective in that, by acting as they act or do as they do, the State would be seen as ceding to them the high moral ground and thus provoking in its citizens, mistrust, hatred, tension and even a complete breakdown in State authority. Furthermore studies have shown that if the State behaves in a manner that is seen as not appropriate or proportionate than sections of the community transfer their loyalty and trust over to an organisation that they believe in. Therefore maintaining the moral high ground and cherishing human rights is not merely compatible with an effective and successful counter-terrorism strategy but is the correct course of action. That said, in respect of balancing human rights against national security, it is the UK Government's stance that human rights law was forged in the wake of shocking periods of global conflict and already strikes a balance between security interests and the rights which are considered fundamental to being human. The UK '*DirectGov*' website has as its opening headline the following declaration: *'Anyone who is in the UK for any reason has fundamental human rights which the government and public authorities are legally obliged to respect. These became law as part of the Human Rights Act 1998'*[42]. That said in 2004, the House of Lords accepted that the threat of terrorism may constitute a 'public emergency'. [43] It further emphasised that *'measures taken by a member state in derogation of its obligations under the Convention should not go beyond what is strictly required by the exigencies of the situation'*[44]. One must remember that in 2004, the state of anxiety was such: The Prime Minister (Blair) had gone as far as stating that the threat from new terrorism is comparable with the that presented by Nazism in the mid-twentieth century (Waugh 2004:5)

In Lord Hoffmann's report (2001) *The Greater Danger - Balancing national security and human rights* he stated; *"[T]he government has a duty to protect the lives and properties of its citizens. But that is a duty which it owes all the time and which it must discharge without destroying our constitutional freedoms .... The real threat to the life of the nation, in the sense of a people living in accordance with its traditional laws and political values, comes not from terrorism but from laws*

such as these. That is the true measure of what terrorism may achieve. It is for Parliament to decide whether to give the terrorists such a victory" Lord Hoffmann[45]. In December 2004, the House of Lords ruled that the law which allowed Britain to detain foreign nationals suspected of terrorism indefinitely and without trial, was a breach of the UK's obligations under the Human Rights Convention. However, one years later, after the attacks in London on 7th July, the Prime Minister Tony Blair suggested that Lord Hoffmann (one of 8 judges that ruled against the Anti-Terrorism, Crime and Security Act (ATCSA), would not now make such comments. The Prime Minister's assertion was that the UK Government had been right and the judiciary was wrong – that limitations on human rights and civil liberties are required in response to the security threat which Britain is now facing.

To support this assertion, it should be noted that since 7th July 2005, the UK Government *has* gone further. It has indicated in its National Security Strategy of 2010 (*A Strong Britain in an Age of Uncertainty: The National Security Strategy*)[46] to Judges that they must be prepared to consider national security concerns as a balance to potential human rights violations. The argument is that there is a greater danger to the well-being of British citizens which comes from terrorism than there is from an erosion of the basic human rights and freedoms upon which the UK is based. So we are being urged to recognise the need to make sacrifices of fundamental human rights in the name of national security. Leaving any considerations or concerns of the UK Government to one side, and take these acts to be a reasonable response to the terrorist threat that is facing Britain, then in reality the political manipulation of the law and those entrusted with the responsibility to apply it, may represent a far greater danger to the security of the nation and to democracy than abiding by the principles embedded in the international conventions introduced after the Second World War. With this thought in mind, we need to give even greater notice to Lord Hoffmann's warning than we did before those awful events (7/7) had taken place.

The current events must be placed into context and noted that it was after the Second World War, which had witnessed the horrors of torture, death, destruction and genocide, that countries came together to lay down the principles and framework to limit the possibility that the world would again witness such widespread violations. They did so in declarations and conventions which dealt with genocide and torture and with civil, political, economic and social rights, rights which were considered universal – the right of every individual. These international laws deliberately put the rights of people above the rights of states out of a realisation, borne out of harsh reality that states sometime acted in self-interest to the detriment of its citizens and humanity. In terms of the wider advantages of laws established between states, is that they (the laws) do not lend themselves so easily to political manoeuvring. A valid question at this moment in history is: are we witnessing the re-

writing or disregard of the laws which have maintained some semblance of world order with the consequence that we are creating instability, undermining the very existence of the order forged out of the Second World War. Interestingly, when Britain went to war against Iraq some claimed it did so after manipulating international and local laws in order to ensure that it justified the political decision that had previously been taken. One should remember that when the UK Government were unable to obtain the necessary resolution from the UN Security Council authorising military intervention in Iraq, the laws were re-interpreted to circumvent the institution established by international agreement to avoid states acting arbitrarily. [47]

Developing this theme (stepping outside of the norm) and moving into the twenty first century, O'Neill's *the Suicide Factory* (2006) details the life and works of Abu Hamza, who from his *infamous* speeches at the London Finsbury Park Mosque admitted that he had recruited and directed hundreds of followers to think about their beliefs, to travel aboard and to acquire training that could lead them onto killing non Muslim people in the name of their cause. Stories and headlines such as these constantly remind the public and politicians that the war on terror was and is here in the UK and we are not winning (7/7 & 21/7). One such story related to Rajib Karim, the British Airways (BA) worker convicted of an airline plot and sentenced to thirty years (who was self radicalised from online teachings, similar to those of Abu Qatara), stated that he *'looked forward to meeting them in the court of Allah on the day of judgment when ultimate justice will be served'*[48].

In the early days, Abu Hamza continued to openly preach that the imprisonment of convicted terror suspects in UK prisons does nothing but reinforces the hatred of Islam and leads to further injustice against Muslims and therefore requires radical action by his followers. In order to highlight the surrounding issues of the continuing extradition saga of Abu Hamza, Burleigh (2006) an author and a Sunday Times columnist, wrote a chilling article entitled *'Caged Lions of Islam have us cowering'*[49] in which he stated being that in his opinion the UK Government appear to be losing its grip on these issues and that the UK public are losing faith in the justice system. This may change somewhat following his recent extradition to the United States on terrorism charges (October 2012). Burleigh asked the question that when it has been proven that the main terror suspects are communicating with one another, passing on dangerous information, plotting terrorist activities and continuing to radicalise other prisoners, why does the prison system allow for such things to continue. He cited that this issue is not new; two decades ago the prison service of Northern Ireland researched extensively and published ground breaking studies into the management of Irish terrorist prisoners (HM Prison The Maze)[50]. Burleigh expanded upon published research that showed how that allowing inmates to socialised with one another and being allowed to form powerful groups, dominated their environment, controlled entire wings and intimidated the guards and senior officials into letting them (the prisoners)

maintain their own justice and punishment systems within the wider prison service. In written and verbal evidence to a Home Affairs Committee of MP's that attended Belmarsh prison on the 28th November 2011, MP's were told that an inmate on remand was persuaded to undertake a martyrdom mission within 72 hours of being housed a few cells away from the radical Jamaican preacher Abdullah al-Faisal. Belmarsh's inmates are 20% Muslims.

However, to contrast this article, where Burleigh is potentially in danger of *overstating* a simplistic answer to the worsening situation in the prison system, he implicitly contrasts the violence of 20th-century political religion with Christianity. Thus on first reading *Sacred Causes* one might assume that all the troubles of 20th-century Europe could have been avoided if only it had retained its traditional Christian faith and not allowed any other faiths to enter Europe and in particular the UK. To contrast this viewpoint, one only has to read any informed literature around AQ, its history, aims and beliefs to see the opposite. Interestingly, Coll (2008) points out that the reality around the *Al-Shawa* (the Awakening) from an Islamic point of view is very different to what is portrayed, the Awakening lasted between 2001 and 2008 and its aim was to raise awareness of the need for '*Jihad*'[51] in the Islamic world. In terms of the gaining an understanding of why the UK Government is so fearful of AQ and its 'network of networks' (Affiliates), it is necessary to look at the information streams and the media focus on the spreading of the AQ message.

The author cannot leave this part of the professional doctorate without noting and highlighting that a huge part of the debate surrounding Section 44 has been linked closely to previous issues around the use of other stop and search tactics. The general use of stop and search has been controversial within British policing for a long time. The Scarman Report (1981) articulated how the misuse of stop and search has alienated minority communities[52]. According to the Scarman report, the Brixton Riots (1981) were a spontaneous outburst of built-up resentment sparked by particular smaller incidents. Scarman went onto explain in his report that the riots took place as a result of a series of complex political, social and economic factors that created a disposition towards violent protest. The report highlighted problems of racial disadvantage and inner-city decline. He championed the call for *'urgent action'* and stated that action was needed in order to prevent racial disadvantage becoming an *'endemic, ineradicable disease threatening the very survival of our society'*. Scarman found unquestionable evidence of the disproportionate and indiscriminate use of 'stop and search' powers by the police against black people. The report details the use of arbitrary roadblocks, the stopping and searching of pedestrians and mass detention. Communication between police, community and local authority had effectively collapsed before the riots. Scarman recommended changes in training and law enforcement, and the recruitment of more ethnic minorities into the police force. According to the report '*institutional racism*' did not exist.

Interestingly, many of Scarman's reforms were implemented and The Police and Criminal Evidence (PACE) Act 1984 set out the way police officers were to carry out their duties. It stated specific codes of practices for police procedures and established the rights of people detained by the police for a suspected crime or offence. In contrast to the report, the Commission for Racial Equality (CRE) said that Scarman's wider social and economic reforms were *'seriously out of key'* with the political tempo of the times. Scarman later acknowledged he could have been more outspoken in his report about the necessity of affirmative action to overcome racial disadvantage. In chapter four, further discussion around the use of stop and search tactics take place and mention of the low numbers of complaints in respect of Section 44, a handful of complaints have been received in respect of Section 44 as opposed to the many thousands received on a yearly basis for the main crime based stop and search legislation.

Finally, and in answer to Q3, one has to consider the part that such extreme views play in providing a framework for government and state thinking. The recently published and circulated AQ media strategy, states that AQ has now moved into the *'Mobilisation phase'* or *'Trumpet of War'* phase (*al-Nafeer*)[53], this phase will take place from 2008 to 2015 and will raise the forces of Islam against the West, right across the Islamic world to end *'the period of corruption'*. The Liberation or *al-Taheer* phase begins in 2015 until 2022 and will see the dissolution of corrupt regimes, and lastly the Caliphate or *al-khilafa* meaning the unification of the newly-liberated states into a united organisation that will save Islam from the West. This four phase long term strategy is widely available and is referred to in many of the Arabic writing that this review has encountered. It is this type of reporting and wider circulation of AQ's aims and objectives that lead many in the media to speculate that the crisis with regard to international terrorism is increasing and requires constant monitoring and in many cases strengthened legislation which may in fact see the reduction of certain freedoms, increase vigilance by the security and police services and possibility a reduction in adherence to human rights considerations and legislation.

Chapter 3.

Methodology

3.1 Methodology Structure

This chapter will explore how and why the data and wider material for this professional doctorate was researched, captured and stored. How the interviews and focus groups were conducted and why it was constructed and structured in this format. Then the chapter will move on to explain how the elements within it have evolved over the past four years and record some of the difficulties faced during the analysis phase of this professional doctorate. Throughout the chapter the reader will be taken through an academic and personal voyage that has produced the majority of the data that has supported the overarching assumptions and recommendations within the professional doctorate. In uncomplicated terms, it is hoped that this approach will allow the author to present a comprehensive account of how counter-terrorism has evolved from policy, law and legislation to police procedure and to hypothesize as to the wider implications that such a shift in counter terrorism may have for liberal democratic states. This chapter will explain why the different methods were utilised, the benefits, any disbenefits of each of the chosen methods, include the research setting, the ethics considered, the category of respondents, the instruments used and the practical considerations of utilising confidential, restricted or sensitive data/information to inform the overall thesis. The end result is a product of rigorous modern academic methodology combined with the extensive practical experience of a senior detective and leader within the counter terrorism environment of the Metropolitan Police Service (MPS), utilising both *observation* and *knowledge* of the armed services, private industry and the policing environment of over thirty five years.

In respect of access to sources and materials relating to the professional doctorate, all materials utilised were gathered using *'Open Source'* that being non confidential police or Home Office data. It is further confirmed that there are no direct ethical liability for the author with regards to the implementation and analysis involved in this professional doctorate. It must be noted that the author is a serving senior police officer (Detective Chief Superintendent) with and accepting that he does have an in-built subtle bias (insider bias) and prejudice towards the host Service (MPS). However as a senior police officer and a career detective, who has been involved on many occasions in observing and documenting many diverse types of confidential police inquiries and investigations, the author believes that this professional doctorate has been undertaken in an unbiased (within an acceptable tolerance) manner, that it is transparent, fair and impartial and has documented any and all research

and subsequent findings to the best of his abilities. Taking that into account, since the professional doctorate involved multiple and diverse sources of material involving both police and non-police material alike, there had to be a *balance* struck in terms of presentation and analysis, hopefully a true and fair representation of the data has been achieved. As part of the preparation for this professional doctorate, several essential points were highlighted during the research phase one being, that writing a faulty or vague literature review is one of many ways to derail a professional doctorate and that if the literature review is flawed, the remainder of the project may also be viewed as flawed, because *"a researcher cannot perform significant research without first understanding the literature in the field"* (Boote and Beile, 2005:3).

Furthermore this professional doctorate wanted to certify and reassure anyone reading this professional doctorate and attempting to utilise its findings that they could be confident that a robust and rigorous review of current and previous stop and search literature (and related material) have been examined. The aspiration has always been that this document can be read effortlessly, that it is unambiguously presented and the conceptualized literature review indicates to the reader that the rest of the professional doctorate has been completed in the same if not similar vein. Boote and Beile (2005) talk about *'when encountering an inadequate literature review, examiners would proceed to look at the methods of data collection, the analysis, and the conclusions more carefully'* (2005:6). In order to demonstrate that considerable levels of thought and preparation has been utilised in this phase of the professional doctorate, prior to researching the main areas of the work, the author set about researching methods of capturing and recording the key elements of a literature review. From the outset of this exercise several key components became apparent and that some needed to be formerly addressed. These were that the author is an eclectic, enthusiastic and energetic reader (and needed to be more disciplined and focused as to the type of material sourced, examined and cited). Much of the material read was either background or supplemental to the actual project and had to be viewed as such and much of the material/articles/literature was read/researched through either interest, out of necessity or by way of a third party (associate/tutor/supervisor) recommendation.

3.2 Mixed Methods Research

The intention of the professional doctorate was to utilise five of the key social research methods, those chosen were:

- One-to-one interviews,
- A single extensive and well documented case study (albeit smaller case studies are also included),
- Internal (police) focus groups,

- Bespoke questionnaires and
- Document analysis in order to combine qualitative and quantitative approaches for the project.

Bryman (2008) refers to this collection of approaches as '*Mixed Method Research*'. Mixed methods research is a growing domain of methodological preference for many academics and researchers from across a variety of discipline areas. In 2006 the *Journal of Mixed Methods,* in its call for papers defines mixed methods as 'research in which the investigator collects, analyses, mixes, and draws inferences from both quantitative and qualitative data in a single study or a program of inquiry'. Creswell and Clark (2007:5) define mixed methods as follows: *"Mixed methods research is a research design with philosophical assumptions as well as methods of inquiry....the use of quantitative and qualitative approaches in combination provides a better understanding of research problems that either approach alone"*. The author decided to utilise a mixed method approach as it inherently suited the overall collection and analyse style of the thesis, seemed to provide the greatest amount of flexibility within the project and most of the methods were familiar to officers and staff within the policing environment (focus and working groups, structured interviews and one to one informal interviews).

3.3 The interviews and directive conversations.

The key contextualisation component of the professional doctorate was achieved by the utilisation and analysis of a number of interviews with principal stakeholders, one-to-one directive conversations, correspondence with and meetings (non formal interviews). At the beginning of the professional doctorate and as part of the initial scoping exercise for this dissertation and to be rooted in living political history, nine key stakeholders within the associated environment stood out as being vital to understand the historical, legal, social context and rationale for the use of these powers. The stakeholders were:

1. The Right Honourable Jack Straw MP (2000 Government lead). Initial correspondence via his office, a date and time was agreed for a formal interview and a full list of question send for prior consultation. Unfortunately, due to a death of a fellow MP, Straw cancelled at the last minute and then was unable to attend a second and third interview. The private office did however pass comments and references back to the project via telephone conversations, advice on access to public speeches, previous interviews and articles surrounding many of the topics (questions) submitted in initial interview letter (see appendix E).
2. Chief Constable Andy Trotter (2003 MPS Deputy Assistant Commissioner and Authorising officer for the use of the stop and search powers in 2003). Letter sent and date and time for

an interview was agreed. The interview was tape recorded and has since been transcribed and abstracts of the interview do appear within this thesis. Permission sought and agreed from Mr Trotter to utilise the material from the interview.

3. Ms Pennie Quinton (2003 *Gillan and Quinton Case) person stopped at the Arms Fair and central to the case study in chapter six. Date and time agreed and the full interview was* tape recorded.
4. Lord Alex Carlile (2001/10 Government Independent Reviewer). Due to his position within the stop and search environment, several meetings were arranged over a three year period, prior to the commencement of the project. At the time of the meetings, notes made of the themes and points relating to the changes in direction around the Section 44 and Section 47A work. These notes are not recorded in the project documents due to the sensitive nature of the conversations (national security considerations).
5. Assistant Commissioner John Yates (ACSO 2010 Specialist Operations MPS). Yates was the Assistant Commissioner at the time of the repeal of Section 44 and the move towards the replacement Section 47A legislation and therefore key to the oversight of the current legislative arrangements. Not tape recorded as many of the meetings were by way of the author's role as chief of staff and contained sensitive and confidential material.
6. Deputy Commissioner Craig Mackey (MPS & ACPO Lead for Stop and Search). Multiple conversations during and after Home Office meetings to discuss the death of Section 44, the replacement Section 47A and how the MPS (and how National policing would utilise power). Not recorded as many contained sensitive and confidential material.
7. Bennett Obong (Metropolitan Police Authority Stop and Search Lead). Multiple conversations around the use of Section 44, the review process and the replacement Section 47A legislation, not recorded but notes made.
8. Assistant Commissioner Andy Hayman (ACSO 2007 Specialist Operations). At the time of the terrorist attacks in London, Hayman was the key policing figure in the UK, responsible for the 'uplift' in use of the tactic in 2007, and authorised the MPS wide roll out of Section 44. Not recorded but statement and articles are freely available and have been cited in the thesis.
9. John Toner, National Freelance Organiser – National Union of journalists. Interview conducted on the same day as Pennie Quinton. Toner was instrumental throughout the press and photographers campaign to remove the use of Section 44 and assisted the MPS in creating a national press accreditation 'pass' system, training for police and press and provided various articles and publications to the thesis.

From the outset of this research, it was acknowledged that this was always going to be a major undertaking to attempt to contact, arrange to meet with and interview all of the above persons in such

a short time frame. In addition to this, to hold workshops and focus groups with operational police officers and members of the public and to maintain viable interview notes, transcripts and confidentiality. As mentioned in the original Research Document 1 (RD1), many of the meetings were conducted under Chatham House rules[54], most were not formally recorded (due to the wishes of the interviewee). However, some notes were made and those notes formed the basis for much of the work. By utilising these interviews, documentation, reports, open source articles and questionnaires, the project has reviewed and analysed the creation, evolution and development of the Section 44 Terrorism Act 2000 (TACT) counter terrorism stop and search powers.

It was recognised early on in the process that the most effective way forward during the initial stages of the project was to conduct one-to-one interviews as previous experience taught the author that as well as an interview being a purposeful and powerful discussion between two persons, the clearest information can be retrieved from a well structured interview. Kahn and Cannell (1957:127). The use of interviews would not only assist the author with data and information establishment but would help gather valid and reliable data which was highly relevant to the research question(s) and objectives. Although most police and academic interviews tend to be highly formalised and structured, the author wanted to achieve an informal setting with open and probing questions in order to solicit high quality verbal evidence/data. The types of interviews more commonly used in social sciences research and closely related to the level of formality or structure that was aimed for may be categorised as either:

- structured interviews;
- semi-structured interviews;
- unstructured interviews

The author decided to adopt a semi-structured interview methodology due to the fact that many of the key persons interviewed felt more at ease being part of a conversation rather than a formal question and answer session type interview, although in practice the author did have a list of themes or questions that needed to be covered. This style of interviewing meant that the author could omit certain questions in particular interviews given the specific organisational context which is encountered in relation to the research topic. The actual order or position of questions was also varied depending on the flow of the conversation. In several of the more bespoke interviews (Trotter and Quinton), additional questions were required to further explore the core research question given the nature of the 2003 public order events. In respect of interview setting and surrounding ethics issues, the author established that primary research suggested that conducting one-to-one interviews was the most appropriate instrument to gather specific data in this type of

research project, after a short but reflective period of project and thesis scoping, the author settled upon the key stakeholders listed above. Extensive background inquiries were made and once initial conversations were had and provisionally found to be supportive, formal introductions was made via either a telephone call or via an email to the person or their personal assistant (PA). In order to address any perceived or real ethical issues, a letter of introduction and invitation to be interviewed was sent to all respondents (see sample letter at Appendix E). The letter of introduction addressed the following:

- The purpose of the interview. This was explained over the telephone and reiterated in the accompanying letter of introduction and purpose.
- The need and assurance of anonymity and confidentiality.
- An explanation that the interview would be either a taped (subject to consent) or a contemporaneous style interview (hand written notes), which they would be requested to agree to in advance.
- The time that would be necessary. Interviews generally lasted between 30 - 60 minutes.
- A full explanation of what the final product (the thesis) would be and who would have access to that information (the London Metropolitan University and the Metropolitan Police Service) only.
- That no operational data/information/intelligence would be released from any police or security services systems/sources and all necessary support/authority had been obtained prior to this work commencing from the Assistant Commissioner for Specialist Operations (ACSO) within the MPS. Written report signed by AC John Yates and retained with project documentation, available for inspection should any interviewee request sight of the said document.
- That light refreshments would be available (subject to any dietary and religious requests).
- Lastly, a copy of the '*draft*' questions would be sent to the person ahead of the interview, with a copy of an interview information consent form at **Appendix C.**

The two most common ethical considerations that the author faced were that of confidentiality and trust. On both issues, assurance that confidential or sensitive (identifying) information would be protected was provided. This together with a full and frank undertaking to protect their anonymity assisted in making the respondents more relaxed and open under the interview protocols, thereby reducing the risk of interview bias. Most of the interviews were conducted in the either the author's office, the respondent's office or in a focus group setting at their respective patrol bases or police stations. However two of the interviews were conducted in a neutral setting (their request and identified location) were the interviews of Pennie Quinton and John Toner, both were interviewed in

the Members Lounge in the Tate Modern. The intent was to allow the respondents to relax in their surroundings, where they would not feel intimidated by the interview process. The primary consideration was to encourage free, open, honest dialogue and not to feel that this was in any way a '*police*' style interview i.e. an interview that is to establish facts which could be later used in formal court or hearing proceedings.

In terms of attempting to relax the interviewee and to encourage dialogue, at all times the author dressed in clothes that matched each respondent (suit or relaxed clothing, uniform was worn on occasions to match the duties of the officers in question). The focus of each of the interviews changed according to the person being interviewed, however a central themes did emerge, these being around the understanding of the legislation, the impact the deployment (perceived or real) had on the people (assets) and the interpretation of what was the aim of actually utilising such powers in areas of the capital to protect the citizens and to detect and deter acts of violence or terrorism. As the interviews progressed, the modification or the feel of the questions can be noted. This was due in part to the interviewer (author) becoming more relaxed and aware of the process that was required but also as the interviews developed from a semi-structured model to a broader linear structure.

3.4 The Gillan and Quinton Case study

In order to add real depth to this work, it was decided early on in the doctorate strategy that a case study would be undertaken to examine the background narrative and the reality of Section 44, its use and how the actual deployment affected the key actors in this research (CC Andy Trotter, Pennie Quinton, and the Police Officers). Therefore, some contiguous examination of what a case study consists of, the benefits and any disbenefits seemed to be an effective way to commence the project. It is agreed that a case study is an intensive analysis of an individual unit (e.g., a person, group, or event) stressing developmental factors in relation to context. As case studies are common amongst social sciences and life sciences disciplines having one main study seemed to fit well within the confines of the professional doctorate and sat well with the stated aims, as case studies can be both descriptive and/or explanatory. In the case of explanatory, the latter is commonly utilised to explore causation in order to find underlying principles, this would be extremely useful at getting to the '*root*' of the issue that being the interpretation and use of the stop and search power. Thomas (2011:23) offers the following definition of case study: "*Case studies are analyses of persons, events, decisions, periods, projects, policies, institutions, or other systems that are studied holistically by one or more methods. The case that is the subject of the inquiry will be an instance of a class of phenomena that provides an analytical frame, an object, within which the study is conducted and which the case illuminates and explicates.*"

Therefore, rather than using a set of samples and following a rigid protocol strict set of rules to examine limited number of variables, the project selected a case study that involved an in-depth, longitudinal examination of a single instance or event, as in this case: The 2003 stop and searches of Gillan and Quinton at the Royal Docks in London. In many case studies, it is accepted that an average, or typical, case does not always provide the richness of information that is desired, however, whilst clarifying the lines of history and causation in this particular case, it was chosen because of its interesting, topical and particularly revealing set of circumstances (the stop and searches at a live operational policing event and the resulting impact). It was however, further accepted that a case selection that is based on representativeness will seldom be able to produce these kinds of insights, in this instance this proved to be a satisfactory means of examining in a systematic, well documented way of looking at the events, collecting data, analyzing any and all information that was available and then using that data to inform, support and report the results, whilst having the extra bonus of access to both Trotter and Quinton.

As a result of the analysis, the professional doctorate has been provided with a sharpened understanding of what took place, why the incident happened as it did, and what became of the important lessons learnt. It was felt that this type of case study would not only add the nuances of the case but it would lend itself to both generating and testing the author's hypotheses. It was always the intention to utilise the case study model as part of the overall research strategy and as an empirical inquiry that would investigate a defined phenomenon within its own real-life context, this is also supported and well-formulated by Lamnek (2005) who maintained the use of a case study model as a research tool added enormously to any project as a research approach, in that the findings were somewhere between concrete data and methodological paradigms.

3.5 The Focus Groups

The next phase commenced following a series of internal police focus groups held with officers of constable, sergeant and Inspector ranks with a core aim to establish the true extent of any briefings, operational deployments and legal direction (legislative and practice knowledge levels). The aim was to develop an open and truthful environment where the officers could be given a mandate to express their thoughts and observations regarding this critical area of policing that until now had not been afforded to them. The focus groups were held at four locations across London at selected Boroughs, these were selected in relation to the deployment of the counter terrorism stop and search powers as a tactic, which boroughs conducted deployed it the most (Westminster, Lambeth, Southwark and Brent). As a fundamental component of this professional doctorate and as a way of collecting valuable subjective or internal belief data as well as the operational officers thoughts, it was decided to use the focus groups to measure and monitor the '*mood*' of operational officers in respect of

utilising this counter terrorism tactic (Section 44 stop and Search). The focus groups provided a means for an organised discussion with a selected group of individuals (patrol officers) to gain information about their views and experiences of this particular case and the deployment tactic. The author considered that focus group interviewing was particularly suited for obtaining several perspectives about the same topic (tactic). The benefits of focus group research included gaining insights into the officer's shared understandings of the counter terrorism legislation (TACT 2000), and the ways in which individuals are influenced by others in an operational deployment or group situation.

Doctorate Note: The author did not however hold any focus groups with officers that had not *utilised* the stop and search powers, in hindsight this omission would perhaps have been covered but due to time, duties and access restrictions these have not been carried out. The author and facilitator noted that on occasions problems did occur when, whilst attempting to identify the individual view from the group view, several officers reminded in the *'groupthink'*[55] mode and this caused some additional work for the facilitator to ensure that all participants were allowed 'airtime'[56] during the various discussion stages of the focus groups. Therefore, the role of the facilitator was very significant, a good level of understanding of group dynamics, leadership and interpersonal skills was required to moderate and manage the groups successfully. Prior research indicated that focus groups tend to be under-used in the more traditional policing environment, over the past ten years a growth in their use has been noted and from a slow start the movement to use them has increased, Powell and Single (1996).

There are multiple definitions of a focus group in the research literature, but certain features like organised discussion and interaction, extensively noted by Kitzinger (1994:103-21,1995:299-302) and collective activity by Powell, Single and Lloyd (1996:193-206) Powell (1996), social events by Goss and Leinbach (1996) and the identification of key contributions that focus groups make to research Powell (1996:499) defines a focus group as: *'a group of individuals selected and assembled by researchers to discuss and comment on, from personal experience, the topic that is the subject of the research'*. Although some focus groups are seen as a form of group interviewing, the author thought it important to distinguish between the two. Group interviewing involves interviewing a number of people at the same time, the emphasis being on questions and responses between the researcher and participants. The focus groups that were conducted in the early part of this is study and relied upon the interaction within the police groups based on their shared experiences of conducting stop and searches on the communities of London. Hence on these occasions, it can be clearly witnessed (noted) that the core characteristics which distinguishes focus groups, are the insight and data produced by the interaction between the participants. As mentioned previously, the main purpose of the police focus group research was to draw upon/draw out the officer's attitudes, feelings, beliefs, experiences and

reactions in a way in which would not be feasible using other methods, for example operational observation, one-to-one interviewing, or questionnaire surveys (although questionnaires were used later on in the process to check and/or support the findings of the focus groups, utilising a different set of officers). This proved interesting in that the actual findings differed somewhat from the results of the questionnaires.

It was accepted that although the individual interview was easier for the author to control, the benefits of allowing a group of likeminded individuals '*space*' to consider a problem did have significant benefits to the project. The initial benefit being the focus group allowed the author to compare a larger amount of information in a shorter period of time. Research into '*observational*' methods revealed that the actual outcome was reliant on waiting for things (stop and searches) to take place, which when attempting to see a '*stop*' in a natural environment tended to create an unreal situation unfolding before the eyes of the interaction recorder (witness), ever mindful that Powell and Single (1996) stated that focus groups could help to explore or generate hypotheses and develop questions or concepts for questionnaires and interview guides. The author did utilise some of the observations/findings to 'direct' some of the future deployments in and around the Capital and has since used some of the comments in various presentations to community and policing conferences. In terms of potential limitations, Kitzinger (1994, 1995) argued that interaction is the crucial feature of focus groups because the interaction between participants highlights their view of the world, the language they use about an issue and their values and beliefs about a situation. This type of interaction also enabled the participants to ask questions of each other, as well as to re-evaluate and reconsider their own understandings of their specific deployment experiences.

A further benefit of having such focus groups was that it allowed the author to elicit information in a way which allowed the doctorate to find out why an issue was salient, as well as what was salient about it Morgan (1988). This proved to be a real defining moment in aspects of '*command and control*', many of the officers felt that little control of the staff was provided and therefore the command chain was *'slack'* or in most cases *'broken' (see learning outcomes and recommendations at Appendix F).* In order to assist in the introduction phase of the groups, a list of 'starter' questions were drafted and used to *break the ice*, these initial questions are listed and attached at **Appendix J**. Lastly, in terms of the identified benefits of holding such focus groups, many of the officers wanted to remain in touch with the project team and volunteered to become a core group and saw themselves as a *'forum for change'*. This was a real boost to the doctorate and remains in place today (June 2012).

In terms of disbenefits and on a real practical level, when dealing with operational police officers, that are sited at several dispersed locations and on shift work (in the main), focus groups can be quite logistically time-consuming to assemble. It proved a challenge to convince police line managers to

release their staff for several hours at a time. In line with the thinking and recommendations of Macintosh (1981:85), the police focus group were made up of groups of between six to ten officers. The focus group sessions usually lasted about 90 minutes maximum, three were in central London locations, due to room booking, facilitator and catering availability, the fourth being in a police station in North London (Wembley). In carrying out preparation for the series of focus groups, the author attended a pre workshop to gauge the possible reception, make up of questions, group dynamics and time restrictions. It became immediately obvious that the group did not respond well to having a senior officer (Detective Chief Superintendent) in their midst, let alone facilitating the focus group. The author reassessed this decision and decided upon a facilitator that was of a sergeant rank, thus appearing to be one of the group in terms of position within the organisation but not a briefing officer (Inspector Level). This worked extremely well and was used throughout the focus group section of the professional doctorate.

Once a group meeting has been arranged and formed, the role of facilitator became critical, especially in terms of providing clear guidance and explanations of the purpose of the meeting, the initial settling down of the group (making them feel at ease) and facilitating the interaction between the actual group members (particularly the mixed ranks groups). The facilitator was encouraged to be open and to promote debate, usually by asking several leading questions i.e. "*who here has recently carried out a stop and search under the counter terrorism act?* ". Prior research provided guidance around the issue of challenging participants, especially when attempting to draw out people's differences and their experiences. The facilitator's role proved to be a difficult and challenging one and the project decided to utilised one member of staff to fulfil this role. Having selected and briefed a single person to conduct all the focus groups, this allowed the professional doctorate to maintain a balanced view and allowed for a consistency of thought throughout the groups process. Ethical considerations for all the focus groups undertaking were considered and when selecting and involving participants, the professional doctorate team ensured that a diverse cross section of the MPS were catered for.

Within the focus groups, it was essential that open and honest (transparent as possible) answers were recorded and used to direct and inform the overall piece of work therefore, although initially a set of suggested guidance topics or prompt questions were provided to the facilitator, the focus groups were briefed that they were to be as free to discuss any of the range of topics that they wanted to raise. Secondly the officers were encouraged to speak unreservedly about their experiences and anxiety and to use *vignettes* (role-plays)[57] and other forms of expression to enrich or supplement their responses or answers. This proved to be particularly useful when discussing the engagement piece and what the officers considered being best practice or what could improve the professionalism and/or customer satisfaction. In terms of analysis of the findings from the focus groups these tended to focused on, but not limited to the subset of the actual 'encounters' of the stops and did not yield a great deal of

information around the reasons for the selection and legal context of the resulting stops. The facilitator's notes and recollections (findings) are recorded in an Executive Summary and are attached at **Appendix I**. The findings will be discussed and utilised in chapter seven under lessons learned.

In respect of improving/adding to the already extensive catalogue of literature/material in this area of policing, the project wanted to provide some original and creditable specific stop and search data. Therefore, as part of the research phase a bespoke questionnaire using both open and closed questions was created, thus allowing for the bulk of the responses to sit within a five point 'answer' system and the remaining questions to allow for a free text, narrative style answer. The questionnaire at **Appendix B** was used on two separate but conjoined sections of the project, firstly to be sent out to officers that had utilised the stop and search tactic on borough and secondly as a *'prompt'* method during the focus groups, again held with police officers of varying ranks. With this in mind the final questionnaire (product) had to be capable of providing data/information to analyse and be capable of being used as a fallback position should the focus groups *stall* or slow down. The main advantage of using a bespoke 'police' questionnaire proved to be:

- Least expensive method to reach each of the respondents.
- A very time-effective way to reach more officers, including officers based at outlying stations, on various shift patterns across the Capital.
- The questionnaire avoided interviewer bias, any guiding or suggested answers (that may have impacted upon the validity and reliability of the data collection.
- Anonymity insured more valid responses (although many officers did in fact supply their details for follow up feedback and/or comments).
- Although the author was some distance away (New Scotland Yard), there was an opportunity to develop rapport with the respondent.
- There was an opportunity to probe or clarify any misunderstandings about purpose, questions, privacy, or whatever cannot be answered.

The disadvantages of using the questionnaire proved to be:

- The overuse of questionnaires within the MPS has created a *'negative engagement or completion effect'*, in that over time the response rates have fallen to between 25 to 30 percent and this is now seen as the *norm* and an acceptable return rate.
- The author sent out a total of **62** questionnaires (two to each of the 32 London Boroughs) and received **48** questionnaires back.
- A return rate of **77.4** percent which is well above *the norm.*
- It does require some motivation and effect to respond.

- The officer must understand the questions and the type of response required/desired.
- The officer must consider and create a response (on the open narrative questions).
- Their responses must be translated into categories or values that can be utilised in the overall project return.
- Whilst the process was believed to be simple and straight-forward, there were a few communication errors.

Having completed many questionnaires in the past, the author ensured that the numbers of questions were limited to ensure a good response and engagement rate, as research indicated that response rates decline rapidly as the number of questions grow. Most questionnaires are divided into two main types of questions (1) absolutely necessary and (2) interesting, the police questionnaire aimed at being both. Research conducted prior to the construction and circulation of the questionnaires indicated that 'open-ended questions' tend to elicit longer answers, are easier to follow and allow the responder (officers) to provide feedback in a narrative style response. The narrative responses were used in the behavioural type responses and were useful to gauge the mood and ideas of the officers. Some of the answers, information provided/gathered by open-ended questions was used to develop appropriate close-ended questions for another parts of the professional doctorate, such as the one-to-one interviews and the focus groups. The benefit of open questions are that they force the respondent to consider the question carefully, think of a suitable response and then to commit to explaining their response, most of the time. Consideration was given initially for the possibility of spoilt questionnaires, illegible handwriting and or blank being left, in practice the 48 returned questionnaires were all completed *on-line*, spell checked and then submitted via the internal email system, thus elevating any handwriting or other issues. In terms of 'closed' questions, the first five questions utilised on the questionnaire were all closed style questions (with a possible five answers) and were as follows:

1. Were you satisfied with the briefing/training on Section 43/44 Terrorism Act (TACT) 2000?

2. Have you, in your role as a police officer or PCSO ever carried out a stop and search or witnessed a stop and search?

3. Thinking about the most recent time you carried out a counter terrorism stop and search (or witnessed one), how satisfied were you with the way you or your colleague treated the person you/they stopped and searched?

4. Should the Metropolitan Police Service (MPS) continue to use this form of tactic (CT stop and Searches) as a way to combat terrorism and to reassure the public?

5. How long did the most recent stop and search require the member of the public to wait for (in minutes) whilst the procedure was being conducted?

These five questions provided specific answer choices to questions that were deemed as relevant to the final outcome of the professional doctorate (all linked to chapter six - the case study of Gillan and Quinton). The benefits of using these types of closed questions were two fold, firstly when ordered in a straightforward fashion, allowed the officers to move through the questionnaire in a simple logical manner, taking them through a stop and search. The main considerations that *surfaced* were around the fact that police officers were asked about:

- Their legal and operational knowledge.
- Their attitudes in stopping members of the public.
- Their beliefs, who to stop and why.
- Their feelings, about stopping and searching people.
- Their motivations and
- Past professional behaviour, was the stop and search right and proper and effective.

What was obvious in some of the returns that there was a strong tendency to give answers that are socially and organisationally desirable, that could make the officer look thoughtful, professional and aware of their powers and legislation. Another major concern for the professional doctorate was whether or not the officers that took part in the survey knew enough to provide a meaningful answer, i.e. an officer (respondent) who has never used the legislation or conducted a counter terrorism stop and search and requested to complete a questionnaire from their supervisor. In addition to the above, the author considered the following somewhat basic if not necessary questions:

- How much money would be required to send out the letters/questionnaires, in order to collect the data?
- How much time will be needed to progress this phase of the project and to process the data?
- Was there a similar questionnaire being considered by the MPS and was cost-sharing an option or was there the possibility of sponsorship or central endorsement?
- How many completed questionnaires would be required to provide an appropriate and worthwhile sample size?

In terms of cost, the questionnaires were sent out to the Police Borough Commanders on the 32 London Police Areas with an introductory letter, requesting them to pass the questionnaire out to two suitable (someone that had used the legislation) officers. This was initially sent out via the internal email system, thus at no cost to the professional doctorate (agreed with project sponsor prior to

sending). The questionnaires provided the officers with an option to either *'complete on-line'* or to print off and *'complete manually'*. The completed forms would then be return via the internal police despatch system again incurring nil cost, apart from a small *'opportunity cost'* as the internal mail system delivers to the author's office. As the main *thrust* of the questionnaire was aimed at checking on the leadership and management of assets/deployment etc, an enormous amount (probably too much) of research was carried out prior to the construction of the 'police questionnaire', in terms of researching past and present leadership styles from the *'Great Man'* notion of heroic leaders[58], through trait theories[59], behaviourist theories[60], Tuckman's situational leadership model (1965)[61], Fielder's contingency theory[62] and on to transactional and transformational leadership of MacGregor Burns (1975) and Bass (1990)[63]. Additionally, researched were the various briefing and learning styles: auditory, visual and kinaesthetic[64], finally *'how to write a questionnaire'* by Remenyi (2011) in order that the results / findings were usable and able to withstand academic scrutiny.

The data from the questionnaire has been expanded upon and compared with other data that appears later in this doctorate (chapter 7) however it is worthy of a brief explanation within this section of the types of questions utilised: This form of data collection proved to be highly effective in terms of cost, return rate and data supplied. Lastly the use of primary and secondary analysis of previous surveys and questionnaires of police officers and members of the public who have been engaged in one form or another of stop and search activity. This aspect of the research provided valuable data, comments on the initial engagement phase, the usefulness of the counter terrorism tactical deployments and on the wider social and community context Sudman & Bradburn (1982). In terms of document discipline, document analysis and in order to ensure that all documents that are utilised conform and comply with established academic principles, the thesis maintained a strict policy on what it utilised and how it used those identified documents. This professional doctorate recognises that a primary source document is a document or physical object that was written or created during the time under study. These sources were present during the experience or time and offer an inside view of a particular event. A search of several internet sites has provided this thesis with a composite guide to what is primary and what is a secondary source documents. For the purpose of clarity the joint agreed composite is reproduced below: Examples of primary sources include:

- Original documents (excerpts or translations acceptable): Speeches, manuscripts, letters, interviews, newspapers, autobiographies, official records, police and Home Office records.
- Creative works: Novels.
- For the purpose of this thesis, a primary source provides first-hand testimony or direct evidence concerning the topic (stop and search) under investigation. Any documents/reports

utilised are created by witnesses or recorders who have experienced the events or conditions being documented. Therefore, a secondary source interprets and analyses primary sources. These sources are one or more steps removed from the event. Secondary sources may have pictures, quotes or graphics of primary sources in them. Some types of secondary sources include: Publications: Textbooks, magazine articles, histories, criticisms, commentaries, encyclopaedias. Examples of secondary sources include:

- A journal/magazine article which interprets or reviews previous findings
- A history textbook (Collins – Rules of Engagement - Iraq conflict)
- A book about the Irish Troubles 1969 - 1999.

3.6 Understanding and challenging accusations of bias

At the beginning of this chapter the topic of *'professional, personal and academic bias'* was introduced and as any researcher or reader will know is not uncommon within the field of social sciences and related research to note/record some form of bias. However, whilst attempting to explore this important area of academic concern, the author decided that in order to truly understand the term the thesis must first research the term. This proved to be more challenging and complex than first thought as the term *'bias'* is by no means straightforward in meaning. The problem faced was that the academic understanding of the term is in itself ambiguous and in many cases used to refer to the adoption of a particular perspective or particular stance or standpoint, leading to certain aspects or topics become salient and other key aspects of research merge into the background. More commonly, 'bias' appeared to refer to an error or grouping of systematic errors: or a deviation from a true score, the latter referring to the valid measurement of some phenomenon or to accurate inference of an inhabitant's parameter. The term may also be used in a more explicit sense, to denote one particular source of systematic error: that deriving from a conscious or unconscious tendency on the part of a researcher to produce data, and/or to interpret them, in a meaning or way that inclines towards an erroneous or particular conclusion, which sits in alignment his or her understandings or beliefs. These understandings or beliefs depend largely on other cited and referred to concepts such as confirmation, truths and self objectivity bias, usually formed within a specialist environment or consultant type role. The subsequent research shows that bias can take many forms, some intentional and in some cases unintentional: In order to provide the reader with some common types of bias that were considered by the author at the commencement of the project, see list below:

- **Insufficient sample:** A generalisation or conclusion is made from too small a sample size.
- **Observer bias:** One observer consistently over or under records data values.
- **Information bias:** Data is systematically incorrectly recorded.

- **Cherry picking:** The deliberate choice of the data or scientific studies that support your view, while ignoring the data or studies that oppose your view.
- **Confirmation bias:** People tend to remember things that confirm their beliefs and forget things that do not. For example they will more frequently remember times they made a correct prediction than times they were wrong and they will tend to look for information that confirms their established views rather than information that contradicts them.
- **Recall bias:** Subjects forget details of their past history. For example: patients with needing replacement knees may remember earlier injuries to that joint. People without problems in their knees may not remember such incidents, particularly if they were minor inconveniences or a long time ago.
- **Timing bias:** The timing of an experiment can affect the results you get.
- **Assessment bias:** This can occur when people are aware of the thing being studied. This is a particular problem where you are looking for a subjective response for instance, double blinding (where neither the experimenter nor the subject knows whether they are in the control group or not) can help to alleviate this.
- **Omitted evidence:** Leaving out evidence that would weaken or even cause the average reader to dismiss the claim.
- **Insider/outsider or membership bias.** Being part of a group or society and therefore potentially being blinded to inside bias of one form or another.

All of the above can tend to skew the conclusions of research in one particular direction or another. In an effect to ensure that such bias was avoided, advice and guidance was sought out regarding vigilant experimental design and researcher integrity. The author was acutely aware that even a small change in the wording of a question, be it in a questionnaire or during the interview phase could affect how the focus group participants or interviewees respond to the question and hence the conclusions they provide/reach. With respect to quantitative research, the importance of validity has been long established. In qualitative research, discussions of validity have been more controversial and different typologies and terms have been produced. In mixed-methods research, wherein quantitative and qualitative approaches are combined, discussions about validity issues are in their infancy and therefore there's appears to be a shortage of tested and verified findings. In terms of utilising mixed-method research that involves combining complementary strengths and non-overlapping weaknesses of quantitative and qualitative research, assessing the validity of findings is particularly complex; Tashakkori and Teddlie (2003, 2006) refer to this type of merging of the two methods as *'the problem of integration'*.

The author has noted that accusations of bias appear to be a persistent occurrence within the field of social and psychological sciences study, the research for this professional doctorate has provided the author with several examples of such that have achieved the status of major public events, such as the attacks on *'Hereditarian theories of Intelligence'*, notably around the work of Kamin (1974), the response to the Glasgow University Media Group's books on television news by Harrison (1985). Moreover, in many cases, the reaction to an accusation of bias is a counter-charge; indicating that it is not just the research itself that has been found wanting but in fact the actual analysis or evaluations of source research that is biased. That said, notwithstanding the rate of recurrence with which it is used, the association of the term 'bias' has been given little attention in the procedural literature. In an effort to establish an agreed baseline to work from, attention was drawn to the Oxford English Dictionary looking for assistance to the actual meaning: The dictionary does not mention the true sense of the word at all. Nevertheless, what is useful is that it is an idea that shows a particular point of view and that this 'view' can make a difference as to how well one discriminates significant patterns in a scene, or in a sequence of events.

Weber (1949:90) developed a concept around 'bias' set within a methodological context, in the form of his theory of ideal types. Weber defines an ideal type as: *'a conceptual pattern that brings together certain relationships and events of historical life into a complex that is conceived of as an internally consistent system'*. Weber went onto deliberate that this is not a representation of reality 'as it is', but rather involves the *'one-sided accentuation'* of aspects of reality in order to detect causal relationships Weber (1949: 90). It is worth noting that within many of the papers read, bias can be seen as a *positive* feature, in the sense that it is enlightening: in many ways it reveals important aspects of phenomena that may be hidden from other perspectives, remembering or taking into account (if possible) the possibility of negative bias remains, this was particularly prevalent in the interview phase, although the term 'bias' was constantly used in social research methodology, quantitative researchers occasionally employ it, notably in discussions of significance levels Levin, Wasserman and Kao (1993:92), whilst qualitative researchers also use it. For example, it is often taken to be implied in Becker's influential argument that sociological analysis is always from *someone's* point of view, and is therefore partisan (1967: 245). The effect of this is evident, for instance, in the claim that *'the question is not whether the data are biased; the question is whose interests are served by the bias'*. Gitlin, Siegel and Boru (1989:245) argue that in certain cases the recommendation is that research *should* be biased in favour of serving one group rather than another, this is not the predominant sense of the term 'bias' as it is used in the social sciences, and within this thesis acknowledge is accepted but bias is generally seen as a negative feature, and the author has sought to avoid this position or observation.

To expand on this point, one key question under consideration during the interview phase was: how to judge the validity of any statements made / claimed? In reality, this proved complex to manage without robustly challenging the actual interviewee. In terms of said viewpoints, one important factor that reoccurred throughout the research phase was that everyone had a fixed viewpoint and whilst the interviewer did on many occasions challenge the provided standpoint, few deviated away from the initial proffered statements. In fact one interesting point appeared to be that: dependent on the rank or social/legal position of the interviewee, the stronger or *'fixed'* the viewpoint was, furthermore within the focus groups, the lesser (constable or sergeant) the rank, the more uncertain of offering a definitive viewpoint and in many cases waited for a confirmatory 'nod or acknowledgement from the facilitator.

Before moving on from this point, the last type of bias that the author wanted to cover was that of the insider / outsider or membership bias. In Dr Sonya Corbin Dwyer's article (2009), *'The Space between: On being an insider / outsider in Qualitative Research'*, she explores this issue of should a researcher be part of the population he/she is studying or should they not? The article throws up several interesting questions around status (of the researcher), the 'space' created between the audience/members/population and the research findings and how the researchers perspective is perhaps a paradoxical one: it is to be acutely turned-in to the experiences and meaning systems of the others, to 'indwell' and at the same time to be aware of how one's own biases and pre-conceptions maybe influencing what one is trying to understand Maykut and Morehouse (1994:123). Adler & Adler (1987) went on to identify three membership roles of qualitative researchers engaged in observational methods:

- A peripheral member researchers, who do not participate in the core activities of group members;
- An active member researchers, who become involved with the central activities of the group without fully committing themselves to the members' values and goals; and
- A complete member researchers, who are already members of the group or who become fully affiliated during the course of the research.

Taking all of the above into consideration, Corbin Dwyer, Adler & Adler, suggest that being an insider and a member of a limited and on occasions a close-knit society or community, has many benefits (and disbenefits). A major benefit is the immediate acceptance by the group, this acceptance provides an automatic level of trust and openness that your subject community may not provide to an outsider. Secondly, an insider has (on many issues) a shared mental understanding of the roles/tasks performed. Thirdly, evidence suggests that the participants are more willing to share their experiences

with someone *'who understands'*. Lastly, although the insider status can afford access, entry, common ground from which to commence a conversation /focus group, their status can also impede any research as the group / individual may fail to explain/expand their experiences fully as the participants may make the assumptions of similarity or increased knowledge of the subject matter. The author overcame these issues by utilising techniques recorded by Watson (1999) and Armstrong (2001) by commencing each and every session by *'distancing'* the facilitator or interviewer from the group or interviewee. To this end, as far as possible the findings are a product of academic retrieval as opposed to insider bias.

3.7 Data control, gathering, confidentially, storage, retention and version control

In order to allay fears or to counter challenge any questions over issues of research data control, gathering, confidentially, storage or retention issues, the author decided from the outset of the professional doctorate to ensure that a dedicated storage system/area was located at his home address (study) and access to any files, storage systems or hardcopy files was restricted. This in essence required a strong *briefing* to all the other members for the author's family (household). Further explanation around the importance of the retention of key documents and storage of computer data, effectively placed the home computer off-limits. This situation was later resolved by the purchasing of a dedicated laptop, thus allowing the family computer to be utilised by the remaining family members. A secondary 'back-up storage capacity was also purchased to ensure that any loss of data could be reduced or minimised (a commercially available and approved data storage unit). As previously stated, the original primary data/evidence was retained by the author at his home address on a dedicated laptop. This was later supplemented by a data storage system attached to the main family computer. However as the doctorate continued and the sheer amount of data, notes and other miscellaneous documents grew, a sense of panic also grew in proportion with the size of data, with the fear of data loss/collapse and a third system of data support was enabled. A third fall-back system came in the form of several *'pen-drives'*. All chapters and reports, notes and key documents were also loaded onto pen-drives. This then caused an unintentional outcome of 'multiple version control'. As one document was updated or changed in any way then the remaining two separate systems needed to be updated and each version had to be double checked to ensure that the latest version was retained on each of the stand-alone systems. The simple and most effective method resulted in each document being given a version number and a date modified coding.

In addition to the version control, the author reviewed the security protocols, procedures and processes within the doctorate and decided to utilise the UK Government's information security and data handling guidance as defined within their 'Protective Marking Scheme'[65]. Any data or documents that are no longer required will be disposed of in a safe, secure, ethical and Home Office approved

manner. Due to the sensitive nature of this research the author ensured that only source material that is 'open source' (that being freely available to the general populous is cited and referred to within the document). A retention period of five years has been agreed with all parties and a weeding system if required, will be introduced when necessary. Throughout this professional doctorate and in subsequent discussions with tutors, internal MPS advisors and more recently doctorate supervisors has been the issue of what can be included or introduced into the main body of the thesis legitimately within the document analysis phase in respect of privileged or confidential information. The dilemma came about as the author is a senior police officer within the field of counter terrorism, with access to restricted and secret material/intelligence.

The sheer amount of information/intelligence/research data has lead to a point where it is difficult to delineate what was new and relevant data and what was tacit knowledge from the authors role in the MPS, thus causing some ethical issues. Following discussions with the supervisors it was decided that in order to de-conflict research from work related information, a set of working principles or research boundaries were agreed to by all parties, the principles being:

- All data capture would be conducted via 'open source' utilising computers/data bases that are *Non-MPS Systems.*
- No police records, restricted (non published) documents/reports/press releases would be utilised in any part of the project or recorded in the thesis.
- No information/data would be transmitted between the author's office (MPS workstation), sent to or from the author's home address.
- Only authorised (by ACSO) information/data would be included in any part of the thesis.

In summary, this chapter has described how the research phase of the professional doctorate utilised the key social research methods, those being one-to-one interviews, internal (police) focus groups, bespoke questionnaires and document analysis with the overall intention to combine qualitative and quantitative approaches for the doctorate. Whilst remembering that at all times, integrity, truth, ethics and the issue of academic and professional bias was a consideration and observed factor, that said, it is imperative to understand that these methods (mixed methods) were used as it was considered (at the time) that they were the most appropriate and proportionate method to support the findings/assumptions in the thesis conclusion. The combination of the methods provided a better understanding of the overall research than one approach would bring. It must however be noted that when information or evidence is required from persons that have carried out an action that maybe disputed by others then a sense of justification may appear in any evidence/information provided. That is why the mixed-methods approach was useful when attempting to triangulate the data provided.

That said, triangulation has been attempted/utilised to some degree in the overall analysis piece to support and strengthen the evidence and information gained but more importantly to provide a fuller appreciation of the thoughts and concerns of those taking part in this professional doctorate.

Chapter 4.

Inception, Royal Assent and Reception of the Terrorism Act 2000

4.1 A changing terror landscape (Omagh Town Centre 1998)

This chapter will detail the historical backdrop of the emerging crisis in Irish history, signpost the outpouring of loathing and disbelief at the attack on Omagh City and the terrible scenes that followed, detail the shock that the UK people and most importantly the UK Government witnessed. The author through his research of documents and articles from this period proffers that it was this single attack linked via the media to the Deal Barracks Bombing that was the final catalysis for the revisiting of previous anti terror legislation, the almost total agreement from all sides of the UK Parliamentary system and the overwhelming support for this new wide reaching power.

What started out as an almost perfect autumnal day in a medium sized peaceful market town in Northern Ireland was transformed into the worst terrorist atrocity in living history of the UK. Paradoxically, the worst terrorist atrocity of over thirty years of conflict in Ireland occurred at the single point of highest hope during those years. The Good Friday Agreement[66] had been signed just 13 weeks before. The massacre, caused by a 'Real' IRA car bomb, claimed the lives of 29 innocent civilians and caused injury to 220 people. Although the effects of the bomb on the victims and their families were catastrophic, the atrocity made politicians in Westminster and Northern Ireland even more determined than ever to make the process work: the opposite from what was intended by the terrorists. The attack was described by the BBC as "*Northern Ireland's worst single terrorist atrocity*" and Tony Blair, the British Prime Minister at the time, stated that this act was "*appalling act of savagery and evil*". Likewise, *Sinn Féin* leaders Gerry Adams and Martin McGuiness condemned the attack and the RIRA itself and said "*This appalling act was carried out by those opposed to the peace process*", party president Gerry Adams said that, "*I am totally horrified by this action. I condemn it without any equivocation whatsoever*". This single act of terror had an extraordinary effect on the people of Northern Ireland and the UK. It further galvanised the Labour Government of the day to extensively debate in Parliament existing powers, order an immediate review of existing terror legislation and finally to replace the Prevention of Terrorism (Temporary Provisions) Act 1989 (PTA) and the Northern Ireland (Emergency Provisions) Act 1996 (EPA) as amended by the Northern Ireland (Emergency Provisions) Act 1998 with new *permanent* United Kingdom-wide Counter Terrorism Legislation. In order to place these momentous changes into some form of political and social context it is worth stepping slightly back in time before the Omagh bombing and exploring the then existing terror legislation, the various amendments and what lead to the 1996 Lord Lloyd of

Berwiew's report entitled 'Inquiry into legislation against terrorism' [CM 3420] which was published towards the end of 1996. Several statutes contained measures that were designed to prevent terrorism in the UK and to assist the investigation of terrorist crime. The principal measures were:

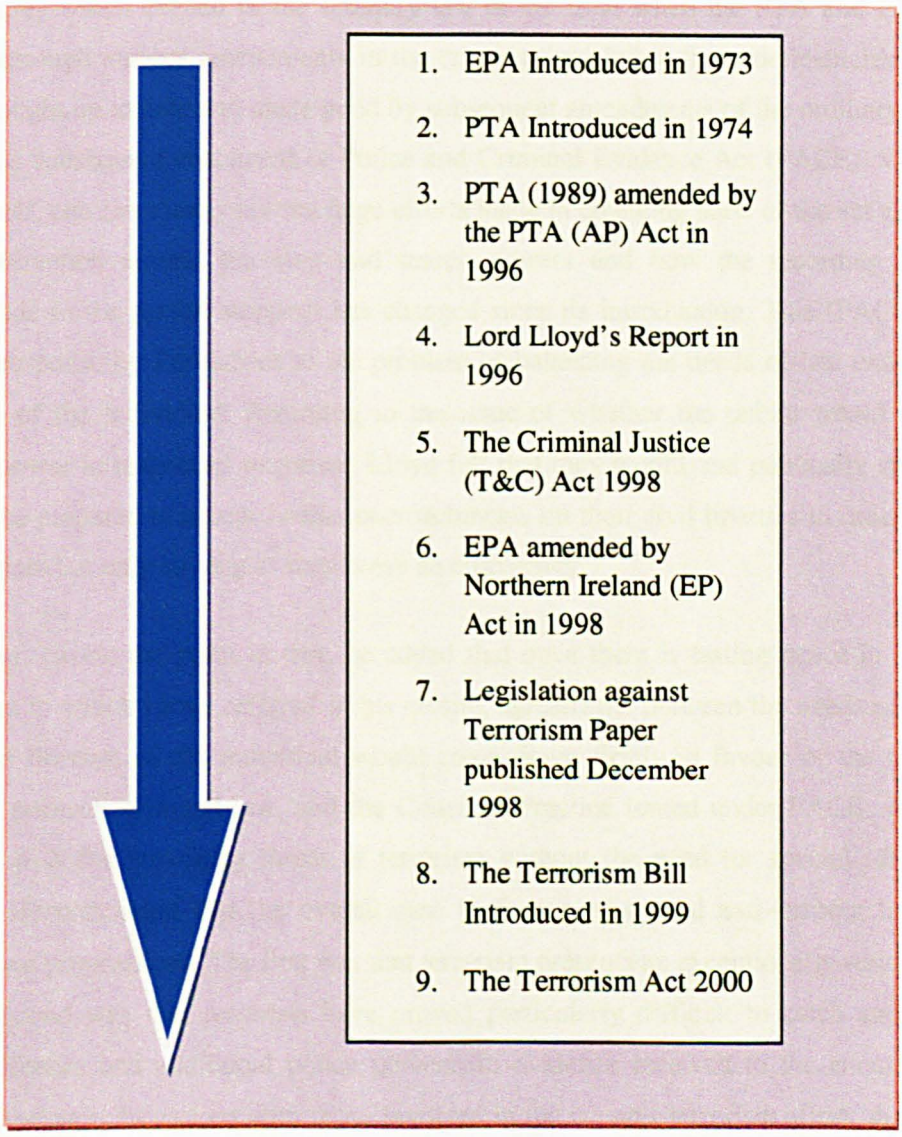
- The *Prevention of Terrorism (Temporary Provisions) Act 1989* [the PTA], as amended by the *Prevention of Terrorism (Additional Powers) Act 1996* and the *Criminal Justice (Terrorism and Conspiracy) Act 1998*; and

- The *Northern Ireland (Emergency Provisions) Act 1996* [the EPA] as amended by the *Northern Ireland (Emergency Provisions) Act 1998.*

The PTA was first introduced in 1974 as a temporary measure in response to a series of IRA attacks in Great Britain, including the Birmingham pub bombings. Incredibly, it completed its passage through the UK Parliament in a ***single day***. However, whilst in force it was re-enacted only on several occasions, most notably in 1989. Several of its provisions did apply to international terrorism as well as terrorism connected with the affairs of Northern Ireland. The Act, which conferred exceptional powers on the police, was subject to annual renewal by Parliament, following the publication of a report on its operation during the previous year. In contrast the EPA was first introduced in 1973 in response to the prevailing threat from terrorism. Like the PTA, the EPA supplemented the ordinary UK criminal law, providing a few additional powers to the police and security forces in Northern Ireland to deal with terrorism.

The Act was also subject to annual renewal by Parliament, again following the publication of a report on its operation during the previous year. The Act was of a limited duration. Similarly, since 1973 the EPA legislation had been reviewed, renewed and re-enacted on several occasions. The 1996 Act, which is the fifth in the series, was amended by the *Northern Ireland (Emergency Provisions) Act 1998*. Unlike previous *Northern Ireland (Emergency Provisions) Acts* the 1998 Act did not seek to repeal and re-enact the whole of the 1996 Act. Those parts of the 1996 Act that were not specifically affected by the 1998 Act remain in force. The *Northern Ireland (Emergency Provisions) Act 1996* expired on 24th August 2002. Due to there being a number of different Terrorism Acts/legislation referred to within this chapter, a timeline of legislation and events has been produced below:

Figure 1. Timeline of Terrorism legislation within the United Kingdom.



Although, briefly mentioned in chapter three, Lord Lloyd (1996) outlined the case against having special counter terrorism legislation[67] and stated the following: "*It has been put to me that, however serious the effect of individual terrorist incidents may be for the victims, and accepting that the authorities must do everything in their power to prevent such incidents, nevertheless the threat from terrorism is often exaggerated when measured by the actual consequences to the public at large. Thus the number of people killed and injured in terrorist attacks bears no comparison to the numbers killed and injured on the roads or as a result of other forms of crime. And who would argue that terrorism currently presents as great a threat to the fabric of our society as, for example, the abuse of drugs?*

Interestingly, having initially gone against the introduction of special legislation, Lloyd then went onto to explain the actual difficulties and deficiencies of the proposals, in that there were many recorded deficiencies which existed in the ordinary law at the time when the PTA and EPA were passed however, through various amendments in the criminal legislation those deficiencies have by and large been brought up to date and made good by subsequent amendments of the ordinary law and in particular by the subsequent enactment of Police and Criminal Evidence Act (PACE). When one looks at PACE itself, one can clearly see the huge efforts made in changing parts of the act to provide a strong robust direction around the stop and search powers and how the recording of stops (information provide to the person stopped) has changed since its introduction. This (PACE) was a truly remarkable response by Parliament to the problem of balancing the needs of law enforcement against the rights of the individual. Returning to the issue of whether the public would accept a different type of power in respect of terrorism, Lloyd felt that they would and publically stated that the public would be prepared to accept further encroachments on their civil liberties in order to meet the threat of terrorism but only so long as they sense an emergency.

Lloyd did however, caveat the point in that, he added that once there is lasting peace in Northern Ireland the balance to which Lloyd referred in his closing agreements between the needs of security and the rights and liberties of the individual would come down firmly in favour of the latter. He observed that the ordinary criminal law, and the Codes of Practice issued under PACE, should be sufficient to deal with the remaining threat of terrorism without the need for special offences or special powers[68]. He concluded that the overall case in favour of special anti-terrorist legislation rested largely on two propositions. The first was that terrorism presents an exceptionally serious threat to society. The second was that terrorists have proved particularly difficult to catch and convict without special offences and additional police powers. In evidence received to the enquiry Lloyd pronounced that thorough discussions with those involved in the counter-terrorism effort, the enquiry had established precisely what it was about '*terrorism*' which makes it not merely more serious than other forms of violent crime, but different in kind. It appears to the enquiry that the chief distinguishing characteristics of terrorism are as follows:

> *(i) terrorist violence is typically directed towards members of the public or a section of the public, indiscriminately or at random;*
> *(ii) it frequently involves the use of lethal force, and is capable of causing extensive casualties among the civilian population;*
> *(iii) consequently, it creates fear among the public, which is precisely what it is designed to do;*
> *(iv) its purpose is to secure political or ideological objectives by violence, or*

threat of violence. It therefore aims to subvert the democratic process;
(v) it is frequently perpetrated by well-trained, well-equipped and highly committed individuals acting on behalf of sophisticated and well-resourced organisations, often based overseas.

What was absolutely critical to the inception of these powers were Lloyd's closing arguments to the enquiry, he explained that these were exceptional distinguishing characteristics around this area of legislation that did justify special legislation and he thought that although the overall numbers of domestic terrorist attacks, incidents had declined over the years, the threat was such that action in the form of new legislation was warranted. He made a special point of explaining that he felt the number of incidents was not the whole story and the scale and the impact was critical in his final decision making. Lloyd expressed that it was the fear of incidents and attacks that induce alarm in the public generally and that fear explains why members of the public are willing to accept restrictions on their liberty, not to mention great inconveniences, which they would not otherwise have been prepared to tolerate. He further pointed to the potential, as well as the actual threat. Submissions received by the enquiry highlighted the overall decline in the number of terrorist incidents in recent years however; the reduced numbers had been more than off-set by the trend towards more deadly weapons and higher casualties. Lloyd went on to conclude that the propositions set out in paragraph 5.10 were soundly based and that there was a need for permanent anti-terrorist legislation in the United Kingdom, continuing beyond the end of the emergency in Northern Ireland. Taking Lloyd's concerns into account and his final suggestion that the UK did in fact require new terrorism legislation, three key elements/incidents not only demonstrated the case for change but overwhelmingly supported the urgent perceived need for change within Parliament, these were:

1. The Good Friday (Belfast) Agreement (10th April 1998) on the verge of collapse.
2. The Omagh bombing (15th August 1998) and resulting public outcry.
3. The Criminal Justice (Terrorism and Conspiracy) Act 1998.

In Westminster the newly elected Labour Government, brought in the Terrorism 1999 Bill, for over two decades of renewing temporary counter terrorism laws in Britain, making such measures permanent with the Terrorism Act 2000 was not necessarily a conventional or predestined conclusion, especially considering tensions between civil liberties, human rights and ever growing concerns around national security. In order to set out the political backdrop and to provide some context, the Northern Ireland peace process was very firmly underway, the Labour party who had voted against temporary counter terrorism laws for over a decade had only just been brought back into power, and

recent history pointed to the likeliness of an inconclusiveness or even a lack of willingness to engage in a round of changing the status quo in terms of the then temporary terrorism legislation.

On the 16th March 1999, the Home Secretary Jack Straw announced to the House of Commons, that following various enquiries, working parties and extensive consultation, that the Government would be proposing the introduction of a 'permanent' counter terrorism legislation (in line with Lord Lloyds recommendation), furthermore this new legislation would effectively do away with the need for an annual review to take place and a renewal of temporary provisions. Straw finished off that statement by forcefully reiterating that terrorism and the threat of terrorism from several fronts was likely to continue for the foreseeable future.[69] Rather than attempt to review that entire period (from the 1970's) the professional doctorate focused on one particular temporal epoch: the late 1990s and in particular the transition from the temporary Emergency Provisions (Northern Ireland) Act 1973 (EPA)[70] and Prevention of Terrorism (Temporary Provisions) Act 1974, to the permanent Terrorism Act 2000[71]. By the late nineties, there was no discernable consensus between the two major parties on whether or not the PTA or the EPA were politically or operationally effective in terms of winning the social/moral high ground or the protective security 'armed' struggle in Northern Ireland.

In fact the ongoing sectarian violence was interpreted by certain fractions within both the Conservative and Labour parties as evidence that counter terrorism law, in one form or another, must continue, although this political position was not fully accepted throughout the wider political arena. To many in and around the political arena, the introduction of such powers were seen as a big mistake, concerns around powers of exclusion, arrest, seven day detention, well publicised miscarriages of justice and the wide spread use of stop and search powers were all a step too far. [72] In addition to the 1993 Downing Street Declaration, the 1994 paramilitary ceasefires, the 1997 prison release schemes[73], the 1998 Good Friday (Belfast) Agreement and disapproval of the 1998 Omagh bombing, it could be said that they all contributed to wider public debates on the lack of action and movement on the war on terror. Whilst at the same time focusing almost exclusively on Northern Ireland, it is worthy of note that in addition to the Northern Ireland issue, international insecurities not only remained, but appeared to be taking a more prominent position, bringing into a sharper focus the debate on domestic and as well as international terrorism. Although such issues did not necessarily appear as immediate threats requiring new or amendments to counter terrorism laws, it was generally accepted that some additional emergency measures were required to be moved onto a permanent footing.

Several high profile attacks seemingly unconnected to Northern Ireland were referenced within official correspondence although were not directly targeted against Britain. Instead, they were often

connected to specific groups and targets, these were often referred to as single incident or one-off atrocities rather than imminent threats of terrorism to the UK and its citizens, e.g. a car bomb outside the Israeli embassy in London in 1994, the 1997 attack on a international tourist office in Egypt, the 1998 bomb attack on a Johannesburg restaurant and the 1998 bombing of the U.S. embassy in East Africa, all increasing media attention on political violence, but not necessarily an indication of an emerging threat demanding Britain establish permanent international as well as domestic counter terrorism legislation.

In response to these growing concerns in respect of Northern Ireland and aboard, the UK political scene and news stories of the day would not have inexorably predicted a parliamentary shift to make UK counter terrorism law permanent. For over a decade the Conservative leadership had intensified and enhanced serious crime policies that supported and encompassed counter terrorism, although not extending their CT remit. In 1997, a Labour Government was elected into power and on one level, surprisingly it was Labour who took the lead and who introduced a key piece of emergency counter terrorism legislation with the PTA in 1974[74], it was also the same Labour party who constantly voted against PTA and EPA renewals for over a decade prior to this 1997 re-election. It is around this time that although the Labour Party continued to believe (and champion) that emergency legislation would not resolve the problems that existed in Northern Ireland, a paradigm shift was beginning to take shape and effect. Furthermore, the grievances to which the operation of emergency powers gave rise were in themselves one of the causes of the continuing violence[75]. Not only did Labour introduce legislation collapsing the PTA and EPA into the single, UK-wide, Terrorism Act 2000 but they also began an array of other institutional changes furthering the permanence and normalisation of exceptional counter terrorism agenda more broadly. It can be noted in various political and social discussions of the day that there were some very public disagreements[76] over counter terrorism legislation effectiveness in particular several high profile miscarriages of justice (the Birmingham Six and the Guildford Four), the perceived creation of suspect communities reinforcing feelings of alienation (the Irish and more latterly the Muslim communities) and a growing lack of trust between communities and the State.

An interesting entry segment to the political and practical transition phase moving from temporary powers to permanent powers was the historical context and political positioning, this was witnessed by considerable press interest and several articles started to appear in quality newspapers (evidenced by Jack Straw's Guardian article on the 14th December 1999). An essential part of this *'situational change'* can be seen clearly in legal terminology or political trajectory, introduced by Labour with the Terrorism Bill and Legislation Against Terrorism Consultation Paper in 1998. The papers are set out in a particular way, demonstrating and maintaining the levels of risk and threat from the ever

increasing terrorist picture. This increasing threat position provided a backdrop of insecurity and helped to enable and justify permanent counter terrorism legislation by newly distinguishing three terrorist parts within the official discourse: firstly, refocusing the Irish position as an ongoing terrorist situation, secondly, the growth and increasingly worrying Domestic Extremist (DE) scene that was emerging across the UK and lastly the newly focused International threat. An example of where such 'linking' process took place was in the media coverage was around the IRA's links to Libya and the Czech Republic by showing that the purchasing of 'Semtex' had taken place, additionally in the financing by the Americans (*Noraid*)[77] and that the once '*local*' Irish problem was in fact a multi-national problem that needed to be treated robustly by UK National and International legislation. It was at this time that the issue of an all-encompassing effective terrorism definition came to the forefront of the debate.

As part of the consultation phase of the Terrorism Bill 1999-2000, a consultation paper was published in December 1998 and concluded in March 1999. In all, the UK Government received eighty (80) responses to the consultation paper, the full list of the responders can be found in **Appendix A.** Following this period of consultation the Government published the Terrorism Bill on the 2nd December 1999. It is important to note the Terrorism Bill was designed to amend and extend the existing legislation and place the new legislation on a *permanent* rather than a *temporary or renewable* basis and to extend it so that rather than being restricted to terrorism connected to the affairs of Northern Ireland also that it would be able to deal with international terrorism and domestic extremism as well. It is further worthy of note that the Terrorism Bill (later The Terrorism Act 2000) contained many measures which were already in place within existing legislation however, it did differ from the PTA and the EPA in that it set out a new and expanded terrorism definition, which was designed to include *ideological and religious motivations* for acts as well as *political motives.* Lloyd went on to say in his report that although the old definition had served the UK well in practice, it (the definition) had been criticised as being at once too wide and too narrow. It was seen as too wide because it covered trivial acts as well as serious acts of violence.

For some, it was seen as too narrow because, being limited to political ends; it was argued that it did not apply to acts of terrorism perpetrated by a single issue group or religious fanatics (see figure 2, Terrorism, a three part crime, with six core motivations*).* He went on to say that what was clear was that the definition of terrorism *must* encompass the use, or the threat, of serious violence in order to induce fear and that the motive must be political in a broad sense. Lloyd continually stated that it was not an easy task to produce a thoroughly satisfactory definition; no doubt partly for the reason there are few overseas countries where it had been attempted. The United States of American in contrast, has at least four different definitions of terrorism, according to purpose. Finally Lloyd suggested that

the most suitable definition and the one that would best suit the UK's purposes is modelled on the working definition used by the FBI and is as follows: *"The use of serious violence against persons or property, or the threat to use such violence, to intimidate or coerce a government, the public or any section of the public, in order to promote political, social or ideological objectives"*[78].

In order to further justify and to explain his position and recommendation, the Bill went onto describe actions of serious violence against any person and against property, rather than just violence. Importantly the previous legislation applied only to the affairs of Northern Ireland and International Terrorism. The 1999 Bill (and subsequent 2000 Act) on the other hand was designed to cover all forms of terrorism including domestic terrorism (extremism). Further aspects of the 1999 Bill considered previsions to tackle terrorism finances, seizures of cash and assets and forfeitures, police powers to stop and search, powers of entry and seizures at all UK borders. Although this work concentrated on the aspect of counter terrorism stop and search (It's life and death) it would be remiss not to mention the 1999 Bill sought to create an entirely new offence of *'inciting terrorist acts aboard'* and the offence of *'providing weapons training'*.

4.2 The Consultation Document

Interestingly, on being published the Labour Government also widely released the consultation document and its findings. In respect of the proposed terrorism definition: only fifty seven (57) of the overall eighty (80) organisations/parties responded, twelve (12) supported the proposed definition, sixteen (16) supported with caveats. The caveats were:

- New definition is acceptable but not convinced new definition is necessary.
- New definition is acceptable, although rather wide.
- Concerns recorded regarding 'serious violence' needed defining.
- Religious and/or ideological motivation should be deleted.
- If domestic terrorism is included detailed guidelines will be required.
- Ensure property is covered.

Twenty eight (28) responders had 'significant concerns', these were:

- Stated definition too wide.
- Objected to Religious and/or ideological motivation.
- Restrictive on the media.
- Motivation of terrorists should not form part of definition.
- Proposed definition should be extended to cover computers and industrial acts.

- There should be an exemption e.g. when there is a declaration of war by the UN.

In contrast and in respect of the chapter 9 of the Bill (proposed legislative changes to the use of counter terrorism stop and search), only twenty eight (28) responded to the consultation paper. Chapter 9 went onto consider the various powers of the Police and Army in Northern Ireland to stop, question and search pedestrians, vehicles and their occupants. It was proposed that (for the most part) the then current powers in the PTA should be en-acted and made applicable throughout the UK. This simple yet effective move would enable some of the Police powers under the EPA to be repealed and should it be necessary (nearer the time) the Army could form part of the temporary section of the new Terrorism Act 2000 powers and perhaps even continue with an annual reporting requirement. In light of the events that led to the repeal of Section 44 in 2010, it is astonishing that in respect of this fundamental part of the act, only twenty three (23) person or organisations responded and that only four *'areas of concern'* were recorded and discussed. The actual responses (areas of concerns) are listed below to demonstrate the sheer lack of engagement: these were as follows:

Retention and improvement of the stop and search powers.

- **23** responded.
- **12** supported the changes
- **5** supported but saw a need for any new proposals to require a Secretary of State authorisation regarding Vehicle stop and search.
- **6** rejected the section outright.

UK wide authorization arrangements

- **6** responded
- **4** supported the section
- **2** rejected as not practicable

Code of Practice for Northern Ireland

- **5** Responded
- **4** Supported.
- **1** Rejected

Continue with the EPA Army powers until security situation in Northern Ireland is stable.

- **6** Responded

- **2** supported
- **4** Rejected

4.3 From a Bill to an Act

In many ways, the lack of responses to the proposed stop and search section of this Bill is echoed on the later section in the finalised Act (TACT 2000). The documents that can be accessed do not allow the project further disclosure to any great depth or degree and therefore, the analysis is somewhat limited. What is clear from this research, when in later years (2009/10), the media claim that much debate, disagreement and discourse took place around this particular issue (stop and search) and the introduction of a permanent inclusion into the Act, is simply not the case. Before moving onto the implementation of the Terrorism Act 2000 in chapter five, following its introduction in the early 1970s, counter terrorism legislation had always been seen as highly contentious and extraordinary and aimed at the defeat of terrorism and the extension of normal policing[79]. Humphrey Atkins (Secretary of State for Northern Ireland) went onto say, *"Such powers were unprecedented in peacetime, necessary to enable preventive action to be taken against people who appear to the Secretary of State to be involved with terrorism but against whom it is not possible to bring charges under the present law"*.

By the late nineties in order to justify making the previous counter terrorism laws permanent, it was essential to establish the threat posed by terrorists as more serious and more dangerous than "*the run of the mill*" career criminals (the UK had sufficient laws in place to deal with these types of criminals) as well as being indisputably illegitimate. Whilst at the same time, national debate and counter terrorism policy makers could not be seen as losing touch with historical, social and political terrorist ancestry which lay behind much of the violence, nor could they be seen as ignoring international conventions on human rights. Several well known miscarriages of justice cases were cited as evidence that the state was moving down a path that it could not return from (Birmingham Six, the Guildford Four) as well as the infamous '*Sus Law*'[80] (Section 4 of the Vagrancy Act 1824). An increasingly indefinable nature and heightened risk of terrorism (as constructed in the ongoing discourse) helped satisfy both of these requirements. The general consensus within the political élite during the various discourses of the nineteen seventies and eighties was that terrorism was a serious threat to the maintenance of peace and public order, stemming from highly organised 'hooligan' or para-military gangs causing unacceptable levels of violence as well as subversive unrest. By the early nineties, this ever growing threat to stability and peace was well established as distinct from ordinary crime, some would argue even encompassing a similar feel around having a political or moral legitimacy. By the mid nineties, the debate had moved on, in so far as the official Home Office discourses again shifted. Processes of threat construction divided terrorism into three defined strands, Irish, domestic and

international, while expanding the danger of terrorism generally, paving the way for permanent counter terrorism law. Jack Straw stated in Parliament: *"Our commitment to the rule of law is one of the crucial differences between the principles of democracy and the evil dogma of the terrorists"*[81]. The continuing framing of the debate in such a powerful and authoritative manner made it almost impossible for any politician to disagree with these statements politically, especially when such revered figures as Lord Lloyd spoke of: *"terrorism produces that singular horror and revulsion is that terrorist crime is seen as an attack on society as a whole, and our democratic institutions, it is akin to an act of war"* in his 1996 report (Lord Lloyd 1996). Therefore ultimately the author feels that the case for the change in legislation was made and made very effectively.

4.4 Royal Assent and Reception of the 2000 Act

At the beginning of this chapter, it can clearly be seen that the political procedures required to position the Terrorism Bill at the forefront of the legislative process, gather the required evidence of a *'need for change'*, brought together supporters (on both sides of the political divide), effectively closed down any detractors and managed the media, public and potential Human Rights fallout in record time, all against what was perceived as the acceptable and safe *status quo,* this was nothing short of a momentous act of statecraft. The Terrorism Act 2000 received Royal Assent on 20th July 2000 and came into force on 19th February 2001. The Right Honourable Jack Straw MP (Home Secretary of the day), described the act as *"a timely replacement for the Prevention of Terrorism Act 1989"* and as *"simply protecting democracy by consolidating previous anti-terror measures"*. When reading the above paragraphs, it should be remembered that the Terrorism Act 2000 was the first of a number of general Terrorism Acts passed by the Labour Government and the UK Parliament which superseded and repealed previous terror based acts (the Prevention of Terrorism (Temporary Provisions) Act 1989 and the Northern Ireland (Emergency Provisions) Act 1996).

The powers it provided to the Police and Military have been controversial, leading to several noted cases of miscarriages of justice, alleged abuse, and several high profile legal challenges in the British and European courts. The stop-and-search powers under section 44 of the Act in particular have now been ruled illegal by the European Court of Human Rights and will be further discussed and examined in chapter five of this professional doctorate. However, returning to the 2000 Act, the key features focused upon at the time were:

- A new framework of *permanent* UK-wide counter-terrorist legislation.
- Judicial extensions of the detention of terrorist suspects replaces Ministerial extensions.
- ECtHR compliant.
- Extended safeguards for those in police custody suspected of terrorist acts.

- Five new Codes of Practice.

It can be seen that the 2000 Terrorism Act, built on almost all of the proposals in the Government's consultation document *'Legislation Against Terrorism'*, published in December 1998. The consultation document in turn responded to Lord Lloyd of Berwick's Independent Enquiry into Legislation Against Terrorism, published in October 1996. Lloyd said *inter alia* that even if there was lasting peace in Northern Ireland there would still be a need for specific legislation to counter the threat from other forms of terrorism. Lloyd went on to explain, that previous counter-terrorist legislation provided a range of measures designed to confront terrorism and support the investigation of terrorist crime and that the new act would build on previous knowledge and would fall into eight broad categories:

1. A power for the Secretary of State to proscribe terrorist organisations, backed up by a series of offences connected with such organisations (membership, fundraising etc); other specific offences connected with terrorism (such as fund-raising for terrorist purposes, training in the use of firearms for terrorist purposes, etc); and a range of police powers (powers of investigation, arrest, stop and search, detention, etc).
2. That previous counter-terrorist legislation was subject to annual renewal by Parliament. Under the Act this will no longer be the case. The main provisions in the Act are permanent. There will, however, continue to be an annual report to Parliament on the working of the Act; this is required under section 126.
3. Part VII of the Act provides additional temporary measures for Northern Ireland only. These are subject to annual renewal and are time-limited to 5 years. Each provision can be switched off by order at any time. Setting these temporary powers in the context of a UK-wide framework of permanent counter-terrorism measures underlines the Government's commitment to repealing the Northern Ireland specific powers as soon as it is safe to do so.
4. The previous counter-terrorist legislation was originally designed in response to terrorism connected with the affairs of Northern Ireland ("Irish terrorism"), and some of its provisions had subsequently been extended to certain categories of international terrorism. It did not apply to any other terrorism connected with UK affairs ("domestic terrorism"). Under the Terrorism Act counter terrorist measures are applicable to all forms of terrorism: Irish, international, and domestic.
5. A key feature of the Act is that it introduces judicial extensions of the detention of terrorist suspects. This replaces the previous system of Ministerial extensions and has enabled the UK's derogations from the ECtHR and ICCPR to be withdrawn.

6. Under the new legislation important safeguards for those in police custody suspected of terrorist acts are continued and extended. In Northern Ireland, these include the audio and video recording with sound of police interviews with terrorist suspects which are governed by separate Codes of Practice.
7. Other safeguards include the right to have someone informed of one's detention; the right to legal advice; and the right to have a solicitor present during police interviews. These safeguards along with others are contained in the section 99 Code of Practice on the exercise of police powers covering detention, treatment, questioning and identification of persons detained on suspicion of terrorist activity.
8. Independent oversight of the workings of the Act will be provided by the appointment of the Independent Terrorism Act Reviewer and, in Northern Ireland, the ongoing work of the Independent Assessor of Military Complaints Procedures in NI and the Independent Commissioner for the Holding Centre(s).

Returning to the golden thread of this thesis and to the most commonly encountered use of the new 'Terrorism Act 2000' was outlined in Section 44 which enabled the police and the Home Secretary to define any area in the country as well as a time period wherein they could stop and search any vehicle or person, and seize articles of a kind which could be used in connection with terrorism. Unlike other stop and search powers that the police could use Section 44 and did not require the police to have reasonable suspicion that an offence has been committed, to search an individual. In attempting to discover why the Government installed this required (not requiring reasonable suspicion), one has to return to the *Terrorism Bill 1999 / 2000*[82] *and Lord Lloyd*, who advised the Government and later detailed in the Bill: *"The Government agreed with Lord Lloyd's view that these powers were effective both as a deterrent and in practice and that they would still be required in the event of a lasting peace in Northern Ireland. It added that there was ample evidence to suggest that the ability of examining officers to stop and search at random and, without the need for reasonable suspicion, had disrupted both Irish and international terrorist operations; and that explosives, guns and ammunition and other terrorist equipment had been recovered through the use of the powers"*. Within the actual Bill, the ample evidence is not provided in any depth and relies on additional points drafted throughout the report. The 1999 / 2000 report continued: *"The Government also agreed with Lord Lloyd's conclusion that the powers could be strengthened and improved. It said: The powers have been, and continue to be, criticised on the grounds that:*

- they are applied disproportionately against those travelling to, or from, the Irish Republic or Northern Ireland;

- they are unnecessarily restrictive in that they prevent the owners of small aircraft from using airfields which are not designated, except with the approval of an examining officer, whether or not they are not carrying passengers for reward; and that their use imposes delays on passengers and freight to the detriment of the smooth flow of traffic.
- their use imposes delays on passengers and freight to the detriment of the smooth flow of traffic.

The Government did however acknowledge that the use of the powers could result on occasions in some inconvenience and possible delays to passengers and freight traffic. The Governments position of the day was that it did not believe that the powers would be utilised improperly or in a discriminatory fashion. It did admit that the vast majority of stops and examinations would be conducted on people and goods travelling. As Irish terrorism had thus far posed the greatest threat to the security of the United Kingdom, this is inevitable. The Government went on to suggest a number of possible changes to the current arrangements for port and border controls. Those that have been incorporated into Schedule 5 of the Act and in summary revolved around the time that passengers were allowed to be stopped and questioned. The guidance moved from a 24 hour timeframe at which a passenger could be detained down to a maximum of 9 hours, whether or not the officer had any suspicions that the person is or has been involved with the commission, preparation, or instigation of acts of terrorism. This single issue raised more headlines and media interest than any other section of the act but was not commented upon in the consultation document. Liberty have always argued that Section 44 was too broadly drafted and as a result it was open to be abuse by police, in particular to stop, search and to intimidate protesters at peaceful demonstrations who do not present a terrorist threat. Liberty has produced a guide to *'understand the powers'* it [The Act] grants police officers[83]. Although much debate and legal/public consultation was had around the scope, various sections and inclusion of terms such as religion or ideology, the final definition of *'terrorism'* within the 2000Act, is defined as:

> **1.**—(1) In this Act "terrorism" means the use or threat of action Terrorism:
> where— interpretation.
> (a) the action falls within subsection (2),
> (b) the use or threat is designed to influence the government or to
> intimidate the public or a section of the public, and
> (c) the use or threat is made for the purpose of advancing a political,
> religious or ideological cause.
> (2) Action falls within this subsection if it—
> (a) involves serious violence against a person,
> (b) involves serious damage to property,

(c) endangers a person's life, other than that of the person committing the action,

(d) creates a serious risk to the health or safety of the public or a section of the public, or

(e) is designed seriously to interfere with or seriously to disrupt an electronic system.

(3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied. ch1100c01a 24-07-00 23:00:14 ACT Unit: pag1 CH 11, 21.7.2000

To conclude, this chapter and to summarise the three questions at the beginning of this chapter is difficult, except to say that, today more than ever a UK citizen should understand that laws are there to protect the citizen and not to attempt to regulate every aspect of our daily lives. It is vital to know that the dominate source of our laws are parliamentary established, drafted and created by elected politicians and enforced by police and other government funded agencies and finally punishments are dealt with via our court systems. That said judges can actually make some laws through their decisions in their courtrooms. In England and Wales lawmaking is broken down into two parts, legislative and judicial. Legislative occurs in and around parliament and involves the preparation of new laws. Judicial occurs in courts and involves the application of the law to real world cases. History shows that, people do terrible things in the name of various causes, beliefs, religion and other real or perceived injustices; in 2000 the UK Government believed they needed exceptional counter terrorism powers that exceed those normally in place for serious and major crimes because of our recent history in Northern Ireland, the emergence of AQ and domestic extremists. This position for such powers/legislation was supported by several eminent scholars, politicians and law lords.

In terms of the dangers concerned, possible infringements against human rights and liberties etc, many of which are well documented, the UK Government decided that the safeguard in place were sufficient to deal with these and other concerns. The case of Gillan and Quinton clearly raises issues surrounding the implementation, utilisation and sustainability of such powers now and for the future but at the time 2000, the UK Government felt that the dangers and infringements on human rights and liberties were worth the possible outcomes of a reduced freedom and reduced movement to its citizens. Whether that would be the case if the Terrorism Act was introduced today the author is not convinced and that any safeguards required would be immense (example the additional safeguards surrounding any deployments of the Section 47A powers).

Chapter 5.

Available Police Guidance, the Utilisation (Implementation) and Identified Concerns

5.1 National Police Training and Guidance

This chapter will explain the diverse and complex training landscape that existed across the UK around 1999 / 2000, explore the then circumstances of the national training provision, briefly detail the structures, available guidance and national direction that were provided to the Police Forces on this new and critical issue. The chapter will then outline the utilisation of the powers, how it was deployed by the police forces, notably the Metropolitan Police Service (MPS) and the identified concerns emanating from the utilisation of these powers.

Although the Terrorism Act 2000 received Royal Assent on 20th July 2000 and came into force on 19th February 2001, the actual supplying of any legislative guidance was left for several months and actual *'police guidance'* on the exact nature of the Act, its usage and interpretation was left by and large to the various forces that deployed the powers. Nationally there was no one overarching guidance document explaining the enormity of the Act, how police were empowered to use it or instructions from the Government on any *'principle of use'*. As the actual Terrorism Act 2000 is too long to be attached in the references of this thesis however, a copy can be accessed via the web link: *www.legislation.gov.uk/ukpga/2000/11/contents.* The Association of Chief Police Officers (ACPO) did however; communicate their thoughts and general comments on the new Act in an internal letter, sent to all Chief Constables and Forces throughout the UK. The actual letter has not been located but anecdotal evidence from Craig Mackey suggest that it was sent round shortly after the Act came into force, this is normal ACPO practice.

To understand the historical context of the time, in terms of overall police national training in 2001, Centrex, the name of the Central Police Training and Development Authority (CPTDA), was established under Part 4 of the Criminal Justice and Police Act 2001, and was the primary means of police training in England and Wales (although some of the larger Forces, MPS, did maintained their own training establishments but still utilised guidance and practice notes provided by Centrex). The headquarters of Centrex was situated at Bramshill House, formerly known as the National Police Staff College, Bramshill. Centrex was given (under the 2001 Act) responsibility to provide direction and learning/study material for most aspects of police training and development. Centrex also took on the responsibility for producing many of the national reports, standards and guidance on behalf of the UK Police Service, ACPO and the wider policing (legislation) environment. Due to a number of external

factors, namely financial restrictions and reductions of staff (in real terms), overall lack of confidence from the UK police forces, the increase in training demands not being met and the move away from an older style of police training, Centrex was replaced by the National Policing Improvement Agency (NPIA) on 1st April 2007. From 1st April 2007, the functions of Centrex and other bodies were merged into the National Policing Improvement Agency (NPIA). The NPIA now works in partnership with forces and policing bodies throughout the UK to improve the way they work across many areas of policing. The agency took over the work of several precursor agencies including the Police Information_Technology Organisation (PITO), Centrex (including the National Centre for Policing Excellence), and a small number of Home Office staff.

PITO and Centrex were both abolished when the NPIA became into being and assumed formal responsibilities for police forces in England and Wales but, unlike PITO, not for the eight Scottish forces. It is fair to say from an operational standpoint that the creation of the National Policing Improvement Agency (NPIA) marked one of the most significant milestones in policing for many years. The NPIA was proposed by the Association of Chief Police Officers (England & Wales) as a response to the UK Government's green paper *Building Safer Communities Together.* The stated objective of the NPIA was and remains today to support the delivery of more effective policing and a culture of self-improvement around policing in the United Kingdom (unlike PITO, it is not solely a supplier of national police IT systems). It should be noted that NPIA whilst still in its formative years had a number of significant challenges to meet such as, the implementation of the *Bichard Inquiry* after the *Soham Murders*, the McFarland Report regarding Police IT and PITO, made the development, implementation and standardisation of new police technologies a major national priority. The development of doctrine and policy in conjunction with ACPO, encouraging a national police strategy in terms of purchasing of equipment and bringing about universal police standards in areas such as training, development and leadership were all fundamental priorities and objectives of the agency. The HMIC Report *'Closing the Gap'* recommended closer working and partnerships especially in strategic areas such as protective service and community policing.

The National Police Improvement Agency (NPIA) was established in the latter part of 2006, under the Police and Justice Act 2006 and part of its remit NPIA is to develop policing doctrine and practice advice, in consultation with ACPO, the Home Office and the Police Service. It has been agreed by ACPO that practice advice produced by NPIA should be used by chief officers to shape police responses to ensure that the general public experience is consistent across the country and levels of services are maintained. Interestingly, NPIA is at great pains to point out on its website that the implementation of all practice advice will require operational choices to be made at local level in order to achieve the appropriate police response.[84] In respect of the guidance that was available at the

time (2008), noted that the first published/accessible document states that practice advice focuses on the use of stop and search powers under the Terrorism Act 2000. It replaces *ACPO (2007) Practice Advice on Stop and Search in Relation to the Terrorism Act* and *ACPO (2006) Practice Advice on Stop and Search, Section 4.* Key to the guidance was clear suggestions as to how the powers should be interpreted and utilised across the UK. The guidance further stated: *'The powers of stop and search under the Terrorism Act are intended for use in exceptional circumstances, and their operational use should be seen in the context of the wider counter terrorism CONTEST Strategy.*

The introduction pages went onto state*: 'The powers are an important part of tackling terrorism. They create a hostile environment for terrorists to operate in and can help to deter, disrupt and detect terrorist activity. Used correctly, stop and search is a powerful tool that can help protect all of our communities from terrorism.* Interestingly, even within this document, it was identified that the use of such a power could cause problems, the guidance reminded officers: *'Its use can, however, create significant problems and perceptions within the community...This advice provides clear guidance on the rationale for the use of stop and search, the importance of briefing and tasking, and the vital role of community engagement.* The guidance went onto to highlight a number of examples of good practice that was available for all forces to use. The powers covered by this advice reiterated that the powers are at their most effective when they have the support and understanding of the community, and are used in a proportionate way by appropriately trained and well- briefed officers'[85].

In terms of locating any actual police guidance, this proved to be extremely difficult as NPIA could not provide the author with a definitive document or product in which that detailed any direction or guidance from around the 2001 period. The nearest documents that were found were the *'2006 and 2008 Practice Advice on Stop and Search in relation to Terrorism'*. This document was produced on behalf of the Association of Chief Police Officers (ACPO) by NPIA and published 2006 and 2008 respectively. In the 2008 foreword, written by Deputy Commissioner Craig Mackey (the ACPO Business Lead), he wrote that the advice focused on the use of stop and search powers under the Terrorism Act 2000 and replaced the ACPO 2007 Practice Advice (the author could not locate the 2007 advice). This was due to the current trend of only maintaining the latest *'electronic copy'* of a police document and destroying pervious copies. This practice does make any detailed historical research difficult. The 2008 advice differs slightly from the 2006 advice and is broken down into three key sections within the document. Section one explains the importance of Community Engagement, how to develop community intelligence, the role of the Independent Advisory Groups (IAG's), the role of the Police Authorities and finally details what should be said/explained to casual observers.[86] Section two, is by and far the largest part of the document as it defines and explains what *'Terrorism'* is, the legislation around Section 43, Section 44, the operational use of the two sections and how the

police should communicate the use to the community. The section goes on to explain how briefings and taskings (deployments) should be carried out, the benefits of the correct use of the power and how it is vital to present these deployments in a user friendly manner. A brief example of the type of advice can be seen on page 16 of the document. (As all rights are reserved, the author cannot reproduce the section here however the '*checklist*' and other sections can be found via the document at *www.npia.police.uk/.../Stop_and_Search_in_Relation_to_Terrorism. Regarding* Practice advice on stop and search in relation to terrorism 2008). The document states: '*Officers should use the information provided to influence their decision to stop and search an individual. Officers should also be fully briefed on and aware of the differences between searches under Section 43 and Section 44 of the Terrorism Act 2000, and the circumstances in which it is appropriate to use either power'.*

It further states that 'briefings should also provide officers with a form of words that they can use when explaining the use of stop and search under the Act. Officers should be reminded at the briefings of the importance of providing the public with as much information about the use of the powers when dealing with the public. They should explain the power that is being used, that the person is not suspected of being a terrorist, what the operation is seeking to do, e.g. to detect and disrupt terrorist activity, why the person was selected to be searched and lastly and most importantly what entitlements the person has. Interestingly, when the officers were asked in the focus groups around what they were briefed on prior to any deployments, many of the officers were not aware of the above five pieces of information. Furthermore when the officers were asked had they seen or been shown any guidance documents or handed any handouts relating to entitlements, information for the person stopped and searched, many stated that they had received very little. In fact on page 17 of the advice document, there is a simple guide *(checklist)* as to how to carry out a stop and search, the information required under law to be obtained and what information is required to be given to the person searched. If this simple half page document had been provided to all officers prior to any deployments, then a real change in activity may have been witnessed[87].

The advice does state that there *may* be exceptional circumstances where it is impractical to brief officers before they are deployed, where this occurs, supervisors should provide officers with a briefing as soon as possible after the deployment. Through the focus groups, interviews and from practical operational experience, the author cannot envisage a time or circumstances that it has been so urgent that a briefing (even a two minute briefing) has not or should not take place. Section three sets out the process for authorising Section 44 searches and includes the role of the authorising officer, the start and expiry times of authorisations, the role of the National Joint Unit and the Home Office in scrutinising applications for Section 44 searches. Furthermore key to this section is the introduction of community impact assessments (CIA's), ongoing threat assessments and local information. In all police operations, it is now standard practice to carry out a Community Impact

Assessment or '*CIA*' as it is known. The CIA is a living document, this means that the CIA should be consistently reviewed and updated throughout the life of any operation. It is suggested that a CIA is completed prior to any deployment and address local issues, particularly where an authority covers a diverse and large area. The requirements of the Human Rights Act 1998 and all equality legislation should be included in the CIA as well as any known diversity issues (community issues). The CIA is seen as a critical document and further information on how to incorporate a CIA in policing operations can be located in the *'ACPO Practice on Critical Incident Management'* via the ACPO website.[88]

The officer authorising the actual power (Commander or above) to be used must inform the Home Office of the grounds as soon as reasonably practicable, in practice this means that once the paperwork has been completed, a copy is transmitted to the Home Office Minister's Department via the National Joint Unit (NJU), who collate and ensure the details are correct. Once the authority has reached the Home Office, they the Home Office have forty eight hours to confirm the authority. The Home Force, via the NJU should consider the following points prior to making an application to the Home Secretary. That there is an ongoing assessment of the terrorist threat, that any handling and assessing any new information that becomes available over the period of the authorisation, that the description of and reasons for geographical extent of powers is recorded and justified, that the details of briefings and training provided to officers using the powers are recorded, that any security requirements at or within the location are considered, that practical implementation of powers, that a Community Impact Assessment (CIA) has been completed and why other search powers are insufficient and that this power is the only option.

In terms of what type of information to be considered in an application, these may include local intelligence that terrorist activity may have increased within an area or with relevance to the area; pronouncements by terrorist organisations that particular interests are targeted; any recent or planned arrests, police action or circumstances which highlight terrorist activity within the area; any current situations within an area where evidence to suggest that they could be exploited by terrorists and any officially recognised advice e.g. an ACPO Advisory Message[89]. It should be noted that in 2001, the British Security Service (BSS) disclosed in various briefing and statements, that they were aware of 250 primary investigative targets, and that by July 2005 this had risen to 800. The service went on to explain that each of these 800 targets had the potential to develop into an intensive operation which could have escalated and therefore may have had a knock on effect on other intelligence development activity.

5.2 The continued utilisation of the Power

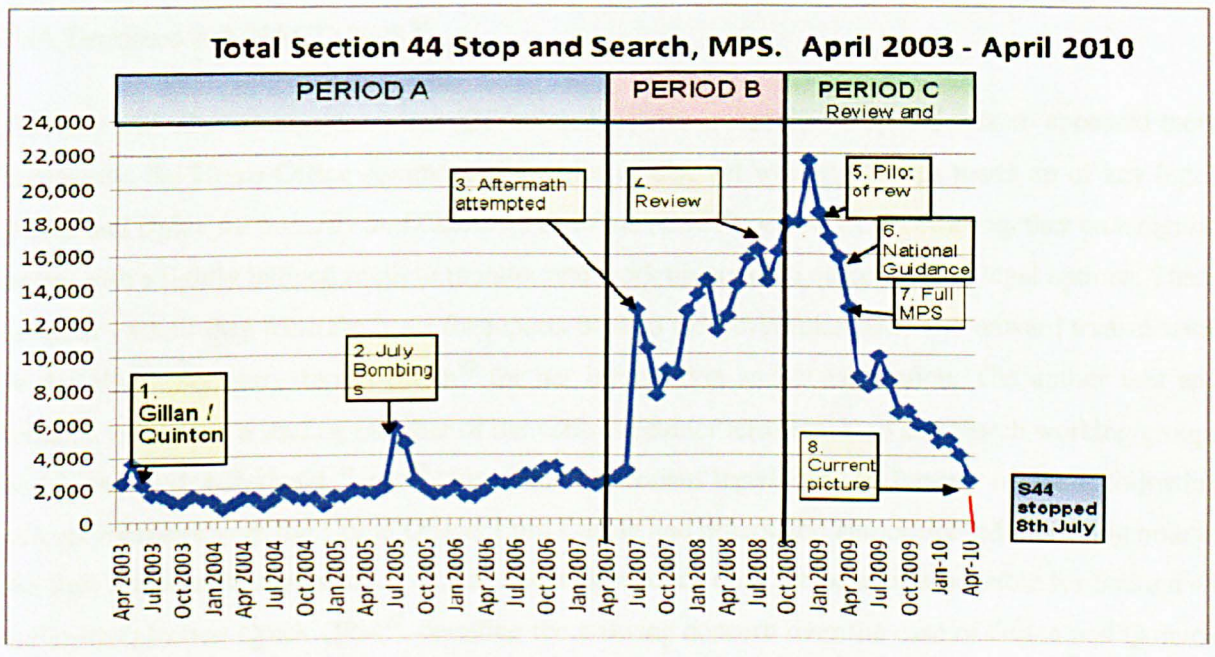
In 2006, the Intelligence and Security Committee informed the UK Government that *'An intensive operation, for example into imminent attack planning, can consume almost half of the Security Service's operational and investigative resources'*[90]. The use of Section 44 TACT stop and search by the Metropolitan Police Service (MPS), City of London Police (CoLP) and the British Transport Police (BTP), commenced in earnest on the 8th July 2005, following the attacks on the 7th July[91]. The four co-ordinated terrorist attacks killed fifty-two people (as well as the four bombers) and injured a further 700 commuters. It was later established that the explosions were caused by rudimentary homemade organic peroxide-based devices packed into rucksacks which the bombers carried. The bombings were followed exactly two weeks later by a series of attempted attacks. Behind the political rhetoric and underlying principles of reassurance and protection, the UK Government and Police had to take decisive action, the streets of London appeared to be under a concerted terrorist attack, from a well organised, highly trained and effective terrorist group or groups, who were lead, directed and resourced and prepared for a lengthy campaign, unlike anything the UK Government or Police had ever witnessed. The events of 7/7 were seen as a complete watershed moment from the previous tactics used in conjunction with the Irish terror campaigns, in that little was known of the suspects, their methodology and ultimately how many 'terrorist cells' were involved.

As highlighted by the 7/7 Coroner's Inquest Report[92] and the Royal United Services Institute (RUSI) report[93] on the 7/7 attacks, at this critical time, little *'usable'* intelligence had surfaced around the threat, and or the suspects. It was due in part to this lack of credible intelligence that a strategic decision was taken at the highest echelon of the organisation (MPS) to turn the Capital into a no-go area for terrorists and to create a robust *'hostile environment'* for anyone who either had intentions or were considering taking action against the Capital. One counter terrorist tactic that emerged from the initial security meetings at New Scotland Yard (NSY) was the use of a London wide 'Blanket' counter terrorism stop and search regime (strategic policy decision). It is a little recorded fact that up and until this point in 2005, the use of Section 44 TACT stop and search had not been deployed across the Capital in any great numbers and was a little known tactic. As the chart at **figure 2** below shows, the use of Section 44 as a viable counter terrorism tactic within the MPS commenced in April 2003 and was only ever deployed using a very small cadre of specially trained officers within the Territorial Support group (TSG), perhaps numbering twenty five officers per month and only used in and around the Westminster area (iconic sites and crowded places)[94]. At that time the tactic was used by the MPS purely as a reassurance and protective security measure. It was authorised on the basis of a small scale deployment in and around the Westminster 'central zone' Government area, in an effort to create a 'hostile environment' or better described as a 'terrorist unfriendly environment'. This particular tactic

was one of a number of protective security multi-layered security approaches that were 'overlaid' across the Capital to secure London from terrorist activity (reconnaissance) and attacks.

Other tactics that were considered included, several localized Intelligence led policing initiatives, the use of CCTV cameras at strategic points throughout the Capital, the ongoing deployment of 'Overt' high visibility patrolling, heavy vehicle mitigation (HVM) at key locations across the road network, armed targeted traffic checkpoints, Project Griffin and Project Argus (training for Private companies), general training on Bomb Threats and how to deal with suspect packages, additional overt policing at iconic and crowded places and lastly increased high profile armed patrols. It was only following the 7/7 attacks that Assistant Commissioner Andy Hayman decided that this tactic should be further deployed across the wider London area and then to the scale as reported later in the media. Research notes show that this 'wider' tactic was utilised over the 2007/8/9 period and was used hundreds of thousands of times but the notes equally show that this and other tactics were used in order to provide vital reassurance and to create that elusive '*hostile environment*' for the Capital. It did however enjoy considerable success ensuring the safety of Londoners, particularly around high profile state events (Military and Royal Events), crowded places (Trafalgar Square) and iconic sites (Parliament, the Royal Palace). Strangely and for reasons never quite discovered or analysed at any length, during the whole of the use of this tactic, the MPS only received a 'handful 'of complaints from members of the public. This is a marked contrast to the more traditional stop and search usage in which thousands of complaints are recorded each year.

Figure 2. Stop and Search Figures from **April 2003** to **April 2010.**



During the same period (2007 to 2009) the author was undertaking a review of the procedures in the MPS and in his role as National User spent many months working with the National NPIA team redrafting various sections of the practice advice in order to ensure that the practices of the MPS were not only in line with national guidance but secured appropriate oversight and governance structures to protect the reputation of the MPS and to provide frontline officers with a workable doctrine to apply the guidance on an everyday basis.

5.3 From a Blanket to a Patchwork Quilt

It is the contention of the author, that this single European Court of Human Rights (ECtHR) ruling provided the catalyst and a wakeup call to the UK Government and Police Forces across the UK. Gillan and Quinton had achieved what few social and legal reformers had achieved, that being a major political paradigm shift to a more liberal and community centric position on stop and search activities. In late 2008, early 2009, the Metropolitan Police Service (MPS) began to take a proactive interest towards the Gillan and Quinton case passing through the various stages of the UK courts and inaudibly began taking note of the emerging media observations and miscellaneous legal arguments from such luminaries as Lord Carlile[95] and Lord Bingham. Periodically, the uncharacteristic (mainly left of centre press) article would appear providing a epigrammatic update to the case, outlining the continuing need to change the primary legislation and called for the Labour Government to act now and not to await for a legal outcome and to seize the '*morale opportunity*' to do the '*right and proper thing*', i.e. change the legislation before being '*compelled*' to do so by the European Courts. At the same time the MPS were receiving multiple Freedom of Information Act (FOIA) requests/questions around the Services' use of counter terrorism powers in stopping and searching photographers Section 58A Terrorism Act (TACT) 2008.[96]

As these and other counter terrorism (CT) related articles (schedule 7 stop and search) appeared more frequently, the Home Office commenced a series of discreet working groups made up of key legal, police and *Office for Security and Counter Terrorism (OSCT)* personnel to come together on a regular basis, with a tightly defined remit to monitor and work up possible outcomes and legal options. These '*options*' would then form the basis for reports back to the government side and onward transmission to the Home Secretary Jacqui Smith[97] for her information and consideration. The author was and remains to this day a leading member of the various counter terrorism stop and search working groups and is the Senior National 'User'[98], for counter terrorism legislation. In January of 2009, following several meetings with the Home Office, Lord Carlile and others, the author drafted a briefing note to the then Assistant Commissioner for Specialist Operations (and the person responsible for Section 44 authorities) Robert Quick QPM[99], detailing the growing concern over the case of Gillan and Quinton and the emerging issues pertaining to '*having a blanket authority in place*'[100], the continuing use of

stop and search tactics within the MPS force area and the increasing numbers of stops being commented upon by Lord Carlile (the Independent Reviewer) in his annual review to the Home Secretary and Parliament[101], statements such as *'Despite hundreds of thousands of stop and searches in a period lasting nearly a decade, Section 44 was not responsible for a single terrorist-related arrest'*(**269,244**).[102] In March 2009, following an update report being placed before the Management Board (MB) of the MPS, the author was requested to form a *'all-embracing working group'* and lead a dedicated project team to: Conduct a full scale review of the Section 44 TACT stop and search practices in particular to establish any failings or shortcoming of the powers, review internal ACPO Authority procedure, review operational leadership structures, review the UK CONTEST Strategy and MPS Governance, review UK / Force wide deployment processes and to review all processes and procedures are ECtHR compliant.

The author's initial briefing to Assistant Commissioner Bob Quick centred on the leadership and management of the actual deployments, the use of the *'without reasonable grounds'* power (as it was recognised early-on that the 'front line' officers were critical of the manner in which the power was utilised, justified and defended in any subsequent court cases), focusing on the then briefing regime, what were the officers told prior to any operational activity and the engagement piece around how the power was actual utilised when dealing with members of the public. Towards the end of March 2009, the author set about constructing a discreet project team within his command, the Counter Terrorism Protective Security Command, Specialist Operations (SO) Business Group to manage the project. The rationale for this was to remove the project team from the actual day-to-day deployments and internal politics and where possible any influences from the Territorial Policing (TP) Business Group[103].

5.4 Project Commission

Within weeks of the review mandate being agreed and signed off by the Assistant Commissioner for Specialist Operations (ACSO), the author held a series of focus groups with uniformed officers, ranging from Police Constables to Uniform Inspectors. The focus groups were made up of officers who had either utilised the stop and search powers or who had supervised officers that had used the powers. During the early group work, the review team explained to the focus group attendees the reason why they were assembled (usually after a team briefing or team meeting), they communicated the review remit, aims and objectives of the review and the benefits of assisting this work i.e. that any findings would be submitted to the MPS Management Board and would be utilised in future training, development and counter terrorism deployments. Then utilising a pre-designed questionnaire, the project team would request the groups to complete the questionnaire and verbally feedback their responses, observations and opinions on using such a power, the benefits or any perceived negative outcomes. A copy of the police questionnaire is attached at **Appendix B**.

Due to the overwhelming sense that the officers felt that they were left (in many cases) without robust supervision, leadership and direction, the project took a turn away from the initial areas and widened the leadership analysis piece to further understand how external and military leadership role models could assist. This required a revisit to previous work around leaders versus supervisors. Cognisant of the initial statements around operational failings and absent leadership or supervision, an enormous amount of research was carried out prior to the construction of the 'police questionnaire', in terms of researching past and current leadership styles as previously discussed from the *'great man'* notion of heroic leaders[104], through trait theories[105], behaviourist theories[106], situational leadership (Tuckman)[107], contingency theory (Fielder)[108] and on to transactional and transformational leadership (Burns[109], Bass)[110] , briefing and learning styles (auditory, visual and kinaesthetic)[111], to finally 'how to write a questionnaire'(Remenyi)[112] in order that the results / findings were usable and able to withstand robust academic scrutiny. The rationale behind this extensive (extended) development phase was firstly, that the Metropolitan Police Service (MPS) prides itself on its leaders; leadership programmes/training and has its own Leadership Academy (LA) and secondly, the project wanted to test out its own five part hypothesis, this being that:

- The end result (the stop and search) is heavily reliant on the quality and standard of communication at the initial briefing of the officers/staff (results being: appropriate numbers stopped, National Intelligence Model (NIM) used, information/intelligence passed back through the information/intelligence collection process, minimal data corruption or loss and viable intelligence being available for 'further proactive onward action'.
- That the leadership or supervision of the assets (officers/staff) is critical in determining the outcome of any deployments (direction and control).
- That the 'engagement phase' of the 'encounter' with the subject (member of the public) is professional, the reasons for the stop and search procedure are clearly communicated, the stop and search carried out correctly, therefore ensures satisfied customers with few or no complaints and that reassurance, safety and security of the area is maintained.
- That the de-briefing of officers/staff was carried out effectively, efficiently and as soon as practicable to the deployment(s), by a trained/qualified/experienced officer/staff member.
- That some form of deployment/tasking, review/evaluation was carried out again by a suitably qualified person within a reasonable time frame, thus allowing for management information as well as deployment data to be captured and analysed, prior to any further taskings/deployments.

The police questionnaires were sent out to every Borough in the MPS (32). The author requested that the borough counter terrorism lead (usually a Superintendent) ask for two or three volunteers to complete the questionnaire and return it to the author. The only stipulation placed onto the borough

was that if possible could the officers completing the questionnaire have recent operational experience of this type of counter terrorism stop and search. The questionnaire consisted of a front briefing sheet, seven questions and a section regarding their rank, length of service, ethnic profile and a subsidiary question asking would they like to provide additional points as part of a follow up piece of research. The questions and the results are now reproduced here in order to show the findings of the data from which the interviews and other parts of the project fed off (in particular the lessons learnt). In order to explore the findings of the questionnaires and the focus groups, the author has themed the responses together to demonstrate the differences between the two methods. Firstly when asked around the subject of briefings and training, the responders' from the questionnaires stated:

Q1. Where you satisfied with the briefing / training on Section 43/44 Terrorism Act 2000 (TACT)?

I strongly agree that I was satisfied with the briefing

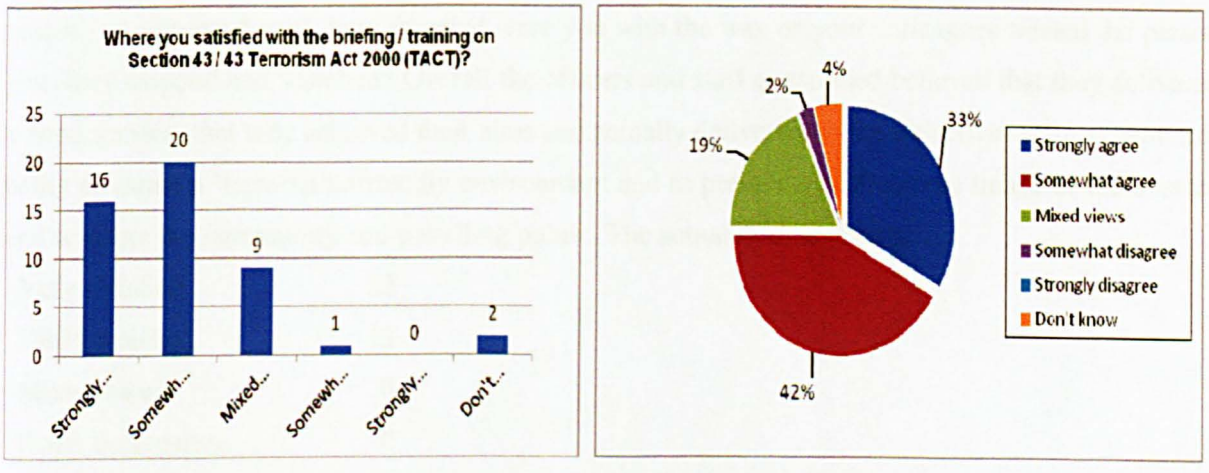
I somewhat agree that I was satisfied with the briefing/training

I have mixed views around the briefing / training provided

I somewhat disagree that I was satisfied with the briefing / training

I strongly disagree that I was satisfied with the briefing / training

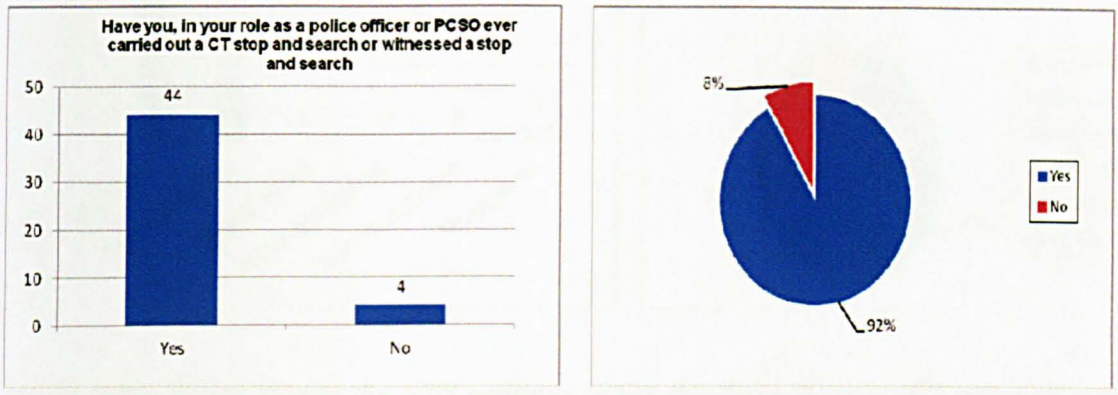
Figure 3. Question 1. Stop and Search Questionnaire



Interestingly, the results from the questionnaire were slightly different from the results of the focus group in that many of the focus groups, felt that the actual briefings were too vague, with insufficient details around the targets, randomness, the actual limitations of the power and where they could or could not be utilised. The top five responses from the focus groups around this theme were that they felt there was a lack of training around the specific stop and search powers of 43 and 44, they felt that they were all unsure of their powers to a greater or lesser extent, in addition, they felt that the CT Co-ordinator role on Borough needed rejuvenating, in questioning it was obvious that the group was unsure about the wording of the act and that leadership featured highly in both focus groups as to a

serious concern in any deployments and direction of the teams. Unsurprisingly in Q2, Have you, in your role as a police officer or PCSO carried out a CT stop and search or witnessed a stop and search? (Yes or No) most stated yes, as part of the overall analysis piece, the author would now ensure that a questionnaire would be sent out to a selection of officers that had and had not utilised the power. In hindsight this was an oversight and would be rectified in any future questionnaire deployments.

Figure 4. Question 2 stop and search questionnaire.



The Encounter

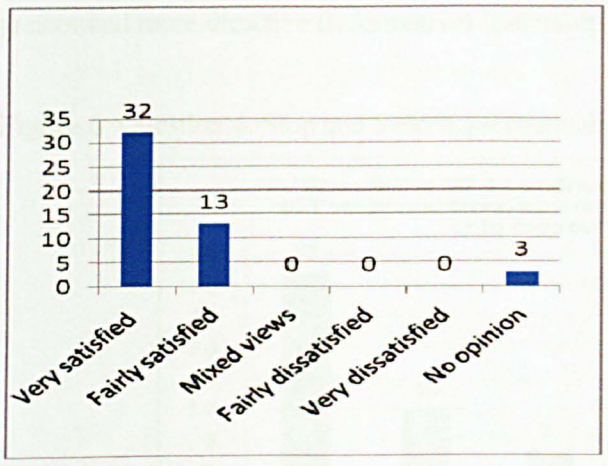
Regarding Q3, Thinking about the most recent time you carried out a counter terrorism (CT) stop and search (or witnessed one), how satisfied were you with the way or your colleagues treated the person you /they stopped and searched? Overall the officers and staff questioned believed that they delivered a good service, that they achieved their aims and actually delivered on the objectives set for them, this being to create a 'terrorist unfriendly environment and to present a professional image of the Service and reassure the community and travelling public. The actual findings being:

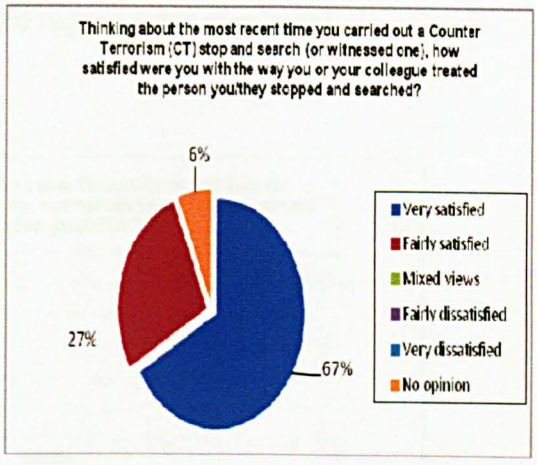
Very satisfied	32
Fairly satisfied	13
Mixed views	0
Fairly dissatisfied	0
Very dissatisfied	0
No opinion	3

The officers from the focus groups, stated that When it came to the actual encounter, no officers interviewed, provided any issues around complaints or issues relating to conduct of stop. All noted that if the power was fully explained to the member of the public, then they the member of the public (MOP) did not resent the stop. That said, there were several occasions that concerns about the length of time the stop took rather than the way is was done or the powers. There had been a few isolated

incidents where members of the public have been stopped and presented the officer with a fistful of 5090's (stop and search recording slips).

Figure 5. Question 3. Stop and Search questionnaire.



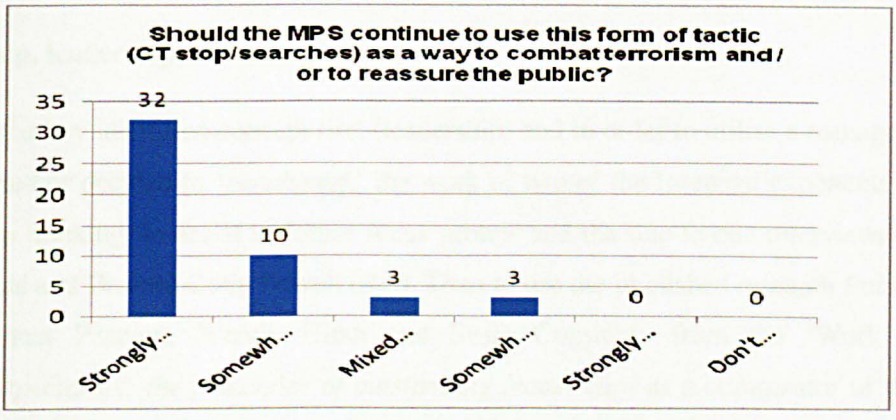


In Q4, when asked; ***Should the MPS continue to use this form of tactic (CT stop and search) as a way to combat terrorism and / or to reassurance the public?*** One can see an overall statement that the officers supported the use in the broadest of senses, whilst in the focus groups many stated that, they felt they would need additional information, stronger data and understanding of the priorities and effectiveness of any further / future deployments. The results from the Q4 were:

I strongly agree that the MPS should continue to use CT stops and searches to combat terrorism / reassure the public	Strongly agree	32
I somewhat agree that the MPS should continue to use CT stops and searches to combat terrorism / reassure the public	Somewhat agree	10
I have mixed views around whether the MPS should continue to use CT stops and searches to combat terrorism / reassure the public	Mixed views	3
I somewhat disagree that the MPS should continue to use CT stops and searches to combat terrorism / reassure the public	Somewhat disagree	3
I strongly disagree that the MPS should continue to use CT stops and searches to combat terrorism / reassure the public	Strongly disagree	0
Don't know	Don't know	0

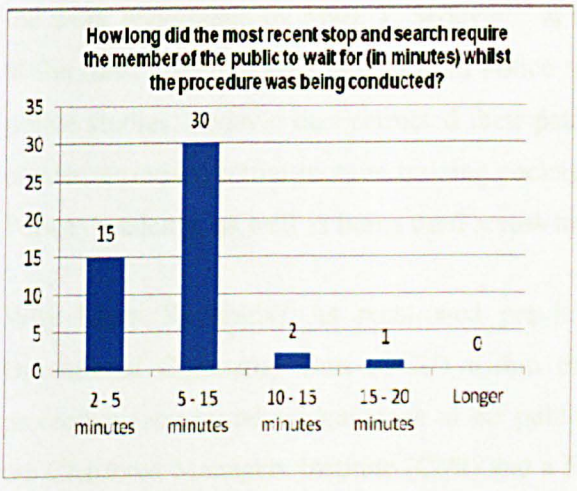
The officers from the focus groups, all spoke of overwhelming support for keeping the power as there was a perception of it being beneficial. Although some officers felt that they received little or no feedback about results or the usefulness of their work. This was commonly mentioned throughout. Everyone was in agreement that the role of the rainbow coordinator needed to be refreshed and that greater and more directive (informative) leadership and supervision was required.

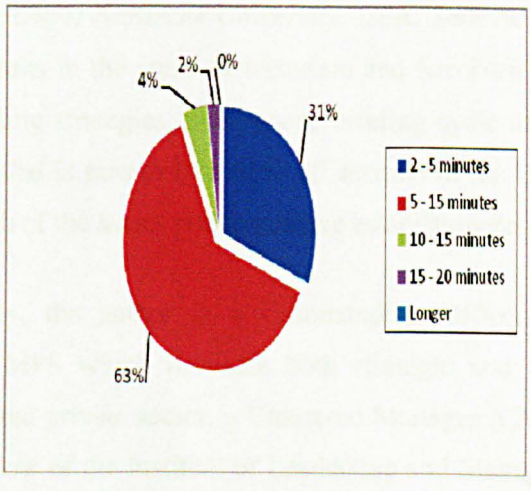
Figure 6 Question 4. Stop and Search questionnaire



In **Q5** when asked around the length of time to stop a person: *How long did the most recent stop and search require the member of the public to wait (in minutes) whilst the procedure was conducted?*

Figure 7. Question 5. Stop and Search questionnaire





This is a critical question in terms of satisfaction of the person stopped and searched, Pennie Quinton when asked stated that she was stopped for around twenty minutes, whereas the officer who stopped her stated that the stop period was around the five minute mark. In reality we know from Quinton's video recorder (it was left recording) that the encounter was just over twenty minutes. When this fact was pointed out to the officers in the focus group many stated that this time (twenty minutes) did appear to be a long time to conduct a stop, many stated that unless the stop and search was 'providing additional grounds for concerns' then they would have concluded the process sooner. In respect of

the findings from the focus groups due to their length of time and details provided many of the findings were noted as 'highlights' rather than recorded verbatim and due to the wordage limitations placed on this thesis, it has not been possible to include the full results of this phase of the project however, the relevant highlights were analysed, discussed and the findings from a the focus groups with *'rank and file'* police officers were collated into an executive summary. That executive summary is attached at **Appendix I**. The findings are now part of a wider stop and search guide or operational tool.

5.5 Leadership, leadership, leadership

Returning to the key identified concept first (leadership) and in order to utilise a manageable research data set, the author decided to *'benchmark'* the work of two of the foremost exponents of leadership and leadership thinking, to assist in future focus groups and the one-to-one interviews. These were: Larry Reynolds and General Colin Powell (Ret). Then to use the published research findings of Penny Tamkin, Gemma Pearson, Wendy Hirsh and Susie Constable from the 'Work Foundation', *(Exceeding Expectation: the principles of outstanding leadership)* as a comparator of the two styles above and to utilise a combination of all of the above to produce the most appropriate leadership style/methodology for a new model of stop and search deployments. As a secondary evaluation to the above research, the author utilised the findings from a series of studies involving American Law Enforcement (ALE) training (Recruit training) following the attacks on the US in 2001, principally the work undertaken by Mark T. Sedevic[113] at the *Olivet Nazarene University*, USA. Sedevic looked at the most effective approach to train Police recruits in the arena of terrorism and terrorism related police studies. Sedevic deconstructed their patrolling strategies, intelligence briefing cycle and then created a revised initial recruits training package that is now delivered to all recruits in the Chicago Police Academy, as well as being used across much of the larger police training establishments.

Why Larry Reynolds? As mentioned previously, the author is a Commanding Officer of an Operational Command Unit (OCU) within the MPS which provides both strategic and tactical protective security advice/guidance to the public and private sector, a Chartered Manager (CMgr) of the Chartered Managers Institute (CMI) and a Fellow of the Institute of Leadership and Management (FInstLM), Reynolds is extremely well known within the private sector and is regularly cited in the business and management press. Reynolds is a leadership and business consultant and has been for over twenty years, has worked with over 10,000 business leaders in over 100 different organisations. He is the owner and CEO of *'21st Century Leader'*, which provides leadership and strategy development and specialises in working with large multi-national companies looking to prosper in the low-carbon economy. Recent projects have involve working with the 'Co-operative Group' on the development of their new head office - the most sustainable building in Europe; working with *Crédit*

Agricole Corporate and Investment Bank on communication strategy as it positions itself as a 'Green Bank'. After many years of researching leadership and leadership concepts and models, in 2006 Reynolds published his four steps or qualities that he believes are essential to leaders in all circumstances and situations. The author of this work was struck by the '*simplicity*' of the Reynolds's model and wanted to see if some of the elements (or all) could be utilised within the MPS stop and search deployment model. The overriding principle had to be: it is easy to remember and it captures (encapsulates) the essence of leadership. Taking into consideration it [Reynolds model] does not cover all of the more 'traditional' skills associated with leadership, the author wanted to develop / take forward a '*blend*' of the four steps styles/methods and develop the skills around them. Reynolds's mantra is that true leaders do not accept things as they are, they question and challenge what is there now and provoke others to do the same, which he notes, in some instances finds them 'out of favour' for doing so. *"If they did not challenge, they would merely be following and would not be leaders"*. The military, politics, business and sport all have well-known examples of such leaders. Horatio Nelson, Winston Churchill, James Dyson and Clive Woodward all challenged perceived wisdom in their particular fields and, despite having to face up to sceptics, all are now household names in the UK. The project believed that the new MPS deployment model also challenged accepted wisdom, when compared to more traditional policing tactical models (National Intelligence Model). Leaders achieve this by developing a clear, well articulated vision of a better future or a course of action. This is something the MPS failed to do within the briefing phase of the stop and search deployments and if this tactic is ever to be accepted as a viable tactic in the future, then the MPS must ensure that the vision and aims are articulated effectively. A good example of this is Lord Nelson, he constantly reiterated to his captains and sailors that his aim was to: Ensure that England was free from the threat of invasion from across the channel. For Churchill it was a future without a German regime or Nazism. For Dyson it was high performance vacuuming system without the inconvenience of a costly disposable bag. For Woodward it was an English Rugby side playing as a cohesive focused team and winning the World Cup and or the Six Nations. Many police service or company '*visions*' fail because they are not clear, exciting or achievable.

Like Reynolds, the author wanted to take this aspect of leadership a step further and having challenged the status quo (that the existing Section 44 TACT model did not work), articulate a vision, that each police Inspector had to win support and commitment (sign up) for that new vision (the new deployment model) because as every successful leader knows that unless they connect with the hearts and minds of their staff, the staff won't back them. This type of winning commitment means getting close to staff, understanding their needs, concerns and aspirations. It means communicating the operational vision in a way that makes sense and is believable. Many would argue that Tony Blair exemplifies this point; from both his ability to *connect* to the British electorate when he came to

power in 1997 and his loss of that *connection* over the Iraq war. Most importantly for Reynolds (and for Gen Colin Powell), the final *essential quality* of a leader is about the *'morality'* and *'ethics of leadership'*. With the British inquisitorial media, leaders in the public eye cannot get away with allowing their private life to be at odds with how the public, or their followers, expect them to behave. Reynolds compared John F. Kennedy and Bill Clinton to demonstrate how private behaviour was hidden from the public in the 1960's but exposed in the 1990's. Leaders in less high profile positions should similarly remember that what they say and what they do should be consistent.

The focus groups *signposted* that in their experience/opinion, the lack of consistency in senior police management behaviour is the most frequently used basis for questioning the intentions behind leadership and management initiatives. In a recent MPS staff-survey (March 2011) the most *damming* comments surrounded the lack of direct line management and leadership and the *'void'* that the lack of leadership / management left within the operational *sphere of supervision.* As is constantly reported, *'trust and respect'* are earned over time, in many cases over many years, yet can be lost in a careless instant. *'Integrity and ethics'* have never been more important issues for leaders. And in a more cynical, media aware, less deferential world, leaders who do not meet their own exacting standards and expectations and who do not act as they wish their followers to act, can find that they no longer have any followers or political supporters – note the recent phone hacking scandal and subsequent public enquiry (Leveson)[114].

In a recent speech Colin Powell reiterated that in 2012, *"A dream doesn't become reality through magic; it takes sweat, determination and hard work"*. Born in 1937, Powell grew up in the rough 'Bronx district' of New York to Jamaican immigrant parents. He studied hard at school and stated that he always saw that his way out of the 'Bronx' was through the US Military, working hard and developing himself. He, still to this day considers himself a soldier first and governmental adviser second. Powell was the first African-American and the youngest army officer ever to serve as Chairman of the Joint Chiefs of Staff (CJCS). It is fair to say that most Americans got their first striking impressions of Powell in this role during his televised press briefings during the first Gulf War. His robust, articulate, forthright manner and unassuming dignity made him a favourite of statesmen, journalists and the American and British public. Throughout his military career he developed a set of guidelines or principles that he would explain to his commanders and soldiers and constantly referred to these as 'his doctrine of leadership' or *'Primer'*. This is rather simple in practice, in essence the *'Primer'* consists of a power-point presentation[115] that has been utilised across the globe in one form or another, written about by hundreds of authors within the leadership arena, dissected by hundreds if not thousands of leadership consultants and presenters and quoted by presidents, politicians and military leaders for as many years as the author can remember. *The Primer*:

is made up of a series of eighteen slides, each containing an overarching 'lesson' and then followed by a short narrative, explaining the lesson from Powell's perspective. The author has utilised several of the lessons over the past ten years within his own command and working life as *'life and working principles'* and on the wall in his office, hangs three picture frames containing three key elements of the primer, these are 1) *'Being responsible sometimes means pissing people off'*. 2) *'The day soldiers stop bringing you their problems is the day you have stopped leading them. They have either lost confidence that you can help them or concluded that you do not care. Either case is a failure of leadership'* and 3) *'Leadership is the art of accomplishing more than the science of management says is possible'*.

As recent events within the media, political and policing world has revealed (July 2011, News of the World), the above quote has never meant so much. Moving onto to the main thrust of the initial research in this chapter, that being to compare and contrast the two subject matter experts and attempt to cross reference and to draw out some *key leadership principles* or traits that the project could utilise in the MPS deployment model as the foundation stones across the stop and search project. Throughout this research phase it has become apparent that most leadership models tend to be conceptually derived and there are very few theories of leadership that emerge from empirical research. In comparing the two chosen subject matter experts and utilising the recently available and relevant policing leadership empirical study of the Work Foundation (WF). The WF recently[116] carried out a major qualitative study centred on what leaders themselves believe leadership to be and how they practice it [leadership], and which included the perspective of direct reports and very senior leaders in six major policing related organisations. In the Work Foundation document, the researchers pointed out that *"qualitative research has the major advantage of enabling deep and detailed engagement with the issues, we wanted to get beneath the skin of leadership, we wanted to understand the world of leadership from the perspectives of those who practice it and therefore we explored both beliefs about leadership - leadership philosophy or 'leadership being' – and the practice of it leadership doing"*[117].

The 'WF' team carried out a series of in-depth interviews lasting between 60-90 minutes each time, not dissimilar to the one-to-one interviews conducted by the author. Each of the 'leaders' were interviewed on two occasions, initially to gather what they understood leadership and leadership concepts to be, then again on how they carried out the 'action' or process of leadership. In total the team conducted 262 interviews which were all recorded and transcribed. The transcripts were entered into a qualitative data software package and coded. The codes they utilised were derived from the interviews themselves not an existing model of leadership. The coding process was a careful analysis of the content of each of the interviews and the identification of themes that emerge across interviews.

It is interesting to note that over 100 codes were initially identified and finally collapsed into eight broad coding categories (themes), these being:

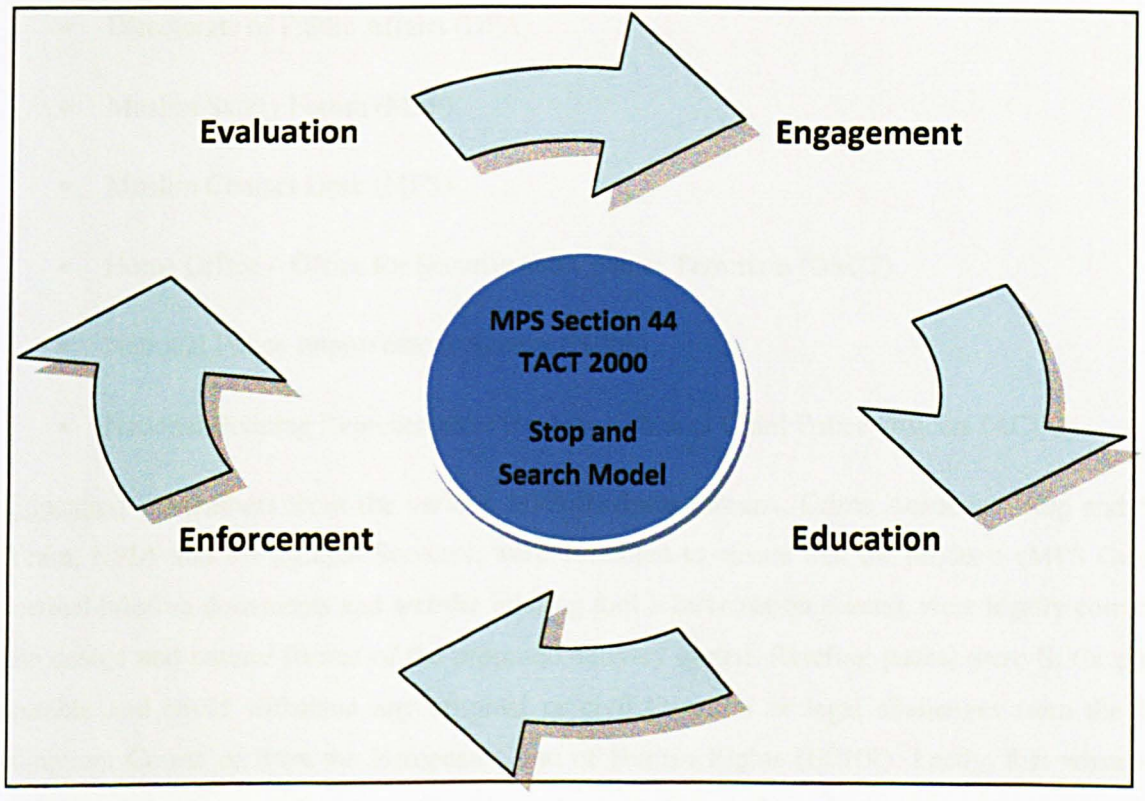
- Vision – all comments regarding vision, purpose and meaning
- Environment – Leader's comments on the way in which they seek to create and maintain culture and climate;
- Relationships – what leaders say regarding the importance of relationships with individuals, teams and the wider collective;
- Power/control – leaders beliefs and acts to do with the use of power and responsibility within organisations;
- Performance – anything on the management and maximisation of performance;
- Communication – comments on informing and engaging others;
- Contextual factors – the influence of systems and processes and organisational culture and how leaders use and work within them;
- Self – self awareness, comments on strengths and weaknesses and how leaders have developed.

The results that the team found, enabled them to divide the findings around leadership and leaders into three *'sub-levels or populations'*, these were: Outstanding, Better than good and Good. By comparing what these leaders say and do within each of the eight broad categories across the spectrum of performance the team looked at how the 'outstanding' leaders differed in their responses. Due to the available space for this chapter, the author has utilised only the outstanding traits, these were found to be: 1. Think systemically and act long term, 2. Bring meaning to life, 3. Apply the spirit not the letter of the law, 4. Grow people through performance, 5. Are self-aware and authentic to leadership first, their own needs second, 6. Understand that talk is work, 7. Give time and space to others, 8. Put 'we' before 'me' and lastly 9. Take deeper breaths and hold them longer.

5.6 The leadership Results

Utilising as many of the comparisons of the two leaders and the benchmarking exercise of the Work Foundation findings, the author decided to use four key areas within his own deployment (leadership) plan/model. These being *'The Four E's Model'*.

Figure 8. Section 44 TACT Deployment Model (McDonagh 2009).



The four key elements of the MPS stop and search model were, Engagement, Education, Enforcement and Evaluation. Each of the four were further broken down to include the following:

Engagement – A Strategic Board was created (under the chair of the author) to ensure that all work strands for the new process were communicated, disseminated for consultation and then fed back into the project team for consideration, discussion and use. The following parties or departments were included:

- Community engagement, working with the thirty two London Boroughs and representatives from the Community Monitoring Network (CMN).
- Liberty.
- Borough policing engagement with the lead for 'stop and search' (Superintendent level and member of the Senior Management Team) and the Operational Chief Inspector (Ops).
- MPS Central Diversity and Equality Team.
- Police Federation.
- Police Staff Unions.

- Directorate of Legal services (DLS).
- Directorate of Public Affairs (DPA).
- Muslim Safety Forum (MSF).
- Muslim Contact Desk (MPS).
- Home Office – Office for Security and Counter Terrorism (OSCT).
- National Police Improvement Agency (NPIA).
- National Policing Representative for Association of Chief Police Officers (ACPO).

Education – Members from the various MPS Business Groups, Crime Academy, Stop and Search Team, NPIA and MPS Legal Services, were consulted to ensure that the products (MPS Guidance, tactical briefing documents and website briefing tool – Information sheets), were legally correct, that the design and nature/ format of the proposed delivery system (briefing packs) were fit for purpose, useable and could withstand any criminal or civil litigation or legal challenges from the United Kingdom Courts or from the European Court of Human Rights (ECHR). Lastly, that whatever the author and the team produced would withstand any challenges from the media or any pressure groups once the model was launched across the MPS.

Enforcement – Taking into account that a few officers in the past had stated (cited in ECHR) that they had unintentionally use the stop and search powers without the correct authority being in place or used it outside of the authorised areas, it was immediately identified that a robust system of 'briefings' was urgently required. A briefing system (pack) was created and delivered by the Borough 'Duty Inspector' detailing the authorised area, method of deployment, time frames, any restrictions of power/deployment and most importantly the overall aims of the deployment. The most difficult aspect of the review was ensuring that the right message went out to all deployed staff and returns of work reached the 'Central Quality Assurance Team'. The review team went out to each of the thirty two Boroughs and 'dip sampled' the briefings and briefing packs and conducted 'post deployment de-briefs'.

Evaluation – Linked in part to above, once the reporting systems, collection of data and analysis of intelligence were in place, the results proved to be less complex than first thought. The local 'Performance and Intelligence Units' proved to be a great help, they further assisted in any follow-up tasks to evaluate and assure any reported 'incorrect usage issues' (officers utilising the power in the wrong area). Ever mindful of the 2003 failures and the subsequent observation of the European

Courts, regarding lack of leadership/supervision and how the author utilised the initial findings from the leadership research. It was established that for the new stop and search model to be effective, efficient and legal (to be able to withstand a media / legal challenge), the following aspects would be desirable to be encapsulated into the briefing package (key leadership objectives in bold):

1) The leader / supervisor must **understand his/her responsibilities** with regard to the use of the Section 44 TACT (2000) stop and search powers (be aware of the legal requirements within the Act).
2) The leader / supervisor must **appreciate and communicate** the MPS and project **'vision'** of the stop and search deployment model to his/her staff.
3) The leader / supervisor must **'set the tone'** (*the Look and Feel*) of the deployment and assist their staff in delivering the best possible service to the community and citizens of London (within the framework of the five P's)[118].
4) The leader / supervisor must ensure that all stop and searches are conducted correctly, recorded and **dealt with in a professional manner**. Utilise *'Intrusive supervision'* tactics. Sir Paul Stephenson said following the G20 Protests: *"I believe that we need to demonstrate stronger leadership and supervision at all levels. This is why I have demanded intrusive supervision. There are, in any organisation, supervisors who sit back and do not confront or challenge poor performance. I want to see more active supervision – by sergeants of often young PCs, by inspectors and superintendents of the officers they lead, and by more senior officers of, effectively, the mini-forces which come under their control"*[119].
5) The leader / supervisor should ensure that any and **all complaints or concerns should be dealt with** either at the time or as soon as practicable and notification passed to the central project team for their information and recording.
6) The leader / supervisor must ensure that **all information / intelligence gathered should be passed on as soon as practicable** to the local intelligence Unit for onward transmission to SO20, SO15 and the stop and search database. National Intelligence Model (NIM) compliant.

To conclude this chapter, research of the initial advice and guidance clearly demonstrated that the roll out of this power and appropriate guidance was not effective and could have been much better, perhaps with a single ACPO lead to take charge across the UK. ACPO did communicate their thoughts but did not provide sufficient clarity to all Forces and therefore each Force had to provide their own interpretation of the act (this was not unusual in the 1990's / 2000). As stated above this was due in part to national police training not being *'fit for purpose'* and this resulted in further confusion as to the roles and remit of Forces and who actually had the lead on this critical issue. To

reiterate, this was at the time of change from the Central Police Training and Development Authority (CPTDA) to Centrex 2001. To further compound the lack of guidance clarity and insufficient 'hands on' practical dissemination of best practice, the author cannot locate any advice or direction around when and how the tactual utilisation of the powers should have been auctioned by forces. This lead to many forces throughout the UK not using the powers as many felt that they did not have sufficient understanding, support from their peers and that many could not justify the actual deployment of such an exceptional power. Furthermore in terms of any UK wide utilisation / roll out evaluation or feedback data or analysis of the 2000 Act the author was unable to locate any and therefore can only summarise that little was conducted or published.

It is an important fact that only following the 2005 (7/7) London bombings did the utilisation of the power increased significantly in the Capital and only after the Gillan and Quinton case had progressed through the UK courts and were entering the European Courts did the Home Office and the MPS commence any monitoring or evaluation of the power. This monitoring lead onto the MPS enquiring into the ramifications any concerns in the use of the power on a large scale. In hindsight, looking back at the 2003 deployments little did the MPS know that their use of counter terrorism powers during a public order situation would change the face of protest and public order policing for the next ten years. That said, the author has found that a *checklist* of actions was in existence but could not confirm if this was ever circulated, from questioning the officers at the focus groups, none of them were provided with such a checklist and none knew of any guidance. It is fair to say that it was only following the 2009 review into the Act and subsequent use were the critical issues identified (leadership, intelligence gathering, deployment timings, locations, direction and control). Overall the research has shown the utilisation, roll out and guidance was poor. Forces were expected to provide clarity, direction and guidance to their officers and staff and that was not provided to an appropriate level. Only in 2009/2010 did the police and law makers really appreciate the damage that had been done in 2003 and therefore rightly the Act was consigned to history. The case study in chapter six clearly and articulately explains why and how the 2000 Act was used / misused and subsequently was rightly repealed.

Chapter 6.

The Death of a Power
(Gillan and Quinton V the United Kingdom - Case Study)

6.1 The Event, the Person stopped and the Man in charge.

This chapter details and explores the events of 2003 in the form of a single comprehensive case study however, it is more than just a case study; it is about the senior police officer who lead the police response that day in 2003 and an interview with one of the victims of the stop and search regime that changed the UK legal system and the way police forces throughout the UK interpret counter terrorism stop and search legislation. This chapter has been enriched and brought to life by two interviews that the author feels has provided the jewel of this professional doctorate. These interviews were conducted relatively late on in the professional doctorate and have changed many of the initial preconceptions that the author had of the two main subjects (Pennie Quinton and Chief Constable Andy Trotter). Both Pennie Quinton and Andy Trotter provided their interviews in an open and honest manner, the author found both of them to be wonderfully perceptive, cooperative and articulate people, who in one way or another have been changed through this case and the subsequent legal battles in the UK and European courts. The full interview transcripts have not been used extensively in this chapter, as much of the interviews are about the actual person, their feelings and their thoughts about the actual legal case, their work and frankly are not appropriate for this forum, however enlightening they proved.

It is the contention of the author that it was this single deployment in 2003, the subsequent court cases in the UK and in the European Court of Human Rights (ECtHR) that forced the Home Secretary (Theresa May) to repeal this power. It was not the overuse of the power (Blanket Authority), the number of complaints (four), nor the mounting numbers of people being stopped and searched across the Capital but two people being stopped at a time and location using a terrorism power when the police should have utilised public order legislation. In chapters one and three, this professional doctorate touched upon the multitude and magnitude of counter terrorism legislation and its application in protecting the United Kingdom (UK), its populace and infrastructure from terrorist attacks, its place in the wider security arena, and its reassurance of its citizens and in the preservation of a hostile environment that keeps potential terrorists at bay. The enormity and the significance of this case on British policing and resulting case law cannot be underestimated, it has literally changed the way the UK police utilise counter terrorism stop and search legislation now and for the foreseeable future. This single ruling has provided a wealth of legal arguments for other pressure

groups to challenge the UK Government on other stop and search powers, namely Section 60 of the Criminal Justice and Public Order Act 1994 and has provided them with a realistic chance of having other powers repealed in the near future. This chapter will outline the failings in 2003 of using counter terrorism (CT) stop and search legislation (Section 44 Terrorism Act 2000) in a public order situation that was deemed not to be appropriate, proportionate and ultimately not justifiable. This solitary deployment in 2003 and subsequent court hearings have led a large proportion of informed commentators to state that there was and remains an overwhelming societal and morally compelling case supporting the urgent need for change.

6.2 The Event.

On the 9th September 2003, the weather was dry, warm, slightly overcast and the major public order event in London on that day was the Defence Security and Equipment International (DSEi) equipment exhibition which was being staged in London Royal Docklands. Nothing unusual in this as it (DSEi) happens every two years and draws thousands of visitors, both trade and military. DSEi is seen as an important event in the international military and national security equipment sales calendar and is organised in conjunction with association UK Trade & Investment's Defense & Security Organisation (UKTi DSO). The DSEi is recognised as the world's largest fully integrated international defense exhibition featuring land, sea and air products and technologies. In 2003 it was opened by the then Defense Secretary, Rt Hon Geoff Hoon MP and during his opening speech, he spoke of the Governments support for the Iraqi people and that the British Military efforts had moved from a war footing into a *stabilisation*"[120] phase. Placing to one side the moral or immoral ethics involved with holding an international arms fair selling weapons that are designed to injure, maim or kill people within a liberal country, the aim of the event was and remains today to showcase an extensive and diverse range of military hardware and software from around the world to a very special and elite group of buyers.

On that particular day and in addition to the Euro fighter Typhoon jet fighter and an Apache attack helicopter in the main exhibition hall, six fully loaded warships were docked alongside the centre. The DSEi is the main showcase for UK military trade and is highly prized among many in the industry and is seen as the key to future sustainable growth, income generation and financial success. It is estimated that the DSEi Expo raises in excess of £500 Million in international orders alone, the exact amounts are not released due to national security reporting restrictions. The nearest to establishing how much the UK makes from arms export is £8291 Million in sales of Aircraft and Ships alone.[121] On that week in 2003, the uniformed security presence in and around the venue was a blend of 2,600 police officers, military police and private security contractors in total. The Metropolitan Police Service (MPS) Senior Officer Deputy Assistant Commissioner (DAC) Andy Trotter, felt reassured

that he had sufficient resources[122] to deal with any and every threat. Prior to the operation, the MPS (Andy Trotter) had planned to utilise public order powers and normal Police and Criminal Evidence Act (PACE)[123] stop and search powers should the need and evidential requirement be forthcoming. In the interview with DAC Trotter, he maintained that he was informed of and requested that he consider using the Section 44 powers by David Blunkett,[124] the then Home Secretary. DAC Trotter following this Home Office recommendation agreed to apply for and use the special powers under the Terrorism Act 2000 against any protesters at the arms fair. The granting of the special powers (the Authority) was later ratified by David Blunkett and when deployed openly criticised by Liberty[125] and several well known opposition politicians. In this respect, the author had three concerns, firstly that when a politician becomes involved in an operational policing matter, there is always the possibility that the issue (whatever that maybe) then becomes a party political matter and could be subjected to inter party points-scoring and used by other politicians to make a case for reform. More recently this can be seen to be emerging as a real threat to the office of the Commissioner of the Metropolis and other Chief Constables through the introduction of political appointments of policing commissioners. Secondly, in the case submissions and law reports analysed there is no mention of why the operational lead (Trotter) had not considered the use of other 'reasonable suspicion' powers or public order legislation (e.g. Section 60 Criminal Justice and Public Order Act 1994) instead of choosing counter terrorism legislation as his primary security power for what was clearly a high profile public order event and no supporting intelligence to suggest there was a threat to National Security. Thirdly, in a similar set of 'operational circumstances' would a similar (sized/experienced) force have policed the arms fair any differently. It is only via the interview that this interesting policing directive emerged and subsequently shines a light on why these particular powers were used (e.g. Trotter was advised by Blunkett to consider using the power). This in many quarters could be seen as direct political interference on an operational policing matter.

As the morning's briefings were being completed, no one had an inkling (or intelligence) that during the course of the day, British policing and the British legal system would be involved in a set of circumstances that would change and damage the very manner in which the police deal with suspected counter terrorism and public order events, incidents forever, let alone the reputational costs that were to take place. As the day unfolded, outside of the main venue in the Royal Docks were around fifty or so protesters from a number of protest groups, the largest contingent were from the Campaign Against the Arms Trade (CAAT)[126]. One of their spokespersons on the day said that the group would attempt to disrupt the event in a number of ways, initially by holding a procession to the east London venue on that morning and latterly several individuals were heard to boast that they were going to attempt to gain access to the high-security event. The author has attempted to establish what other intelligence was available around that period in 2003, it is fair to say that not a huge amount was known about

CAAT and certainly they did not have a high profile in terms of an 'online presence' or breaching security at major public events.

6.3 The key actors in this case study

Kevin Gillan PhD was born in 1977 and is now a sociology lecturer at Manchester University. Kevin completed his PhD at the University of Sheffield, where he investigated a range of social movement groups contesting globalisation and war. His thesis explored the ways in which activists beliefs and activities are shaped by historical and ideological contexts. Prior to this he worked as a research assistant at City University (London) and published a book entitled; *Anti-War Activism: New Media and Protest in the Information Age.* Kevin moved to the University of Manchester as a Lecturer in Sociology in 2007 and is currently continuing to research; Theories of social movements, Anti-war and peace activism, globalisation and the information age, new media and political communication and corporations and culture. However, in 2003 Gillan was a PhD student studying in Sheffield when, on 9th September, he came to London to protest peacefully against the arms fair being held in the Royal Docks, in east London. At about 10.30am Gillan was riding his bicycle near the Centre when he was stopped by two uniformed male police officers. They stopped and searched him and his rucksack and found nothing incriminating. Gillan was then provided with a copy of the Stop/Search Form 5090 which recorded that he had been stopped and searched under Section 44 of the 2000 terrorism Act.

Throughout his evidence, Gillan maintains that he was informed by the officers in response to his questions around why he was being stopped, that the police officers felt there were a lot of protesters about and that the police were concerned that the protesters would cause serious disruption to the event. The search record for Gillan stated that he had been searched for "articles concerned in terrorism". The entire stop and search encounter was recorded as lasting for approximately twenty minutes. Gillan later said of his treatment on that day: *'These laws demonstrated some of the nastiest, most draconian sides of this Government and had to be challenged, there has to be a limit on what the state can do and where it can go"*[127]

6.4 The second person stopped

Pennie Quinton was born in 1971 and is a free-lance film-maker, researcher and human rights campaigner currently specialising in Middle East conflicts. She, to this day is researching the ability of local Middle Eastern journalists to continue to report while living in constant crisis and she is in the process of finishing off a film around the daily lives of the local journalists. On that day in 2003, Quinton, an accredited freelance journalist went to the Docklands site to film any protests taking place against the arms fair. This is where the official account splits away from the personal account, both

slightly different. The semi official account taken from internet and newspaper articles, law reports and the European Courts transcripts. Pennie was stopped by a uniformed female police officer near the Centre at about 1.15pm and asked to account why she had appeared out of some bushes. Quinton was wearing a traditional photographer's jacket and carrying a small bag and a video camera.

The accounts state that she explained to the officer that she was a journalist and produced her press passes. The officer searched her; found nothing of note on her or in her bags and provided her with a copy of stop form 5090. The stop slip recorded that the object and grounds of the search were "P.O.T.A.", (Prevention of Terrorism Act) which was intended at the time by the officer to be a reference to the 2000 Terrorism Act. The form showed the length of the search as five minutes, but Quinton estimated that it lasted for thirty. Quinton claimed afterwards that she had felt so intimidated and distressed that she did not feel able to return to the demonstration although it had been her intention to make a documentary and sell footage of it. Quinton, added: *"If you have legislation the legislation needs to protect people from terrorists and it needs to protect people".*[128] By the end of the first day, 54 people had been arrested in and around the Expo site for various public order offences. In the thesis interview Pennie Quinton stated; *" I knew I was going to be arrested because I was filming for a documentary for a week or so, I was covering the setting up of a media centre, any protest / action that were going to be taking place and I was going to be interviewing people to find out why they were there and interviewing local people....that's why I was there em so em the idea was to get the most interesting footage possible. But there was not a lot to do with the policing as it was going to about the protest so there was a bit about the Quakers, the community and then a bit about the protest itself. Liberty had been in touch with people who were going to be at the protest and who were covering the protest and they had said that they were concerned that the section 44 power of stop and search was being used to police protests and they said that they felt that that power was not for that and they said that was an abuse of the power so they asked everybody working at the protest to keep a log of any stop and searched that had happened to them and hand them back to their (Liberty) observers and so everybody, as far as I know was doing this, which is why they picked my case and they picked Kevin's as there were a lot of people doing that and they took all the people involved and they took the best case to demonstrate that the power was drafted too widely.*

This entire case study is centred around the use of a controversial and some would say a draconian counter terrorism stop and search power, those being the Section 44 of the Terrorism Act 2000 (TACT), which has been mentioned in full in chapter one. As background to this individual case, it is worthy to reiterate that this particular power allowed police officers to stop and search individuals without reasonable suspicion of wrongdoing. This was a major departure from the more traditional and well established stop and search powers that were and still are in existence, such as section 1 of the Police Criminal Evidence Act 1984 (PACE) and the Section 23 of the Misuse of Drugs Act 1971.

Both of these powers demand reasonable suspicion before a constable can search a person. However in the case of Section 44 and in order to ensure a higher degree of oversight (accountability) was in place, a senior police officer of an Assistant Chief Constable or a Commander in the Metropolitan Police Service had to authorise its use (*'the authorisation)*'. In brief this authorisation could only be given if the senior officer considered it "*expedient for the prevention of acts of terrorism*", permitting any uniformed police officer within a defined and recorded geographical area to stop and search any person and anything carried by him or her. What the author initially uncovered from the actual court papers and submissions was the internal police rationale for deploying such a tactic in the first place and what was the briefing provided to the officers prior to any deployments on the ground. As this was a tenet of the later court hearings, one would now expect a greater degree of recording of any rationale. The author will comment further on this in later chapters in respect of lessons learned (Defensive Recording).

6.5 Litigation, litigation, litigation

Following Gillan and Quinton's detention (being stopped and searched) and alleged mistreatment by Metropolitan Police Officers on that day in September, both parties (with financial assistance from various social liberty groups) applied for a judicial review of their treatment. Gillan and Quinton firstly contended that the actual authorisation process and confirmation process were faulty and the key point in question. Secondly, they claimed that the use of the section 44 to stop and search against them at the arms fair was contrary to the legislative purpose and unlawful and that the guidance (briefings) given to police officers on the day were either not provided or that they were presented in such a manner that the officers did not fully understand their powers. Thirdly, the pair claimed that the section 44 authorisations and the exercise of powers under them constituted a disproportionate interference with their rights under Articles 5, 8, 9, 10 and 11 of the Convention. On 31st October 2003 the High Court dismissed the application[129].

Not content with this outcome, Liberty on behalf of Gillan and Quinton made a further application to the Court of Appeal. On 29th July 2004, the Court of Appeal made no order on the applicants' claims against the Commissioner of the Metropolitan Police and dismissed the claim against the Secretary of State. Liberty not wanting to let this action pass, applied for a House of Lords ruling on this matter as a test case[130]. On 8th March 2006, the House of Lords unanimously dismissed the applicants' appeal. In particular, the Law Lords were doubtful whether an ordinary superficial search of the person could be said to show a lack of respect for private life, so as to bring Article 8 of the European Convention on Human Rights into operation. Furthermore they stated, even if Article 8 did apply, the procedure was in accordance with the law and it would be impossible to regard a proper exercise of the power as other than proportionate when seeking to counter the great danger of terrorism. In parallel with the

UK case, Gillan and Quinton (Liberty) continued to maintain that the use of the section 44 power to stop and search them breached their rights under Articles 5 (right to liberty and security), 8 (right to respect for private and family life), 10 (freedom of expression) and 11 (freedom of assembly and association). Furthermore and in order to pursue their claim they lodged an application with the European Court of Human Rights (ECHR) on 26 January 2005.

A hearing was held in the ECtHR on Tuesday 12th May 2009 and the Judgment was given by a chamber of seven judges, which was made up of the following: Lech Garlicki, Nicolas Bratza, Giovanni Bonello, Ljiljana Mijović, Päivi Hirvelä, Ledi Bianku and Nebojša Vučinić. The Court considered that the use of the coercive powers conferred by the anti-terrorism legislation to require a person to submit to a search of their person, clothing and their personal belongings amounted to a clear interference with the right to respect for private life (The Human Rights Act states clearly, this principle to a private life is a right and not a social norm). The public nature of the search, with the discomfort of having personal information exposed to public view, might even in certain cases compound the seriousness of the interference because of an element of humiliation and embarrassment. This was at odds with the claims from the UK Government legal team that the interference could not be compared to searches of travellers at airports. An air traveller may be seen as consenting to such a search by choosing to travel. The person would know that he and his bags are liable to be searched before boarding the airplane and has a freedom of choice, since he can leave personal items behind and walk away without being subjected to a search. The search powers under section 44 are qualitatively different, in that the person can be stopped anywhere and at any time, without notice and without any choice as to whether or not to submit to a search.

In Strasberg, the court's view that the wide discretion conferred on the police under the 2000 Act, both in terms of the authorisation of the power to stop and search and its application in practice had not been curbed by adequate legal safeguards so as to offer the individual adequate protection against arbitrary interference. Firstly, at the authorisation stage there was no requirement that the stop and search power be considered "necessary", only "expedient". The authorisation was subject to confirmation by the Secretary of State within 48 hours and was renewable after 28 days. The Secretary of State could not alter the geographical coverage of an authorisation and although he or she could refuse confirmation or substitute an earlier time of expiry, it appeared that in practice this had never been done. Indeed, the temporal and geographical restrictions provided by Parliament had failed to act as any real check on the issuing of authorisations by the police, which was clearly demonstrated by the fact that an authorisation for the Metropolitan Police Force Area had been continuously renewed in a "rolling programme" since the powers had first been granted in 2001. The Court went on to state *"The officer's decision to stop and search an individual was one based exclusively on the "hunch" or "professional intuition". Not only was it unnecessary for him to demonstrate the*

existence of any reasonable suspicion; he was not required even subjectively to suspect anything about the person stopped and searched". The sole proviso was that the search had to be for the purpose of looking for articles which could be used in connection with terrorism; this was a very wide category which covered many articles commonly carried by people in the streets carrying on their day to day activities. This aspect of the power concerned many and should the person concerned be stopped for the purpose of searching for such articles, the police officer did not even have to have grounds for suspecting the presence of such articles.

The Court was struck by the statistical and other evidence showing the extent to which police officers resorted to the powers of stop and search under section 44 of the Act[131] and found that there was a clear risk of arbitrariness in granting such broad discretion to the police officer. While the present cases did not concern Black applicants or those of Asian origin, the risks of the discriminatory use of the powers against such persons was a very real consideration, although the statistics did show that Black and Asian persons were not disproportionately affected by the powers[132]. In fact the National police database and the MPS 'stop and search' database showed that in terms of the numbers of Black and Asian persons actually being stopped, in terms of a black person being stopped as opposed to a white person, statistically likely to be 1 to1 in the case of Black persons and or 1 to 1.4 in the case of Asian persons. There was, furthermore, a risk that such a widely framed power could be misused against demonstrators and protestors in breach of Article 10 and/or 11 of the Convention. The court did make a mention of the fact that, although the powers of authorisation and confirmation exercised by the senior police officer and the Secretary of State respectively were subject to judicial review, the breadth of the discretion involved meant that applicants faced formidable obstacles in showing that any authorisation and confirmation were ***ultra vires*** (meaning *'beyond the powers'* or an *'abuse of power'*). Similarly, as shown in the applicants' case, or judicial review or an action in damages to challenge the exercise of the stop and search powers by a police officer in an individual case were unlikely to succeed. It was thought key at that time that the absence of any obligation on the part of the officer to show a reasonable suspicion made it almost impossible to prove that that power had been improperly exercised.

In conclusion, the Court considered that the powers of authorisation and confirmation as well as those of stop and search under sections 44 of the 2000 Act were neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse. In making this decision, the Court found that they were not "*in accordance with the law*", and were in violation of Article 8. Upon giving the finding above, the Court held that it was not necessary to examine the applicants' complaints under Articles 5, 10 and 11. The Court held that the finding of a violation constituted sufficient just satisfaction in respect of any non-pecuniary damage suffered by the applicants. Gillan and Quinton were awarded 33,850 Euros (EUR) for costs and expenses. In the period in question (2003) that this case took place,

the MPS did have a full authority in place across the whole of the Capital and did utilise this tactic as the main counter terrorism deployment. However, in 2010 the European Court were not made aware of the fact that since September 2009 the MPS had not had a full authority and had moved from, what was referred to as a *'blanket authority'*[133] to what is now referred to as a *'Patchwork Quilt'*[134] authority. Having analysed, researched and designed the new three layer MPS tactical deployment model, the author believes that, had the Court been provided with the evidence of a clear demonstration of change in the MPS CT tactics, deployments and subsequently the vastly reduced number of searches being carried out since 2008/9 to 2010 they may not have made their judgments had they known the full extent of the changes made by the MPS. The chart[135] at **figure 5** clearly illustrates the huge reduction in the use of Section 44 as a *'cover all CT option'*. The reviews and reports submitted to the MPS Management Board and the MPA all show a marked improvement in utilisation, monitoring and the reduction in deployment of this tactic.

In May 2009 the Metropolitan Police Service submitted a report summarising the conclusions of their review into the use of stop and searches under section 44 of the 2000 Act to the Metropolitan Police Authority (MPA). The report stated that the "emerging findings" from the review supported a three-layered approach to the use of the power, namely that the power should continue to be available in the vicinity of iconic sites and crowded places across London that are of key symbolic or strategic importance. That at all other sites elsewhere, except where authorised by a specific directive (following reliable intelligence), officers should only stop and search individuals using the power under section 43 of the 2000 Act, where they had grounds to suspect that the person might be engaged in a terrorism-related offence. The review commenced looking at the Section 44 powers, authority process, duration of any authority, area designated, type of deployments and how the MPS utilised this tactic. The review was led by Detective Chief Superintendent Michael McDonagh (Specialist Operations) and the author of this thesis. The review commenced in June 2009 and concluded in September 2009. At the same time a national review of the stop and search guidance was conducted in parallel by the National Police Improvement Agency (NPIA). There followed extensive collaboration with all 43 UK Police Forces, in particular the Metropolitan Police Service (MPS), British Transport Police (BTP) and the City of London Police (CoLP), the rationale for the key three, MPS, BTP and the CoLP to be the main contributors in the review was that 94% of all stop and searches in the UK at that time were conducted by the above three forces. The author of this paper presented his 'three layered' deployment plan at several major public community events, which received a highly positive reception and acknowledged the hard work of the MPS in changing their tactics and use of the power (Section 44).

6.6 The UK Government's last and final appeal

On the 30th June 2010 the European Court of Human Rights (the Grand Chamber) refused a final request from the UK Government for a further hearing (final appeal) against the original decision in the Gillan and Quinton case (application 4158/05). The Grand Chamber ruled that the police powers to stop and search had not been curbed by adequate legal safeguards so as to offer the individual adequate protection against arbitrary interference. Commenting on the Court's rejection of the Government's appeal, Isabella Sankey said *'This appeal was always doomed. The objectionable policy of broad stop and search without suspicion was wrong in principle and has proven divisive and counterproductive in practice".*[136] One week later, on the 8th July 2010 Theresa May, The new Home Secretary[137] explained to the House of Commons, that in order to comply with the judgment but not pre-empting the review of counter-terrorism legislation that she had commissioned, she had taken the decision to introduce interim guidelines for the police. She went on to futher explain that she felt that the test for an authorisation for the use of section 44 powers needed to be changed from requiring a search to be 'expedient' for the prevention of terrorism, to the much more stricter test of being 'necessary' for that purpose; and, most importantly, she introduced a new suspicion threshold. She added: "*Officers will no longer be able to search individuals using section 44 powers. Instead they will have to rely on section 43 powers, which require officers to reasonably suspect the person to be a terrorist. And officers will only be able to use section 44 in relation to the searches of vehicles. I will only confirm these authorisations where they are considered to be necessary, and officers will only be able to use them when they have 'reasonable suspicion*".

The Home Secretary announced on the 26th January 2011, that the review of counter-terrorism powers had made a recommendation that the Government should consider whether the police needed new stop and search power more quickly and on 1st March 2011 Theresa May announced that: "*given the current threat environment the police do need the powers more quickly and that the most appropriate way of meeting the legal and operational requirements concerning the counter-terrorism stop and search powers exercisable without reasonable suspicion is to make a remedial order*" *in the "interests of national security*". It is worthy of note that there has been an effective U turn by the government from the views they had held in opposition on this matter. At this time it is worthy of note to examine what the actual differences are in terms of the two sections, Section 44 and Section 47A: The remedial order the Home Secretary spoke of in March 2011 replaced Sections 44 to 47 of the Terrorism Act 2000 with Section 47A. The 'Review of Counter Terrorism and Security Powers' (Cm 8004)[138] presented to Parliament in January 2011 recommended the findings of the European Court of Human Rights in Gillan and Quinton that the current stop and search regime breached Article 8 of the European Convention on Human Rights, furthermore that new guidance should be issued to police removing the provisions for stop and search of an individual under s.44, and requiring s.44 stops of vehicles to be subject to reasonable suspicion. However the review did recognise that exceptional

circumstances may occur that require enhanced powers and that any departure from the principle that stop and search be based on reasonable suspicion must be based on the need to address an immediate terrorist threat to a particular event or location. And that any use should be narrowly prescribed, in terms of duration, geographical extent, based on specific information to that threat, location and timing. The Home Secretary went on to say *" From today Section 47A will give a senior police officer the power to make an authorisation in relation to a specified area or place, if the officer reasonably suspects that an act of terrorism will take place and considers that the authorisation is necessary to prevent such an act."*

The actual authorisation process of Section 47A alters the authorisation in two ways. Firstly, the authorising officer must consider the authorisation is 'necessary', rather than in the case of Section 44 which was set at 'expedient' to prevent acts of terrorism. Secondly, there is an additional requirement that the authorising officer 'reasonably suspects' that an act of terrorism *will* take place. Although on the face of it this potentially strengthens the oversight process via judicial review, it makes the power almost impossible to utilise without specific intelligence suggesting that an attack will take place. Additionally there is no reference to the imminence or otherwise of the act of terrorism which is 'reasonably suspected' nor is there an explicit requirement that the act of terrorism relates to the authorisation area. The requirement of ministerial confirmation of the authorisation application is largely unchanged, with the critical exception that the Minister may now substitute a more restricted area[139]. If one were to be critical of the changes, this part is therefore subject to the same two criticisms made in relation to Section 44, this being that there is a perceived lack of transparency as at this time there is no public data relating to the number of authorisation applications, or the number rejected or approved. That said the total number of authorisations regarding these applications is mentioned in the Independent Reviewer of Terrorism Legislation's annual report and this report is made public. In respect to geographical and temporal limits, Section 47A does restrict the actual limits upon the power by requiring that the temporal and geographical limits to the authorisation be no more than is necessary to prevent the act of terrorism that the application is authorised for, thereby providing statutory influence to the recommendations previously contained in the NPIA's 'Practice Advice on Stop and Search in Relation to Terrorism' and the Home Office Circular. In addition, the current Code explicitly prohibits 'rolling' authorisations.

In the same way as Section 44, the new Section 47A authorisations that are not confirmed by the Secretary of State within 48 hours lapse, although this does not affect the legality of any actions taken in the interim. Therefore, 'short term' authorisations may be made which do not require Ministerial confirmation. There are three issues in connection with this aspect of the process, firstly, it could be drawn that this facet of the process may encourage forces to use the power for a short period,

secondly, the use of 'short-term' authorisations maybe utilised to evade oversight should be curtailed and lastly, more concerning is that the non-confirmation aspect could be used by the Minister to not have to make a political decision as to whether to support or refuse a request. In terms of community engagement, the Code accompanying section 47A states that Home Office forces *should* notify non-Home Office forces when an authorisation is in place which covers overlapping areas, and vice versa.[140] In addition, the authorising force *should* notify the relevant force's Police Authority or equivalent. This is an improvement which will increase the ability of communities to hold forces to account for their use of the power. It should, however, be a requirement not an option. The object of the search is evidence that the vehicle is being used for terrorism or the person is a terrorist.[141] This is only slightly more circumscribed than under section 44 as most objects found on a person or in their belongings that could be used for terrorism will prompt the suspicion that that particular person is a terrorist. Therefore, the officer's discretion remains virtually unfettered within the authorisation area.

In respect of questioning persons that have been stopped and searched, it is fair to say that officers do talk to people (engage them) in order to place them at ease and in most cases this is seen as can be seen as good practice, neither section 44 nor section 47A gives officers the power to question a person who has been stopped.[142] Lastly on this particular administrative point, in respect of the stop and search forms the Code to section 47A states the minimum information that must be included on the stop form. This is seen by all parties to be an improvement, given the wide variance in the amount of detail inputted by officers under section 44. Regarding the case study conclusion and further development work/recommendations, at the beginning of this chapter, as well as the case study, there were three areas of concern raised, these were around political interference (Blunkett), why were the tactics eventually utilised used and not public order powers and lastly, would a similar sized police force consider using counter terrorism powers when dealing with a similar protest or policing incident. The simple answer to the first point is that governments should not intervene or interfere with operational policing decisions as they tend to have a political agenda sitting behind any directions/suggestions.

Chief Constable Trotter in his interview with the author stated that he had not considered using the tactic and following the reports back from his officers who were on the ground that day, he decided to withdraw the use of this tactic on the second day. Unfortunately, it came some hours too late and Gillan and Quinton had been stopped and searched prior to the order to stop using this power had been circulated. The issue of whether a similar sized force would use this type of power in those circumstances is now very clear and the answer would also be no. Following the case in the English courts and the European courts (ECHR), all forces have now signed up to a national set of principles on the use of counter terrorism legislation. All forces have received extensive guidance around the

new Section 47A (replacement for Section 44 stop and search), national meetings have been held and the ACPO Lead for stop and search Deputy Commissioner Craig Mackey has sent a personal letter to every Chief Constable in the UK explaining in detail his thoughts around the use of Section 47A. In short, the new power under Section 47A TACT has provided the Police Service with a new revised Section 44 counter terrorism power, one that is sufficiently circumscribed in that the new power contained in the order is supported by a robust statutory Code of Practice and extensive guidance around how it should be used, what the Home Office expects and what the Home Secretary will sign off (confirm). It has to be said that much learning has been established over the past ten years in and around the use of Section 44 and other key stop and search powers, in respect to communication, complaints, Freedom of Information Act (FOIA) requests and the actual deployment of such a powerful piece of legislation.

In addition to this learning and in support of it, a new police guidance document has been developed to further support any usage of Section 47A in the near future, in particular around such high profile events like the Olympics, State Opening of Parliament and any Royal events. In terms of any operational deployments of the new power, the remedial order provides a much clearer definition and therefore a more targeted and proportionate power (Sections 44, 45 and 46 are now repealed). Much discussion has been had around the issue of the authorising officer having to be satisfied that they have got to have *'reasonable grounds to suspect that an act of terrorism will take place'*. This is set against the previous threshold of the authorising officer using it *'as it is expedient for preventing an act of terrorism'*. The new power is not perfect by any means, as it has not addressed several key aspects in particular the issue of the policemen's 'Gut feeling', 'hunch', randomness of the stop and search procedure when stopping a person or what happens when an officer is outside of a designated area and has a sense something is wrong but does not have enough to utilise a Section 43 stop and search (with suspicion). Having researched the new powers in detail, the author of this paper has noted several key themes or messages that make this power different from the previous CT stop and search powers. Section 47A is highly specific, tightly controlled and a very specialist search power where the searching officer requires no suspicion; it is not merely Section 44 with another name.

The Section 47A power requires a specific high level of *'Intelligence reporting'* to support an application (for the 'end-user' the tactical application is the same as Section 44, albeit with several key additional briefing and deployment requirements). Having spoken to several colleagues and interested parties within the legal and law enforcement community, it is not envisaged that Section 47A will be requested as a viable tactic in the near future, due to the high threshold placed upon the 'authorising officer' and that further development work is required to take place with the Office for Security and Counter Terrorism (OSCT), the police (ACPO) and the community, to ensure that the

section is usable when and if it is requested/required. In order to support such a request, the author would see that much work would be required in terms of the public/community communication/media piece, in order to persuade the growing number of *'interested parties'* that this is an effective and proportionate power and different from the previous Section 44 power, this alone makes its use a major challenge and one that any senior officer would not consider lightly. Therefore taking into consideration the level of anticipated scrutiny around any use of the new 47A legislation will no doubt be well above any previous levels, in particular now that the findings from the Gillan and Quinton case has reached the mainstream media and has several websites dedicated to the case. That said, the author sees that several key areas of development need to be tackled in order that the above issues do not force the police to abandon the use of this new power as it appears to be too difficult to utilise and then to defend its use.

It will require extensive community consultation and an effective communication strategy to demonstrate that the new power is being deployed and dealt with in a robust manner and that the MPS and other police forces are considering the following: The strategic goal and menu of tactical options needs to be elevated to take top priority when this tactic is deployed (as part of a wider deployment). That briefing of officers and the community engagement 'piece' needs to be at the forefront of any future deployment. That any 'stop and search' information and encounter guidance needs to be enhanced and circulated widely (prior to use of the power). Incorporating counter terrorism 'tasking' and deployments into every uniformed officer's daily work and routine is critical in order that it moves from the unusual to the norm. That performance monitoring, review and supervision along with public reassurance needs to be an police and police authority priority with continued support from Government and MPS Management Board (MB) members (taking into account firstly what are meaningful measures of success and agreeing those measures).

It is accepted that the MPS and its partners in the Capital (British Transport Police and the City of London Police) are at the forefront of the fight against terrorism, protective security and community safety and any potential future use of this power will support and complement that work but it is also accepted that the power may cause problems and disaffection amongst the communities they serve. Only time (and a deployment of the power) will tell if this new and improved stop and search power will work on the streets of the Capital and the author would see that further supporting research/work should be considered/undertaken in respect of the Secretary of State's role in confirming authorisation applications should be replaced by an independent judicial authority. There is precedent for such judicial oversight in relation to extensions to pre-charge detention subsequent to arrest under section 41, Terrorism Act 2000[143]. Whilst it might be argued by some that stop and search is of a 'lower order' that does not require such intensive oversight, the European Court of Human Right's comments

on this case suggest that a section 44 stop did involve a detention, albeit ordinarily a short one.[144] Secondly, the practically unfettered nature of the discretion bestowed to individual officers by the absence of reasonable suspicion and the broad nature of the object of the search point to this being an extraordinary power that warrants intensive safeguards. Lastly on this particular point, if this confirmation piece be removed then claims or worries around political influence would be removed once and for all.

Data on authorisations of all UK forces (whether Home Office or not) should be published annually by the Independent Reviewer, subject to a three monthly time lag (as the MPS does now, in order to protect operational deployment and intelligence). This should include such things as the number of authorisations applied for, number approved, number modified by geographical area or duration and number rejected. All authorisations should be subject to a 'confirmation arrangement' and not only those that last longer than 48 hours. This would dissuade forces from using 'short-term' authorisations as a means of evading oversight (not that the author has established any evidence of this thus far). However, until this amendment is made, data should be published annually on the number of 'short term' authorisations which were not subject to prior ministerial confirmation. The Code accompanying section 47A should require, not suggest, that forces notify each other and the relevant Police Authorities. This could increase the tactical benefits of any deployments. PACE, Code A should be amended to require officers to inform persons who are stopped and searched that they do not need to answer any questions unrelated to the search itself. This could form part of an increased 'engagement package' and would assist in the wider communication piece. Work has commenced on this within the wider police family (NPIA). Finally, it should be noted at the time of writing this, provisions within the current order will cease to have effect on the inception of the Protection of Freedoms Bill. The Home Secretary (May) has stated in the House, that the order makes temporary provision and Parliament will have the opportunity to fully scrutinize the replacement powers in the usual way during the passage of the Protection of Freedoms Bill.

Chapter 7.

The Failings, lessons learnt where we are and recommendations.

7.1 The Failings

This chapter will provide a comprehensive overview of the failings of the use of the power by the MPS, the findings of the research from this professional doctorate, the lessons learnt, where we are today in terms of the repealed Section 44, the new Section 47A and finally the professional doctorate recommendations. During the interview phase of this professional doctorate, many of the interviewees and in fact most of the focus group members returned to a central theme, the core of which being that the actual ***'use and deployment'*** of extraordinary or exceptional terrorism legislation was required to counter the threat of terrorist attacks in the Capital. They (the officers) spoke of the need for greater accountability, greater detail in the *'briefings stages'*, a better, more comprehensive understanding of the relevant legislation, greater direction (supervision) or knowledge of the desired outcome of any deployment and what is it (the police service and their leaders) want to achieve i.e. if future perfect, what would it (the tactic) look like?. As part of the research and whilst interviewing senior officers such as Assistant Commissioner John Yates, Chief Constable Andy Trotter and others, it became apparent that the intention of deploying this tactic had always been seen as part of a multi layered security plan and not a single tactic that would solve all the terrorist problems and at best would only ever reduce the threat or risk of a terrorist attack on the streets of London.

In April of 2011, John Yates the then Assistant Commissioner in charge of Specialist Operations (SO) for the MPS (all counter terrorism matters) was requested by Dr Hywel Francis MP the (chair) of the Joint Committee on Human Rights (JCHR) to account for the use of Section 44, Section 47A and where it [MPS] stood on human rights whilst utilising these stop and search powers, AC Yates (MPS) requested that the author draft this *'call for evidence'* because of the research carried out, the interviews and focus groups but mainly for the in-depth knowledge built up over the previous five years. Following extensive conversations with AC John Yates and other key opinion formers, the author drafted a position paper[145] that would provide an opportunity (for the MPS) to present evidence in the matter of the replacement power to stop and search without reasonable suspicion (Section 47A Terrorism Act 2000) to JCHR in respect of any 'operational gaps', following the suspension of the Section 44 powers as well as the reflection on the use of the power in terms of human rights and any subsequent misuse. The response dealt with the request in two ways: Firstly by providing the Committee with a broad outline of the main challenges that the MPS faced in terms of counter terrorism legislation and its use, and secondly, via a confidential annexe[146] detailing the operational

'gaps' as AC Yates saw them at that time (the CT threat picture). Due to the highly confidential nature of the information in the annexe of the report, it would be wrong to report any of those *'operational gaps'* in this professional doctorate and therefore the author will not expand on the second point mentioned in the letter to the committee. Initially, the author was not going to include the response from AC Yates in this professional doctorate however, returning to the question (*What are the dangers, concerns or possible infringements against Human Rights and Liberties?),* one can see that AC Yates (and the MPS) were at great pains to explain, that throughout the process every effort and consideration had been taken to ensure that any possible infringements were reduced or eliminated and that any authority that was authorised was taken extremely seriously. The author explained in the response to the JCHR: that Section 44 Terrorism Act 2000 (Section 44) provided a power exercised by police on the basis of a detailed authority provided by an officer of at least the rank of a Commander within the Metropolitan Police Service (MPS). In practice this has always been undertaken at a more senior level, by the Assistant Commissioner of Specialist Operations. The Section 44 power provided police with an ability to stop and search persons for articles of a kind that could be used in connection with terrorism, whether or not the officer had grounds to suspect the presence of such articles. This was a unique feature of the power but one of the main public concerns in relation to its use. Section 44 Powers were then considered by the Secretary of State who reviewed the documented evidence, before confirming authority within 48hrs of the application. Authority was granted for a period of 28 days at a time and each refreshed request required a new submission by a Commander or above. The Secretary of State had power to withdraw her authority at any time.

The submission went onto explain that the format of the Section 44 request was always submitted on the basis of Home Office defined categories requiring detailed information about the terrorist threat. Any submission was therefore predominantly based upon a highly confidential documented assessment of that current threat by the Police, Security Service and JTAC, as well as specific relevant operational updates. The responsibility for developing that threat picture itself lies with the Security Service working to the Director General. Essentially the police respond to the information generated by a complex process of analysis. The British Intelligence Service (BIS) via JTAC, with its other partners assess a wide range of different and generic sites to be (at the very least) aspirational terrorist targets. Of particular importance is the potential vulnerability of sites across the whole of the MPS area. Unsurprisingly, these include the transport systems, economic targets, the utilities, crowded and iconic/tourist attractions, shopping centres and other 'soft' targets, making London a special case in terms of vulnerability and/or threat. This was a sentiment strongly expressed by the author and confirmed by Lord Carlile, the Independent Reviewer of Terrorist Legislation (2001 to 2011) in many of his statements to the House and in the wider conversation.

The call for evidence (letter) further continued that were the threat against London to increase, it is likely that (because of the very high threat level in which we are now continually operating) this would be on the basis of very specific new intelligence. Rather than lowering the threat elsewhere in the Capital, this would simply focus further activity in response to the intelligence received. At that time there was broad agreement amongst legislators and police (and contained in the judicial and government reviews that have taken place) that the exercise of Section 44 is a tactic to disrupt, deter and prevent terrorism, and helped create a hostile and uncertain environment for terrorists who wished to operate in London. In order to support this position, academic research-centred case studies from Belfast and the City of London (Coaffee 2003) that demonstrated in real every day practical terms how a power such as Section 44 could protect and secure major cities were provided to the committee. The research indicated the intrinsic value of specific target hardening activity through robust search regimes, described as '*opportunity-blocking against highly determined offenders*'. Specifically, where robust search regimes were deployed and applied to vulnerable locations, terrorist activity was displaced outwards. The implications of the research supported the view that prevention tactics, including searching, can be seen as legitimate and necessary in increasingly wide circles beyond a particular site, event or geographic location. Part of Hayman's consideration in utilising this type of prevention, reassurance and creating a hostile environment for terrorists rested on the Coaffee work (2003).

Some years later (2009) and in contrast to Hayman, Yates maintained that the effectiveness of such a broad stop and search power when deployed in order to prevent, deter and disrupt criminality was debated amongst senior officers. It is important to note that the MPA Scrutiny Report on Stop and Search[147] which identified issues that had arose from the use of these powers, and in particular the impact on minority communities, did not come to a position on effectiveness. In contrast to the MPA Report, both Scarman (1981) and McPherson (1999) addressed the issue of Stop and Search, and both pointed to the same issue of negative community impact but both believed it was an important tool in preventing and detecting crime. Criticism surrounding the balance between the number of stops and arrests resulting would appear to miss the point that the legislation and its use deliver a deterrent factor. Much was made at the time around performance evaluation and measurement of success when dealing with such a tactic, the position of the MPS has always been that any form of measurement is challenging to quantify as success and the very nature of counter terrorism policing is that the best outcome is that nothing has happened. AC Yates to this day maintains that community engagement, robust policing methods and good old fashioned detective work is far more effective than just having a stop and search tactic, AC Yates continues to advocate that stop and search is only one tactic that must be utilised in a co-ordinated range of tactics.

The submission utilised research from Millar, Bland and Quinton (2000) and summarised previous documented evidence on the effectiveness of stop and search, the author included much of the work citing the effect of disruptive activity and therefore the overall impact on crime is reduced by attempting to intercept those persons that are intent on committing crime prior to them going out to commit offences and that evidence suggests that the most effective way to use these tactics are to utilise them in locations that are already known and that the localised deterrence or displacement effect will be maximised. There is very real evidence that the very existence of this type of tactic i.e. stop and search operations do prevent crime, whether or not they involve actually searching persons. When researching this professional doctorate and talking to senior officers around the benefits of stop and search, Deputy Assistant Commissioner Peter Clarke (now retired) described Section 44 as *"contributing to the safety and security of the capita"*. His comment that *"Intelligence shows that London is considered by terrorists to be a hostile operating environment."* was made in the context of the commencement of the 2009 MPS review[148] and in respect of the tactical role of Section 44 in countering threat. The MPS believes that high visibility, overt policing tactics have changed the behaviour and has interfered with the activity of terrorist subjects, for example altering travel routes, forcing periods of inactivity etc. Section 44 also had resonance with other stop and search powers exercised daily by the police (locally and nationally) in that it is a disruption / prevention / reassurance measure. It was used pan London and more latterly in targeted protection of particular crowded and iconic places.

Evaluating how Section 44 actually contributed to the safety of Londoners is a demanding aspiration, but the process undertaken did included extensive customer satisfaction and customer confidence indicators, rather than a crime detection framework. The MPS recognised and acknowledged the concerns of the Metropolitan Police Authority (MPA), the media and the community and actively took steps to integrate those views/concerns into the wider review of stop and search. In order to provide a forum for Londoners, MP's and community leaders, the MPS holds a monthly meeting of all parties involved across the entire range of concerned individuals, organisations and charities. The MPS continues to engage with Londoners (at every level) in a more open discussion about the role, function and legitimacy of the use of any stop and search power and to ensure that such legislation can be deployed and utilised in a proportionate way for the duration of any incident or crisis, and in ways subject to legal scrutiny and that do not subvert the legal order. An example of this was that the author attended the October 2012 meeting of the Community Monitoring Network (CMN) and presented the latest updates on Section 47A and the changes to Section 43.

Returning to the question around concerns with utilising the powers and the possible infringements of Human Rights, the author felt it is important to reiterate at every possible opportunity (to the

Commission) that Section 44 had been subject to considerable public and media attention and scrutiny since its inception, most notably through annual reviews undertaken by Lord Carlile and through Judicial Review proceedings and other legal challenges. It was also the subject of ACPO practice advice published in 2006 and 2009. During use of the legislation the police have sought, whilst working in conjunction with the community, to respond to criticism and legal challenges. Fine tuning of the application process had seen a move from the more *'blanket'* style approach to the targeting of specific and defined geographical areas (patchwork deployment regime). However, events were overtaken by the case of Gillan & Quinton which brought about the decision by the European Court of Human Rights in 2010 in ruling the use of the S44 power as unlawful when used whilst based upon grounds without suspicion.

In respect of the 'call for evidence' the key factors that were released during this letter to the committee, were that on two occasions the MPS found itself wanting in respect of a CT Stop and Search without suspicion power from July of last 2010. The two major events, for which a Section 44 authority was required, in order to provide security, safety and reassurance, were the New Years Eve Celebrations and the New Years Day parades in central London. A Section 44(1) authority (stop and search vehicles and persons within the vehicles) was authorised on the basis of assessed threat for a specific area over a short period of time. The operational feedback from the 'Gold Commander' for the New Year's Event, stated that the actual Authority, area defined and tactics that this restricted power afforded him, did not provide the required coverage, operational flexibility or the ability to search people who attended the event. In terms of operational gaps, since the beginning of last year several working / focus groups of practitioners and security experts have been assessing the risks involved in not having Section 44 powers.

In respect of the areas identified they were placed into a confidential annexe A and submitted to the Committee under strict non release guidance and it would not be appropriate to mention the details here however, Yates said of the new powers (47A): *"Section 47A has provided the police with a power that is sufficiently circumscribed as there is a robust statutory Code of Practice and in addition to this new police guidance is currently being drafted to further support any usage in the near future. In terms of any operational deployments of the new power, the remedial order provides a clearer definition and therefore a more targeted and proportionate power. Much discussion has been had around the issue of the Authorising Officer having to be satisfied that they have to now have 'reasonable grounds to suspect that an act of terrorism will take place' instead of the previous wording around preventing acts of terrorism....."*. In terms of the main issue of level of authority and who is now responsible for the actual decision to deploy such a power, this has resulted in a fundamental increase in the threshold for the relevant signatory. The difficulties in assessing the

distinction between reasonable belief, grounds and suspicion has been raised within several forums within the Home Office and this point cannot be underestimated. It is the view of those interviewed within the Police Service and the author that the threshold should not have been set so high as to make it unachievable to deploy this tactic. As part of the extensive work with the Home Office, their legal advisers and the ACPO lead for stop and search (Deputy Commissioner Craig Mackey) this point was raised and concerns noted. In respect of the specific points raised around the authorising process, duration of an authority and the manner in which it is sanctioned and ratified, the MPS and other ACPO officers were content with the recommendations as stated in the remedial order. In terms of any pre-authority judicial oversight (as opposed to executive oversight), AC Yates, could not see a case for any additional levels as the original process had a significant level of oversight already in place, as the application already passed from the Assistant Commissioner to the Home Secretary and was scrutinised at each level. AC Yates went onto add that the Service would need to look closely at adding an additional level of bureaucracy especially if it were in the midst of what may be a testing scenario. The critical issue around any additional administrative phase if it was to be added would be that the person having that judicial oversight would need to be vetted to the highest level (Developed Vetted) and have access to the full intelligence picture in addition to a background of operational experience to make what, in effect, is an operational decision. An alternative process could see a model where the applications are submitted by the police to an independent 'S47A Commissioner' similar to the role performed by the Office of Surveillance Commissioners (OSC) which appears to work well with recognised independence.

AC Yates finally added that with regard to the question of utilisation and whether the MPS would use such a power he stated: "*.... The new 47A powers are in essence in the same space as the suspended powers in that, the police have already moved towards a widely publicised version of any authorities, stops and searches. As you will also be aware, at this time the MPS have not considered it appropriate to use these powers as the MPS have not been presented with sufficient intelligence to reach the threshold necessary to support the use of an authority, however should the intelligence threat change to one of where an authority is warranted then the MPS would consider an authority subject to the conditions laid out in the legislation.*[149] Finally, to date, the revised Section 47A legislation has not been deployed across the Capital and the author cannot locate any evidence of it being used anywhere in the UK. The threshold mentioned during the discussions with Police and the Home Office has not yet been met and therefore it begs the question, is the threshold too high or has there not been an operational need for this power to be used? At the time of the initial MPS review (2009) the UK faced a '*Severe and continuing threat from international terrorism, and there was no indication that it was likely to diminish*' (JTAC). The threat the UK faced and continues to do so, is of a different nature and magnitude to any that the UK has encountered before and the UK and Police

needed to stay one step ahead. Therefore, it was felt that the UK Government and policing agencies needed to reduce the risk to the UK and its interests overseas from international terrorism so that people can go about their daily lives freely and with confidence, that was and remains today the aim of the government's strategy for countering international terrorism, known as CONTEST. Therefore, following the events of 29th June 2007 that saw terrorists attempt to cause mass casualties outside the 'Tiger Tiger' Night club[150] in the Haymarket, London and the partially successful attack on the 30th at Glasgow airport[151], the MPS took the strategic decision to increase the use of section 44 in an effort to deter offenders by the use of increase reassurance patrols in order to create a hostile environment and to prevent further attacks. Since October 2007 the MPS have conducted **154,293** Section 44 Stop and searches/accounts[152]. This was a significant increase over previous years and therefore a strategic decision was taken that whilst the threat level remained at severe, ACSO (Hayman) felt that it was appropriate but also felt that it was necessary to review their use of this power at regular intervals.

In light of this position, the primary aim of the author's project was to ensure the MPS retained its ability to protect Londoners and also address concerns raised by Lord Carlile, the then independent reviewer of counter terrorism legislation, The European Court of Human Rights, as well as the Metropolitan Police Authority (MPA), Community Monitoring Network (CMN) and London Communities over the sheer volume of stop and searches undertaken under terrorism legislation against the number of arrests made or intelligence received as a result. The review remit included the scoping and drafting of a new model for the continuing deployment, use and refinement of Section 44. Following the MPA's *'London Debate'*, the project team, expanded the consultation phase to include the Muslim Safety Forum (MSF), Diversity Directorate, Liberty, British Transport Police (BTP), City of London Police (CoLP), Community Forum Chair, MPA Stop and Search Monitoring Network (SSMN), Specialist Operations (SO), Territorial Policing (front line officers and staff) and other subject matter experts. The consultation findings (from the police officers and community leads) confirmed anecdotal suggestions that the power was seen as draconian, controversial, lacked direct deployment *'leadership and supervision'* and was having a negative impact on certain minority communities, in particular the Asian and Muslim communities in East and South London.

7.2 Lessons Learnt

The emerging findings from the review fully supported a three-layered approach to the tactical deployment of terrorism act (TACT) powers, the overall reduction of the MPS wide authorisation area (from a 'Blanket' authority), down to a *'patchwork quilt'* type model, in which the actual Boroughs would identify and make the case for an series of 'authorities' to cover certain areas/zones within their borough. The new model suggested the following:

- **Level one** - There are numerous sites across London that are of such an iconic nature and/or key strategic importance (Critical National Infrastructure sites) that the officers deployed in the immediate area require the use of S.44 powers at all times.

- **Level two** - The deployment of the power through a specific tasking or directive will allow for its use on a 'prevent and deter' basis. Such a directive will, in appropriate circumstances be provided through Management Board or tasked via the Security Review Committee (SRC). It is expected that this will be used sparingly unless there is a significant change in threat.

- **Level three** - Where any officer sees behaviour, circumstances or has further grounds to raise their suspicion that a person may be engaging in a terrorist related offence they have full discretion to deal with that issue, by way of action designated under Section 43 TACT 2000 Legislation.

The review, piloted the revised approach on four London Boroughs, Southwark, Brent, Newham and Tower Hamlets. The trial period commenced in April 2009; with full roll out planned for the end of the summer of 2009. In terms of evaluation, a research plan was developed to support the review and implementation. The research plan was designed to examine several aspects including community impact, satisfaction and confidence. A separate communication strategy was developed in conjunction with the Directorate of Public Affairs (DPA) covering both internal and external stakeholders. Several media delivery systems were used, including the intranet via 'corporate news', notices, community presentations and briefings to command teams and staff. It was intended that the oversight group was to remain in place to support the implementation of the plan and future issues. The Directorate of Legal Services (DLS) were consulted around the legislation and guidance. In addition, the review team had full access to the writing group of the National Police Improvement Agency (NPIA).

Chief Constable (CC) Craig Mackey from Cumbria Police (now Deputy Commissioner for the MPS) is the ACPO lead for stop and search, and had full sight of the above model and review terms of reference. CC Mackey was satisfied with the construction of a new 'layered' model, reduction of authority area (patchwork quilt) and stated that he would ensure that the work/results were included in the latest version of national guidance. This has now been achieved and forms a major part of the revised Section 47A national guidance. In May 2009, the author wrote an update report to the Metropolitan Police Authority (MPA) on the new Section 44 TACT model. The MPA report was submitted by AC John Yates on behalf of the Commissioner. The actual report is attached at **Appendix G.** In a written ministerial statement issued to the House of Commons on 17th March 2011, the Home Secretary Theresa May announced that she had made a remedial order concerning Section 44 Terrorism Act 2000 on the 16th March, introducing new stop-and-search powers that can immediately be used by police forces in Britain. The remedial order, "fast-tracked" legislation made

under the Human Rights Act 1998 to remove an incompatibility with Convention rights in primary legislation identified by either domestic courts or the European Court of Human Rights. According to the Home Office, the use of an urgent remedial order was a necessary and sensible step to ensure that the police have the necessary powers in place to continue to protect the public from a risk of terrorism.

The remedial order replaces sections 44 to 47A of the Terrorism Act 2000 with a "*more targeted and proportionate power*," said May. "*The provisions in the order will cease to have effect on the coming into force of the similar provisions in the Protection of Freedoms Bill - in other words, the order makes temporary provision and Parliament will have the opportunity to fully scrutinise the replacement powers in the usual way during the passage of the Protection of Freedoms Bill.*" According to the Home Office, the new section (47A) "*removes the incompatibility of sections 44 to 46 of the Terrorism Act 2000 with the European Convention of Human Rights in the light of the European Court of Human Rights' judgment in the case of Gillan and Quinton, which became final in June 2010.*" The new powers are now available to all senior police officers that request them. The timely work of the author and his team has ensured that the MPS is '*match-fit*', legally compliant and confident of its procedures and policies should the need to use these intrusive powers ever arise. Since the revised Section 47A has been in place, no *credible* or *actionable* intelligence has been forthcoming to allow the MPS to '*cross the threshold*' set by Parliament to request an authority, therefore the actual procedures and protocols have not at this time been tested/applied for in a real counter terrorism situation.

7.3 Project Recommendations

Ultimately, the purpose of this professional doctorate had always been to provide a proactive, yet reflective solution to the issue of utilising a highly emotive power within the communities of the Capital. To this end the recommendations below attempt to draw on the mistakes, failures and lessons learned from the past deployments of Section 44 TACT that will hopefully support any further usage (should the need arise) in respect of Section 47A TACT 2000. The recommendations are not listed in order of importance however, the MPS should consider:

1) **Leadership and Direction, ensure that prior to any and all deployments, each police officers/PCSO is aware of the legislation to be used, restrictions of the powers authorised, the limitations of area and timings of any authority in place.** It has been agreed by senior MPS ACPO that no operational deployment will take place without a briefing taking place prior to any deployment.

2) **Ensuring that a comprehensive community engagement and monitoring framework is commenced prior to any operational deployment of any counter terrorism powers.** This would ensure the community is properly consulted in relation to overt counter terrorism policing activity and enforcement operations linked to CT stop and search operations.

3) **A counter terrorism deployment framework needs to be adopted prior to any deployment.** Similar to the *Operation Blunt* initiative currently being deployed to support boroughs with their local engagement processes, ensuring the capture of both quantitative and qualitative data that highlights community opinion.

4) **Communicate the need (robust business case) for counter terrorism overt tactics and deployment.** In order to create a wider understanding and to secure public confidence and trust - A key consideration has been the use of counter terrorism stop and search powers and it has long been recognised by the MPS that there is a continuing need to consult the public in order to engender confidence in the use of stop and search legislation, particularly with black and ethnic minorities about the continued use of such a tactic. Kasperson et al (1992) stated that '*Risk communicators should seek broad public participation and develop a strong listening capacity in order to discern issues about the distribution of risks and benefits, the adequacy of proposed solutions in socio-economic terms and potential vested interests'.*

5) **The need for a simple means of recording engagement activity concerning operational Section 47A tactics.** Including the use of stop and search powers and enforcement operations such as Operation Rainbow.

6) **Proactive media coverage about use of stop and search to keep the streets safe locally and robust response where it is unjustifiably criticised.** Ensure local communities are updated around any proactive operations and the results of any operations.

7) **The necessity for early engagement with all stakeholders.** Including young people as potentially, they are likely to be stopped and searched in greater numbers.

8) **The necessity for engagement with external stakeholders in the third sector.** In order to identify key stakeholders and young people who can provide ideas and solutions, similar to the new Business Engagement strategy within SO20 and the wider Specialist Operations Business Group.

9) **The need to demonstrate that the MPS is protecting vulnerable people, not alienating them.** An assessment (clear demonstration) of *efforts* made to support and protect those in society that cannot protect themselves from acts of serious violence or terror.

10)**The need to re-assure the public that community engagement is taking place.** That the MPS is listening and responding to any community concerns. Taking into account what Berger and Mohr (1975)[153] said *'To try to understand the experience of another it is necessary to dismantle the world as seen from one's own place within it, and to re-assemble it as seen from his...[but] the subjectivity of another does not simply constitute a different interior attitude to the same exterior facts. The constellation of facts of which he is the centre is different'.*

11) **Providing an auditable record of the extent of community engagement at BOCU and Service level.** The MPS boroughs currently provide a weekly community tension report that highlights any issues raised by the public during any stop and search activities. This additional information can be gained about public opinion regarding stop and search tactics, or any other aspects of policing connected with the operation.

12) **Continue to use Community and Business Surveys.** The MPS should continue to utilise small scale survey of their key individual networks about counter terrorism engagement, use of such tactics and why the need for such operations. These should consist of local people who are provided with the opportunity to have a say in all aspects of their local policing arrangements surrounding the counter terrorism environment.

13) **Consider the use of *online* youth survey.** Recently utilised in youth crime surveys and could be used in the CT arena. (i.e.; Thirty one thousand young people were consulted on a variety of issues including knife crime).

14) **Ensure that all police officers and police staff are aware of the privileges and restrictions of Press Passes.** Prior to any deployments, all officers are briefed/updated on the use of press passes and what the holders are entitled to do and limitations of their roles and where they can be checked for validity – New Scotland Yard, Directorate of Public Affairs.

15) **Prior to any deployment, every police officer is briefed on the counter terrorism legislation, their powers, limitations of any powers authorized and the defined area and duration of operation that has been authorised.** It is critical that every police officer is appropriately updated and briefed as to his or her requirements and restrictions prior to any deployment.

16) **Consideration be given to providing police officers with some form of special clothing (CT Tabard) indicating that they are deployed on counter terrorism activity.** Having clearly identifiable clothing or insignia would provide a clear demarcation as to their role on a particular operation/deployment away from the routine/normal policing activities.

17) **Producing and distributing of counter terrorism 'flyers/notices'.** Outlining the aim of the operation/deployment, purpose, duration, area deployed in/on and how to obtain further information or an address to register the member of the public's thoughts/suggestions/complaints. This would be in addition to the current system of notification at the point/location of the operation/deployment.

18) **Consideration should be given to the deployment of 'overt' recording equipment (either audio or video) for any officer deployed on a CT Operation.** Recent MPS deployments in Boroughs across the MPS have produced 'initial' positive results in gathering evidence, mitigation of overt policing tactics and corroborative evidence to support any criminal charges, where previously no witnesses were available. Currently available and in use in several police forces in the UK.

7.4 Chapter Conclusion

To conclude this chapter and to bring this professional doctorate up to date, on Tuesday 10th July 2012, The Protection of Freedoms Act 2012 was introduced and made amendments to the Terrorism Act (TACT) 2000. Constables now have *'new powers'* under the Terrorism Act. These powers (which has been available since 2000), has been amended by the Protection of Freedoms Act 2012 to cover the *'void'* left by the repealing of Section 44. The outcomes of the 2003 Gillan and Quinton case still continues to challenge, shape and change the way British Policing protects and reassures its communities. The Police Service will not truly know how well they have learned the painful and expensive lessons of the past until an 'authority' under Section 47A has been granted, deployed and

tested in the public arena. The research undertaken as part of this professional doctorate was and remains the very tip of the preverbal terrorism iceberg. One of the earliest books the author read in the project initiation phase (PIP), was by Laqueur (1999), who traced the chilling (and now recognised) trend away from group terrorism of oppressed nationalists towards small clusters of fanatics hell bent of vengeance and simple destruction. He charted (with others: Hoffman, Silverstein, Kaplan et al) the increase of access and availability of weapons of mass destruction, cheap and easily accessible chemical and biological weapons and cyber terrorism. With the recent developments such as group radicalisation, self-radicalisation (Lone Actor, Solo Actor), overt leadership battles within AQ Core and removal of key figures within the AQ and AQAP, the author sees this professional doctorate as the *'end of the beginning'* phase in terms of his foray into academia and the commencement of a lifelong research project into an area of local and international social evolution of the nature of terror and terrorism and how it [terrorism] continues to adapt, morph and expand to fill an even greater component part of our daily lives.

The counter terrorism stop and search tactic employed by the MPS, initially included using specialist task force officers, who are drawn from specialist units and who were deployed specifically to provide highly visible uniformed patrols, in areas experiencing increased levels of threat, was a success. When the MPS moved to a position of using regular borough based police officers with little or no training, minimum support, direction, leadership and awareness, to providing a metropolitan wide blanket response, this was a mistake. Many of the officers spoken to wholeheartedly supported the use of this tactic but were not satisfied that sufficient briefings and training had been provided for them to use the powers appropriately and with confidence. Many of the officers in the focus groups additionally mentioned that they did not feel that the leadership and direction was robust enough and at times they felt left alone to deal with the deployments on their own. It is important to state that much research is still ongoing within the MPS and the wider Police Service around the use of stop and search, leadership, control, direction and how best to deploy such tactics and operations within the community and the MPS is committed to continue to engage with all persons identified through partner agencies, internally through the police support associations as well as external other stakeholder, business and community associations.

This professional doctorate has linked into several current and closed operations (i.e. Operation Blunt[154], Fairway and Rainbow), legal and citizens groups and its research findings and project recommendations on the future development of stop and search tactics have been passed on to the most appropriate officers, working groups and to the Deputy Commissioner of the MPS. It is the intention of the author to remain in his post as Commanding officer for the Counter Terrorism

Protective Security Command, the Senior National User and Policy Adviser to the National project team for the foreseeable future. Over the past five years that the author has been involved within this area of policing, he has witnessed at first hand that in respect of counter terrorism stop and search, the deployment of such powers and the overall aim of the officers who have utilised the powers, have all done so with the sole aim of protecting the public and the Capital in which they live. That said, it must be remembered that human rights legislation exists to protect everyone for the abuse of power, mistreatment and overuse of powers that are not monitored and regularly reviewed and challenged. The police service in the Capital enjoys the trust and confidence of the British public because we listen, learn and are accountable to the people. The MPS has acknowledged fully that in the past that on occasions the aims, deployments and outcomes have not always been a success in fact have been unsuccessful however, the Police Service and the MPS in particular has made huge steps in taking proactive measures to reduce the likelihood of such mistakes happening in the future. Senior Officers widely acknowledge that it is impossible to state that mistakes will not occur in the future because police officers are human and humans make mistakes. The extensive legal and practical training that has now been undertaken by MPS has developed to a point where most senior officers believe that the MPS has done everything in its power to demonstrate their commitment to their communities and the people of London.

7.5 Areas of future research and opportunities

As with any research into a critical topic within policing, it will never be enough to complete the said research without looking into possible consequences of the findings and therefore the author believes that there are three potential areas of future research that requires to be considered following this professional doctorate, these are:

- Monitoring the new counter terrorism legislation effecting stop and search powers (increasing or amending Section 47A or Schedule 7 TACT 2000) and how it is utilised.

- Amplification of resentfulness or suspicion of the newly amended counter terrorism powers from the public, media or lobbyists (continuing the theme of suspect communities).

- Further research on the reasons for differences between forces in their use of counter terrorism searches should be considered. In particular, it would be useful to establish whether these differences relate to different policing 'styles' i.e. overt or covert deployments.

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GLOSSARY OF TERMS

ACPO

Association of Chief Police Officers. ACPO coordinates policing policies on behalf of 43 forces across England and Wales. It liaises with Government on dealing with civil emergencies and terrorist incidents.

ATCSA

Anti-Terrorism Crime and Security Act 2001. Parliament passed the ATCSA in December 2001 in response to the heightened threat of terrorist attacks in the UK in the wake of 11 September 2001. The Act includes a range of measures designed to increase the effectiveness of the authorities in combating those directly involved in, or supporting, terrorism.

AL QAIDA

Terrorist organisation headed by Usama bin Laden. Al Qaida is also used as an umbrella term to cover a number of groups who broadly support Usama bin Laden's aims and are willing to engage in terrorist attacks to further these aims.

ASIO

Australian Security and Intelligence Office

AFP

Australian Federal Police

CIRA

Continuity Irish Republican Army.

DPA

Data Protection Act 1998. The DPA gives individuals the right to apply for access to personal data relating to them held by public and private sector organisations. The Act contains a provision for certain exemptions from compliance with all or some of the principles and requirements, for example for the safeguarding of national security.

DSEi

Defense Security and Equipment International (DSEi) equipment exhibition which is held in London every two years (2003 was staged in London Royal Docklands).

ECHR

European Convention on Human Rights (see also Human Rights Act)

ECLN

European Civil Liberties Network.

EPA

Emergency Powers (Terrorism) Act

FCO

Foreign and Commonwealth Office. The Government department responsible for foreign affairs. FCO's travel advice draws on information from the Joint Terrorism Analysis Centre at Thames House. The FCO website provides travel advice on over 200 countries.

HRA

Human Rights Act 1998. The Human Rights Act incorporates into UK law rights and freedoms guaranteed by the European Convention on Human Rights (ECHR). Since coming into force in

JIC

Joint Intelligence Committee. The JIC advises on priorities for intelligence collection and assesses performance against them. It is also responsible for assessing and giving early warning of external developments and threats likely to affect British interests.

JTAC

The Joint Terrorism Analysis Centre (JTAC), was created as the UK's centre for the analysis and assessment of international terrorism. It was established in June 2003 and is based in the Security Service's headquarters at Thames House in London. JTAC analyses and assesses all intelligence relating to international terrorism, at home and overseas. It sets threat levels and issues warnings of

threats and other terrorist-related subjects for customers from a wide range of government departments and agencies, as well as producing more in-depth reports on trends, terrorist networks and capabilities.

LVF

Loyalist Volunteer Force.

MB

Management Board of the Metropolitan Police Service (MPS).

MPS

Metropolitan Police Service

MOD

Ministry of Defense.

NPIA

National Police Improvement Agency

NSAC

National Security Advice Centre. Part of the Security Service, NSAC works to protect key Government assets and the UK's Critical National Infrastructure (see CNI), such as transport, power and water, and to reduce their vulnerability to terrorism and other threats.

OSCT

Office for Security and Counter Terrorism – within the Home Office

PIRA

Provisional Irish Republican Army.

PTA

Prevention of Terrorism Act

PSNI

Police Service of Northern Ireland (formerly Royal Ulster Constabulary or RUC).

RIRA

Real Irish Republican Army. Dissident Irish Republican terrorist group.

SB

Special Branch. Each police force has its own Special Branch. Special Branch has a specialist intelligence function in relation to national security, in particular countering terrorism and extremism.

SNPSLO

Senior National Protective Security Liaison Officer. Relates to supporting the Olympic National Commanding Officer.

Terrorism Act 2000 (TACT)

The Terrorism Act 2000 covers the proscription of terrorist groups throughout the UK, the appeals process by which a proscription order may be challenged, offences relating to terrorist property and finance and police counter-terrorist powers.

UDA

Ulster Defence Association.

UKTi DSO

UK Trade & Investment's Defense & Security Organisation (UKTi DSO)

USAMA BIN LADEN

Head of Al Qaida, which has been responsible for a number of major terrorist attacks over recent years, most notably the World Trade Centre and Pentagon attacks in the US in September 2001

UVF

Ulster Volunteer Force.

APPENDIX A

***List of responders to the Terrorism Bill 1999/2000 Consultation Phase.**

1. The Serious Fraud office.
2. The Right Honourable Lord Justice of the Royal Courts of Justice.
3. Diana Cooke.
4. Dr Peter W. Edge.
5. Rod Badams.
6. Janet Tomlinson.
7. Keith Humphries.
8. P. Dwyer.
9. The Sheriffs' Association.
10. Lawyers Committee for Human Rights.
11. Countryside Alliance.
12. Police Federation of Northern Ireland.
13. Wing Commander A M L Maxwell.
14. K. R. Dunn.
15. Legal Committee of Joint Council of HM Stipendiary Magistrates.
16. Control Risks Group Ltd.
17. Methodist Church.
18. D. Mackenzie.
19. A. H. Fraser.
20. British Irish Rights Watch.
21. Chris Austin.
22. The Journal of Terrorism & political Violence.
23. M. P. Dacey.
24. Guild of Editors.
25. Clive Walker.
26. The General Counsel of the Bar of Northern Ireland.
27. Parveez Syed.
28. The Board of Deputies of British Jews.
29. John Rowe QC.
30. Natasha Arthur.
31. The Right Honourable Lord Lloyd of Berwick.
32. Dr Anita Holdcroft.

33. Justices' Clerks' Society.
34. ITN.
35. The Office of the Independent Assessor of Military Complaints Procedures NI.
36. The Compensation Agency Northern Ireland.
37. Association of the Bar of the City of New York.
38. The Law Society of Scotland.
39. Liberty.
40. BBC.
41. The General Council of the Bar, Law Reform Committee.
42. Insular Authorities in Jersey.
43. Isle of Man Government.
44. Criminal Law Committee of the Law Society.
45. Committee on the Administration of Justice Northern Ireland.
46. The Criminal Bar Association.
47. Bill Gilmore.
48. The Conservative Party.
49. Northern Ireland Human Rights Commission.
50. Police Federation of England & Wales.
51. Police Superintendent Association of England and Wales.

*29 other organisations and individuals who responded to the consultation paper are to remain confidential.

Police Questionnaire

Your views on the use of counter terrorism

stop and search legislation

Dear Police Colleague,

Thank you for taking the time to complete this questionnaire. Before I ask you to complete the questionnaire it is important that you know who I am and why I am asking for your assistance. I am a Detective Chief Superintendent in Specialist Operations (SO), currently in my second year of a PhD programme with the London Metropolitan University and am studying the effects that counter terrorism legislation has on the police, the community and the Capital City.

The responses that I receive will provide valuable information around how you feel/felt about being asked to use stop and search powers/legislation or how you felt having witnessed a stop and search by a colleague (police officer or a police community support officer).

Background: There are times when a police officer or police community support officer stops a person and asks them to explain why they are in a particular place, why they are carrying something or why they are behaving in a particular way. When this happens the police officer or PCSO records the time, date and place where the stop happened on a form and gives a record of the stop to the person stopped. A stop and account is not the same as a stop and search and is not what this questionnaire is about.

I would like to know your views on counter terrorism stop and searches. This is because the Government has recently repealed the old stop and search powers under Section 44 of the Terrorism Act (TACT) and introduced a new stop and search power (Section 47A). Which is why it is important for my research to understand how people feel about being stopped and searched in public. It is hoped that my research will benefit the police and the community and could assist in the way we conduct all future counter terrorism stop and searches.

Please provide me with your views by either: **printing off and completing the short questionnaire below, sending it via the internal despatch system ('the Bag'), to the address at New Scotland Yard on the final page or emailing it to me at the email address below.** I will use your submission in my thesis and pass any recommendations onto the appropriate authority within the Metropolitan Police Service (AC John Yates) and the University.

Your Confidentiality: As part of this process, it is important to state from the outset that I take protecting your personal information very seriously. Any personal information you give in this questionnaire will be treated confidentially and your response will not be linked back to you or any section of the MPS.

1. Were you satisfied with the briefing / training on Section 43 / 44 Terrorism Act 2000 (TACT). Please tick one answer below:

☐ I strongly agree that I was satisfied with the briefing/training

☐ I somewhat agree that I was satisfied with the briefing/training

☐ I have mixed views around the briefing / training provided.

☐ I somewhat disagree that I was satisfied with the briefing/training

☐ I strongly disagree that I was satisfied with the briefing/training

☐ Don't know

Your views on counter terrorism stop and search (section 43/44)

2. Have you, in your role as a police officer or PCSO ever carried out a CT stop and search or witnessed a stop and search ?

☐ Yes (please go to question 3)

☐ No (please go to question 4)

3. Thinking about the most recent time a you carried out a Counter Terrorism (CT) stop and search (or witnessed one), how satisfied were you with the way you or your colleague treated the person you/they stopped and searched? Please tick one answer below:

☐ Very satisfied

☐ Fairly satisfied

☐ Mixed views

☐ Fairly dissatisfied

☐ Very dissatisfied

☐ No opinion

4. Should the Metropolitan Police Service (MPS) continue to use this form of tactic (CT stop/searches) as a way to combat terrorism and / or to reassure the public ? Please tick one answer below:

☐ I strongly agree that the MPS should continue to use CT stops and searches to combat terrorism / reassure the public

☐ I somewhat agree that the MPS should continue to use CT stops and searches to combat terrorism / reassure the public

☐ I have mixed views around whether the MPS should continue to use CT stops and searches to combat terrorism / reassure the public

☐ I somewhat disagree that the MPS should continue to use CT stops and searches to combat terrorism / reassure the public

☐ I strongly disagree that the MPS should continue to use CT stops and searches to combat terrorism / reassure the public

☐ Don't know

5. How long did the most recent stop and search require the member of the public to wait for (in minutes) whilst the procedure was being conducted ? Please tick one answer below only.

☐ Two to five minutes.

☐ Five to ten minutes.

☐ Ten to fifteen minutes.

☐ Fifteen to twenty minutes.

☐ Longer.

6. What could the police do to improve the way we carry out CT stop and searches? **i.e.** Better inform the person stopped as to why they were stopped, provide a leaflet explaining the legislation / the codes of practice or the national guidance, provide contact details of someone they could speak to about being stopped, refer to a voluntary agency etc.

7. Using the spaces below, please rank the following statements in the order that is most important to you when as a police officer or PCSO when carrying out a stop and search by writing numbers '**1**' to '**4**' next to the statement, '**1**' being to the most important and '**4**' the least important

Expectation	Comments
As a police officer or PCSO I should be polite	
As a police officer or PCSO I should record the stop and search in detail	
As a police officer or PCSO I should give the reason why a person is being stopped	
The person being stopped should be given information about how to complain if they want to	

About you

Can I contact you again to ask about counter terrorism stop and search policing in London?

☐ Yes ☐ No

If yes, please fill in your contact details below. You do not have to provide this information if you do not want to be contacted.

Rank _____ **First name** _____ **Last name**_____

Location _____

_____

Internal police email address _____

Please give us some information about you.

You do not have to answer these questions but the information will help me to better understand how colleagues in the MPS feel about the use of CT stop and search.

Gender ☐ Male

☐ Female

☐ Prefer not to say

Age ☐ 20-27

☐ 27-34

☐ 35-44

☐ 45-54

☐ Prefer not to say

Ethnicity

Asian or Asian British

☐ Indian

☐ Pakistani

☐ Bangladeshi

☐ Any other Asian background

Black or Black British

☐ Caribbean

☐ African

☐ Any other African background

Chinese or other ethnic group

☐ Chinese

☐ Any other ethnic group

Mixed

☐ White and Black Caribbean

☐ White and Black African

☐ White and Asian

☐ Any other mixed background

White

☐ British

☐ Irish

☐ Any other white background

☐ Prefer not to say

Religion or belief

☐ Christian

☐ Buddhist

☐ Hindu

☐ Jewish ☐ Muslim

☐ Sikh

☐ Any other religion (please state_____)

☐ No religion

☐ Prefer not to say

Sexual orientation

☐ Heterosexual

☐ Gay/lesbian

☐ Bi-sexual

☐ Prefer not to say

Disability

Do you consider yourself to be a disabled person?

☐ Yes

☐ No

☐ Prefer not to say

APPENDIX C

Research Interview Information Release Form (Consent Form)

Research Description

The focus of this doctorate is researching the creation of Section 44 Stop and Search powers of the Terrorism Act 2000 (TACT), the context of why it was introduced and why the architects (law makers) felt the need to innovate on past anti terror legislation.

Secondly, how the Metropolitan Police Service (MPS) made use of these new powers within the counter terrorism environment (2001 to 2010), the process of how it was disseminated and rolled out across the Service. Thirdly, the cost and consequences of such a piece of legislation, in terms of police/community relations.

The thesis will be crafted in a manner that will not directly criticise or disparage any law enforcement agency but rather will draw upon the existing experiences of police officers, Home Office officials and the communities they protect and serve, in order to critique the counter terrorism legislation.

The reports and documents used to assist with this thesis are for public consumption and are not considered classified or confidential in any manner. In order to assist this research, I have sought permission to utilise data that has been provided to the general public via the eternal websites of the Metropolitan Police Service (MPS), Home Office (HO) and the Metropolitan Police Authority (MPA).

Agreement.

I voluntarily agree to participate in the evaluation of the Section 44 Terrorism Act (TACT) piece of research being carried out by Michael McDonagh. I understand that this evaluation is being conducted by Michael McDonagh to improve the performance and the deployment of counter terrorism powers around the use of CT stop and search within the MPS Area and is also the basis of his doctoral dissertation.

I understand that the evaluation methods which may involve me are:

1. The researcher's recorded observations of my thoughts and perspective.

2. My completion of evaluation questionnaire(s) and/or

3. My participation in a 30-60 minute interview.

I grant permission for the interview to be tape recorded and transcribed and to be used **only** by Michael McDonagh for analysis.

I grant permission for the evaluation data generated from the above methods to be published in his PhD thesis and future publication(s).

I understand that any identifiable information in regard to my name, position and/or agency may be listed ***only*** in the above-mentioned confidential data section of the thesis notes, any information will not be listed in the dissertation.

Participant details: .....

Signature: .....

Date:.....

Researcher: Michael McDonagh

Signature .....

Date.....

METROPOLITAN POLICE Working together for a safer London

SPECIALIST OPERATIONS

Right Honourable Jack Straw MP
House of Commons
London
SW1A 0AA

SO20 Specialist Operations - Protective Security Command

Michael McDonagh
Detective Chief Superintendent
OCU Commander

14th October 2011

Re; PhD Research into Counter Terrorism Legislation.

Dear Sir,

Firstly could I take a moment of your time to introduce myself and to explain the purpose of my research? I am a Detective Chief Superintendent within the Metropolitan Police Service (MPS) and am the operational lead and Senior National User on Counter Terrorism stop and search matters.

Two years ago I was part sponsored by the MPS and the National Senior Career Advisory Service within the National Police Improvement Agency (NPIA) to undertake a PhD looking into effects that Counter Terrorism legislation stop and search powers have on the communities and people of London. To this end, I am now at the stage of my research that I would like to interview the key actors in the creation, development, use and management of the specific legislation I am focusing in on, this being Section 44 of the Terrorism Act (TACT) 2000.

I would like that interview to focus on your part in the consideration and introduction of Section 44, particularly around the 'context for its introduction' prior to 2000. If you are agreeable, I would like to attend your office and conduct a 60/90 minute interview. The list of questions is attached below.

Lastly, can I take this opportunity to thank you in advance for allowing me to take so much of your times as I appreciate you are a busy person.

Yours Sincerely

Michael C. McDonagh

List of proposed questions.

Creation of the Counter Terrorism legislation

1) What was the context for its introduction? (What was occurring in the UK / worldwide to raise this issue).
2) Who requested its introduction, Police, Politicians, Civil Servants?
3) Why enhance/upgrade/change from the previous Anti Terror Acts - why not keep the existing powers? Why innovate?
4) What did the architects think were the gains and costs?
5) What did you think were the risks?

Implementation

6) How was it rolled out (implementation)?
7) Where was it rolled out (nationwide or a particular force)?
8) Were there any impediments to rolling it out (Legal principles, law, due process)?
9) If so, how were these impediments addressed?
10) What consideration was given to the reaction of the community?
11) Did you (the Government) commission any research, focus groups prior to introduction?
12) What changes to the powers occurred as a consequence to any findings/challenges?
13) Did these delimit the exercise of the powers?

Costs and Consequences

14) Was there any mission creep, if so why? (Often powers for one purpose get mobilised for other purposes).
15) Did you consider if this would further an 'authoritarian' state?
16) Did you could or discuss any erosion of due process?

PROJECT RECOMMENDATIONS

The MPS should consider:

1) **Leadership and Direction, a designated SMT member to be BOCU STOP IT co-ordinator in order to ensure that prior to any and all deployments, each police officers/PCSO is aware of the legislation to be used, restrictions of the powers authorised, the limitations of area and timings of any authority in place.** It has been agreed by senior MPS ACPO that no operational deployment will take place without a briefing taking place prior to any deployment.

2) **Ensuring that a comprehensive community engagement and monitoring framework is commenced prior to any operational deployment of any counter terrorism powers.** (This would ensure the community is properly consulted in relation to overt counter terrorism policing activity and enforcement operations linked to CT stop and search operations).

3) **A counter terrorism deployment framework needs to be adopted prior to any deployment.** (Similar to the *Operation Blunt* initiative currently being deployed to support boroughs with their local engagement processes, ensuring the capture of both quantitative and qualitative data that highlights community opinion).

4) **Every MPS Borough to have a dedicated and effective Stop & Search Community Monitoring Group, in order to ccommunicate the need for counter terrorism overt tactics and deployment** (In order to create a wider understanding and to secure public confidence and trust - A key consideration has been the use of counter terrorism stop and search powers and it has long been recognised by the MPS that there is a continuing need to consult the public in order to engender confidence in the use of stop and search legislation, particularly with black and ethnic minorities about the continued use of such a tactic).

5) **The need for a simple means of recording engagement activity concerning operational Section 47A tactics** (Including the use of stop and search powers and enforcement operations such as Operation Rainbow).

6) **Proactive media coverage about use of stop and search to keep the streets safe locally and robust response where it is unjustifiably criticised.** Ensure local communities are updated around any proactive operations and the results of any operations.

7) **The necessity for early engagement with all stakeholders** (Including young people as potential persons they are likely to be stopped and searched).

8) **The necessity for engagement with external stakeholders in the third sector** (In order to identify key stakeholders and young people who can provide ideas and solutions).

9) **The need to demonstrate that the MPS is protecting vulnerable people, not alienate them.** An assessment of *efforts* made to support and protect those in society that cannot protect themselves from acts of serious violence or terror.

10) **The need to re-assure the public that community engagement is taking place** (and that the MPS is listening and responding to any community concerns). Consider working with local communities in the training and monitoring of all deployments.

11) **Providing an auditable record of the extent of community engagement at BOCU and Service level.** (The MPS boroughs currently provide a weekly community tension report that highlights any issues raised by the public during any stop and search activities. This additional information can be gained about public opinion regarding stop and search tactics, or any other aspects of policing connected with the operation)

12) **Continue to use Community and Business Surveys.** (The MPS should continue to utilise small scale survey of their key individual networks about counter terrorism engagement, use of such tactics and why the need for such operations. These should consist of local people who are provided with the opportunity to have a say in all aspects of their local policing arrangements surrounding the counter terrorism environment).

13) **Consider the use of Online youth survey** (Recently utilised in youth crime surveys and should be used in the CT arena. i.e.; Thirty one thousand young people were consulted on a variety of issues including knife crime).

14) **Ensure that all police officers and police staff are aware of the privileges and restrictions of Press Passes.** (Prior to any deployments, all officers are briefed/updated on the use of press passes and what the holders are entitled to do and limitations of their roles).

15) **Prior to any deployment, every police officer is briefed on the counter terrorism legislation, their powers, limitations of any powers authorized and the defined area and duration of operation that has been authorised.** (It is critical that every police officer is appropriately updated and briefed as to his or her requirements and restrictions prior to any deployment).

16) **Consideration be given to providing police officers with some form of special clothing (CT Tabard) indicating that they are deployed on counter terrorism activity** (Having clearly identifiable clothing or insignia would provide a clear demarcation as to their role on a particular operation/deployment away from the routine/normal policing activities).

17) **Producing and distributing of counter terrorism 'flyers/notices'** (outlining the aim of the operation/deployment, purpose, duration, area deployed in/on and how to obtain further information or an address to register the member of the public's thoughts/suggestions/complaints. This would be in addition to the current system of notification at the point/location of the operation/deployment).

18) **Consideration should be given to the deployment of 'overt' recording equipment (either audio or video) for any officer deployed on a CT Operation.** Recent MPS deployments in Boroughs across the MPS have produced 'initial' positive results in gathering evidence, mitigation of overt policing tactics and corroborative evidence to support any criminal charges, where previously no witnesses were available.

Section 44 Terrorism Act 2000 - tactical use review

Report: 10
Date: 7 May 2009
By: AC John Yates on behalf of the Commissioner

Summary

This report highlights the history and rationale for the tactical review and develops several findings in the form of a suggested model, with recommendations drawn from the process of research, engagement and analysis of the tactical use of Section 44 Terrorism Act 2000 in the MPS. This particular stop and search power is routinely used in everyday policing. There is a wider acknowledgement that these findings may have a beneficial effect on national guidance. This report looks at the refinement of tactics and not the legislation or authority process.

A. Recommendation

That

1. **the MPA note the review and its findings; and**
2. **a future joint MPS and MPA consultative seminar takes place.**

B. Supporting information

History, 'why are we refining the tactic?'

THREAT

1. The UK faces a severe and continuing threat from international terrorism, and there is no indication that it is likely to diminish soon. The threat we face is of a different nature and magnitude to any we have encountered before; we need to stay one step ahead.

2. We need to reduce the risk to the UK and its interests overseas from international terrorism so that people can go about their daily lives freely and with confidence. That is the aim of the government's strategy for countering international terrorism, known as CONTEST.

3. Following the events of June 2007 that saw a terrorist based attempt to cause mass casualties in the Haymarket, London and the partially successful attack at Glasgow airport, the MPS took the strategic decision to increase the use of section 44 to deter offenders and prevent further attacks. Since October

2007 the MPS has conducted 154,293 Section 44 Stop and searches/accounts (figures supplied by PIB Oct 2007- Sept 2008). This is a significant increase over previous years. Whilst the threat level remains at severe, the MPS felt that it was now appropriate to review our use of this power.

Aim and scope

4. The aim of this work was to ensure the MPS retained its ability to protect Londoners, but also addressed concerns raised by Lord Carlile, the independent reviewer of counter terrorism legislation, The MPA, CTTLD and monitoring network and London Communities over the volume of stops undertaken under the legislation against the number of arrests made or intelligence received as a result.

5. The review's remit included the scoping and drafting of a new model for the continuing deployment and refinement of Section 44.

6. Commander Denholm (SO) and Commander O'Brien (TP) led the review via an oversight group meeting by-monthly, with a working group carrying out research and development.

7. This has been a joint Business Group Review between Territorial Policing (TP), Central Operations (CO) and Specialist Operations (SO). There has been a wider level of stakeholder engagement from the start of the review and the project team has developed 'new ground' in the level of consultation with community groups.

Legislation and authority

8. Section 44 (1) & (2) of the Terrorism Act 2000 allows officers in uniform to stop and search persons and vehicles. There is no requirement to have any reasonable grounds to conduct the search. This power reverses a fundamental principle in that no suspicion of wrongdoing is required. Appendix 1.

9. Section 43 powers under the Act require reasonable suspicion. Appendix 2.

10. The MPS has in place an area-wide authority for Section 44, signed by ACSO and reviewed every 28 days or close to, on a schedule aligned with our Guardian Partner forces in London (City of London Police, British Transport Police and Ministry of Defence Police).

11. It is important to note that this is not an ongoing power or blanket authority, each renewal is distinct, and may be different dependent on threat and intelligence.

Engagement and Consultation.

12. Following the MPA's London Debate, there has been wide consultation including Muslim Safety Forum, Diversity Directorate, Liberty, British Transport Police, City of London Police, Community

Forum Chair, MPA S&S monitoring network, Specialist Operations, Territorial Policing (front line officers and staff) and other subject matter experts.

13. The consultation confirmed suggestions that the power is seen as controversial and has the potential to have a negative impact, particularly on minority communities.

Emerging model

14. The emerging findings from the review support a three-layered approach to the tactical deployment of TACT powers: Appendix 3.

- **Level one** - There are various sites across London that are of such an iconic nature and/or key strategic importance that the officers deployed in the immediate area require the use of S.44 powers.
- **Level two** - The deployment of the power through a specific tasking or directive will allow for its use on a 'prevent and deter' basis. Such a directive will, in appropriate circumstances be provided through Management Board or tasked via the Security Review Committee (SRC). It is expected that this will be used sparingly unless there is a significant change in threat.
- **Level three** - Where any officer sees behaviour, circumstances or has further grounds to raise their suspicion that a person may be engaging in a terrorist related offence they have full discretion to deal with that issue, by way of action designated under Section 43.

Implementation

15. Trial and testing. As part of the review it is intended to pilot the revised approach on four boroughs, Southwark, Brent, Newham and Tower Hamlets. The trial period will commence May 2009; with full roll out planned for summer 2009.

16. Evaluation. A research plan has been developed to support the review and implementation. This is designed to examine several aspects including community impact, satisfaction and confidence.

17. Communications strategy. A communication strategy will be developed with DPA covering both internal and external stakeholders. Several media will be used, including the intranet via 'corporate news', notices and presentations and briefings to command teams and staff. It is intended that the oversight group will remain in place to support the implementation of the plan.

C. Legal implications

1. The Directorate of Legal Services (DLS) has been fully consulted around the current legislation and guidance. In addition, the review team has had full access to the writing group of the National Police Improvement Agency (NPIA).

2. Chief Constable Craig Mackey from Cumbria Police is the ACPO lead for stop and search, has had full sight of the above model and review terms of reference. CC Mackey has stated that the work done by this review may be considered for inclusion in his next version of national guidance.

D. Race and equality impact

It is recognised that there has been community concerns about its use in the past. The refinement of the use of this power could therefore have a positive impact. As part of the ongoing review all aspects of community impact will be monitored and evaluated.

E. Financial implications

In respect of the evaluation framework, a full costs bid has been developed and is currently subject to a bid to the MPS CT Grant Board.

F. Background papers

None

G. Contact details

Report author: **Michael McDonagh,** *MA CMgr FCMI FInstLM,*

Detective Chief Superintendent, MPS.

For information contact:

MPA general: 020 7202 0202

020 7202 0202

Media enquiries: 020 7202 0217/18

Appendix H

Chris Allison 29.11.10

Assistant Commissioner, Central Operations

Metropolitan Police Service

New Scotland Yard

8-10 Broadway

London SW1H 0BG

Dear Mr Allison,

Re: Police treatment of media workers during November 24th protest

As you may know, for almost five years I have been liaising with the Press Bureau in an effort to improve the treatment of media workers by MPS officers during public order events.

This has included giving talks at New Scotland Yard and Gravesend, and having meetings with CS Ian Thomas. Complaints, particularly from photographers, have continued throughout that period.

It is a pleasure to write to you today, then, to inform you that I have received nothing but praise over the police's handling of the media during the demonstration on Wednesday, November 24.

We are particularly pleased by the reports that your officers scrutinised Press Cards for their validity, and afforded access to those holding current cards. Photographers have stressed that they recognise that officers were working in very difficult circumstances, which makes their efforts even more commendable.

We look forward to this excellent relationship continuing.

A number of people have worked hard to take us to this point, and I hope you will pass on our thanks and appreciation to all concerned.

Yours sincerely,

John Toner

Freelance Organiser

Results of focus groups

Executive Summary of Outcomes

Introduction

All respondents are listed separately to allow for anonymity and free information exchange. Each focus group was formed for approximately two hours. Refreshments were provided and prior to the focus group commencing:

- A briefing was provided to allay fears, that the groups were confidential and not attributed,
- Explaining the process,
- The aim and background of the research project,
- Where data and notes would be stored,
- And analysed and utilised in the finished thesis document.

The main themes from the group are as follows:

- A lack of training around the specific stop and search powers of 43 and 44.
- They felt that they were all unsure of their powers to a greater or lesser extent.
- In addition, they felt that the CT Co-ordinator role on Borough needed rejuvenating.
- In questioning it was obvious that the group was unsure about the wording of the act.
- Leadership featured highly in both focus groups as to a serious concern in any deployments and direction of the teams.

Other Findings:

- Overall, they felt the power was beneficial and useful. When deployed correctly.
- They realised that they did not need to know the exact intelligence but felt that the terrorist briefings were boring and unspecific and went on too long for them to use.
- They wanted the information and any intelligence on a two page document at best.

- One Safer neighbourhood Team (SNT) Sergeant only stopped cars and did not stop pedestrians.
- However MPS wide figures show the majority being person stops without vehicle.
- Taxi's seemed to be an issue when tendering a fare as the passenger was held with a ticking taximeter whilst the stop took place.
- Ratios of police to PCSO's came up as an issue (this comes back to the lack to the lack of knowledge around powers).
- The groups discussed the issue of performance indicators (PI's) for conducting Section 44 stops.
- Most felt there was a performance drive to increase a large number of 44 stops. (Belgravia SNT's do 10 per day each).
- The need for local managers to be aware of the issues and be allowed to vary the tactics was seen as important and would allow for a truly random pattern.
- One Borough mentioned that they only do Section 44's via the 305 (bomb van) patrols/checks.
- Regular (more experienced) officers do not do the Section 44 stops unless directed. (This outer Borough has only a small amount of focus on CT activity).

The Encounter

- When it came to the actual encounter, no officers interviewed, provided any issues around complaints or issues relating to conduct of stop.
- All noted that if the power was fully explained to the member of the public, then they the member of the public (MOP) did not resent the stop.
- That said, there were several occasions that concerns about the length of time the stop took rather than the way is was done or the powers.
- There had been a few isolated incidents where members of the public have been stopped and presented the officer with a fistful of 5090's (stop and search recording slips).

Recording of Stops

- Several officers stated that the *'grounds'* for the stops on one Borough were filled in with a "stop under authority of AC Quick".
- They were told that they did not require any grounds but that a rationale would assist intelligence gathering/requirement and that this would be passed to SO15 Counter Terrorism Command.

- Some staff put grounds down for a section 44 however others cited a rationale instead.

Additional comments

- Overwhelming support for keeping the power as there was a perception of it being beneficial.
- However, they all felt the briefing was of no use to them and they never really bothered reading it.
- Often BOCU's take the odd briefing slide they feel relevant and pasted it into their main briefing.
- Aide memoir good but not thoroughly used.
- Officer felt that they received little or no feedback about results or the usefulness of their work. Commonly mentioned throughout.
- Everyone was in agreement that the role of the rainbow coordinator needed to be refreshed.
- Greater and more directive (informative) leadership and supervision required.

List of Focus Group Starter Questions.

1. Prior to a deployment on a Section 44 CT operation, were you briefed?
2. Who briefed you?
3. What was provided to you (handouts, intelligence update, locations and process)?
4. What was the aim and objective(s) of the deployment?
5. Any timings / locations / details of the Authority provided/sanctioned?
6. Were you briefed around the paperwork, forms, reporting structures?
7. Were you told what to look for, intelligence to gather and where to log it or send it onto?
8. Can you remember when you last conducted a Section 44 stop and search?
9. What happened?
10. Who did you stop?
11. Why did you stop and search them?
12. What happened during the encounter?
13. Did you complete the stop slip?
14. Did you request their ethnic origin or did you assess that?
15. Did the person receive a copy of the slip?
16. What was their overall demeanour?
17. Did you explain why you were deployed at that location?
18. Did they ask any supplementary questions?
19. Did you provide them with any additional information / leaflets/ documents?
20. Would you say it was a productive stop?
21. Would you say they felt it was a productive stop?
22. How would you define a productive stop?

23. How would you define a non productive stop?

24. Do you think this type of stop and search operation is worth conducting?

25. If not why not?

26. Do you conduct other stop and searches (non CT operations)?

27. How many of these type of stop and searches have you conducted over the past three years? (0 to 5, 5 to 10, more than 10)

28. What do you think the community feel about this type of activity?

29. Could we (Police) improve these types of deployments?

30. If so how?

31. Do you think we should use additional branding / information boards / different clothing to mark the extraordinary nature of this activity?

32. Were you satisfied with the level of supervision / support provided?

33. Were you de-briefed?

34. Were you requested to provided intelligence or feedback?

35. Did you complete the intelligence report and submit it to the intelligence unit?

36. Is there anything else you would like to add / suggest?

Rt Hon Jack Straw Guardian Article (1999)

"Given recent coverage, Guardian readers could be forgiven for believing that the new terrorism bill marks the end of liberal democracy as we know it. As ever, however, the reality is very different. Legislating in this area is difficult. By its nature, terrorism is designed to strike at the heart of our democratic values. That is all the more reason why we must ensure that we get right the balance between defending the public from acts of organised terror and ensuring that human rights are protected. The main disagreement between the government and those like John Wadham is our long-held belief that we need specific legislation to counter the on-going terrorist threat. It has, however, long been recognised that we need special laws to prevent and deal with particular threats - just witness the success of the legislation covering serious fraud and drug trafficking. Yet these have not resulted in complaints about the injustices of a "twin-track system". With the new terrorism bill, we are proposing to move away from the rather piecemeal and temporary approach that characterises current anti-terrorism legislation. For a quarter of a century, the prevention of terrorism act - introduced by one of my more liberal predecessors, Roy Jenkins - has provided the police with extra powers to counter the terrorist threat. In opposition, the Labour party objected to three parts of that act. The terrorism bill deals with each of them.

First, the PTA allowed ministers to exclude British citizens entering the mainland from Northern Ireland, and vice versa - a form of internal exile which was ineffective, wrong and opposed by nationalists and unionists alike. I lapsed exclusion powers in early 1998 and, under this bill, they are to be scrapped altogether. Second, the PTA allowed ministers - not judges - to decide whether a terrorist suspect should be detained by the police for longer than 48 hours. With this bill, extensions to detention will require approval by a stipendiary magistrate (or equivalent) - and at last allow the UK to overturn its derogation from a key part of the European Convention on Human Rights. Third, the PTA was a temporary measure to deal mainly with Irish terrorism, and took no account of the changing nature of the terrorist threat. This legislation puts that right too. The powers available under the terrorism bill will be subject to a series of checks and balances to ensure that they are used proportionately. As well as the judicial

oversight of extensions of detentions, proscribed organisations will have a right of appeal to an independent body and all future authorisations of the use of stop and search powers under the bill will have to be confirmed by me or another minister.

Opponents of the bill have cited the proposed new definition of terrorism as an affront to the individual's peaceful right to protest. It is no such thing. The bill (which defines terrorism as "the use or threat, for the purpose of advancing a political, religious or ideological cause of action which involves serious violence against any person or property, endangers the life of any person or creates a serious risk to the health or safety of the public or a section of the public"), in fact distinguishes more clearly than ever before the situations in which anti-terrorist legislation should apply. It increases the level of the threshold before which certain powers within the bill can be activated, by making it clear that it refers to activities which constitute "serious violence". Moreover, the definition itself does not create any new criminal offence. Rather it is primarily the trigger for the use of the powers in the bill. Terrorists committing serious acts of violence will continue to be charged with the usual such offences, from murder to causing explosions. The legislation is not intended to deal with alleged offences properly dealt with under the existing criminal law. Neither will it in any way curb individuals' democratic rights to protest peacefully. The difference between "serious violence" and "violence" will not be meaningless in a court of law, as some have suggested. Our courts are well used and perfectly able to apply the word "serious" in the context of specific circumstances, and do so, for instance, when considering aggravating features in criminal cases. So this will make a difference.

At the same time the new bill widens the scope of the legislation, extending it to include the threats posed by terrorists both domestically and internationally. It must be right for the law to deal on the same basis with all groups or individuals intent on causing death and injury here in Britain to further a cause. This is particularly necessary as the nature of the terrorist threat changes. Finally, some have claimed that the new legislation will prevent individuals and organisations opposing oppressive regimes overseas - the "Mandela" effect. Protest from here, as they see it, will brand them terrorists. But there is a world of difference between an individual's rights to freedom of expression and protest and the

plotting of serious violence. What the bill will do is also to outlaw the incitement of murder and other extremely serious terrorist-related crimes of violence. Any prosecution would also require the consent of the director of public prosecutions if it is to proceed. This part of the bill fills a gap in the law.

Existing legislation which has implemented various international conventions means that it is already an offence here to incite anyone abroad to hijack an aircraft, or someone in Turkey or India to commit murder. Why should similar incitement of terrorist murder in Japan or Australia not also be an offence? This bill strengthens the powers to meet an ever-changing, ever-present threat, yet is properly regulated by a series of safeguards. Every terrorist attack represents a violation of our democratic values, and as such our response must be sufficiently robust to challenge and defeat these vile activities at all times. I think we have got the balance right".

Rt. Hon Jack Straw MP

END NOTES REFERENCES

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[1] Stop and search *'racial profiling'* by police is on the increase, claims study. Analysis shows that black people are now 30 times more likely to be stopped by the police than white people. The Observer, Saturday 14th January 2012.

[2] Police and Criminal Evidence Act 1984 (PACE) and accompanying codes of practice. www.homeoffice.gov.uk/**police**/powers/pace-codes/

[3] Christina Pantazis* and Simon Pemberton, article on suspect communities first published in the British Journal of Criminology (2009) 49 (5): 646-666. doi: 10.1093/bjc/azp031 First published online: June 22, 2009.

[4] REVIEW OF COUNTER-TERRORISM AND SECURITY POWERS REVIEW FINDINGS AND RECOMMENDATIONS, Presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty, January 2011, Cm 8004.

[5] The Sutton Index, is an index of deaths caused by terrorist / terrorism attacks, the CAIN Director is a man called Malcolm Sutton. (m.melaugh@ulster.ac.uk), © Malcolm Sutton.

[6] A short history of Ireland - http://www.bbc.co.uk/northernireland/ashorthistory/archive/intro233.shtml.

[7] BBC On This Day, '1989 Ten dead in Kent barracks bomb', retrieved March 6, 2007.

[8] http://www.homeoffice.gov.uk/publications/counter-terrorism/counter-terrorism-strategy/contest-summary [Accessed 1st March 2012].

[9] *"This is a good moment to be discussing issues of national security, given the lively debate (not least that likely between the partners in our the British coalition government) about what limits should be set on security, intelligence and surveillance methods and what international liaisons with countries with very different ethical standards to our own ought to be acceptable in the pursuit of public safety. We now have a National Security Council, and a new National Security Adviser, and the government has launched a strategic defence and security review. What we should mean today by national security is a pressing issue of public policy. In my book, 'Securing the State' (2010), I attempt to answer that question in three steps.*

The first step is the recognition that national security is a collective psychological state as well as an objective reality such as freedom from foreign invasion. People

need to feel sufficiently safe to justify investment, to be prepared to travel, indeed to leave the house in the morning to get on with ordinary life and to live it to the full even in the face of threats such as terrorism and hazards such as pandemic flu. A feeling of insecurity is highly corrosive of a healthy society so governments rightly see providing security as their first duty. A national UK risk matrix was published last year developing work I started, although we did not as I recall include either greedy bankers or volcanic ash, so as my book discusses there is a way to go in learning how to acquire what I term 'strategic notice' of problems ahead.

The second step, however, is to recognize that security rests on the sensible management of risk not on its elimination. Efforts to prevent risks can do more harm than good. In particular, there is a delicate balancing act for governments in maintaining justice, freedom of movement and of speech, civic harmony and the right to security. Indeed, an important ingredient in public security in a democracy is confidence in the government's ability to manage risk in ways that respect human rights and the values of society.

The third step in the argument is to see that the key to maintaining that delicate balance is to have better informed decision-making by government. Decisions based on adequate knowledge of the situation, plus satisfactory understanding of what is going on. With situational awareness plus good explanation there is some hope that what is liable to happen next can be predicted and risks anticipated, within the limits of the knowable. We should look to government then to decide in good time whether to act to try to reduce the risk or to reduce society's vulnerability to it, or in many cases sensibly to decide to leave well alone. Now, improving decision making by reducing ignorance is the purpose of intelligence, and secret intelligence achieves that purpose in respect of things that other people are trying their best to prevent us knowing. If we take terrorism as an example, having pre-emptive intelligence enables the risk to the public to be managed without recourse to the bludgeon of State power, such as mass arrests, house to house searches, 90 days detention without trial, and so on. A virtuous circle is created as all sections of the public, confident that their rights will be respected, then volunteer more information to the authorities. So intelligence becomes central to national security.....

..... Safeguarding the public, however, involves governments in taking steps that involve moral hazard. But it is not an ethics-free zone. The public has the right to know the ethical principles governing work being done in their name, even if – as must be the case – the public has no right to know the details of sources and methods used by the security authorities. It will help if there is greater recognition that intelligence and security work can both contribute to public welfare and follow a set of ethical norms set firmly within the framework of human rights. A lesson from most conflicts is that after the effort is over, in the words of Matthew Arnold, 'uphung the spear, unbent the bow'. People forget what had to be done to survive and 'it must never happen again' elides into 'it can never happen again'. But it can and it does. Security and intelligence capabilities can take a long time to build up, but are very quickly run down, as was the case when the so-called 'peace dividend' was taken in reductions in defence and intelligence spending at the end of the Cold War. Too often the unexpected crisis erupts in a country or region where it was assumed there would be no intelligence requirement. Pre-emptive intelligence, however, becomes even more important; this requires even closer cooperation between domestic and overseas services, and now between intelligence and policing communities.

At times of great national danger, daring and innovation is forced upon government, along with an influx of fresh talent drafted in, drawn from the best brains of the universities, the law or commerce. In between times, the temptation to stick to routine is evident. Long conflicts, such as that against jihadist terrorism, demand just as much fresh thinking as sudden struggles for national survival. One aspect of innovation is the bringing together of talent from different services and backgrounds to work together to develop new ways of delivering security and intelligence. That should include the private sector. Where, however, the powers of the State to coerce or to intrude upon personal privacy are concerned the guiding principle for public trust should be that these should always be in the hands of those bound by public service values, not shareholder value, even if supported by commercial contractors conducting specialist functions such as forensic science and managing complex ICT systems. Our media can be strident and demand instant answers that are rarely available. It will help government to hold fast to some principles that should govern our search for public security. Let me cite ten.

***Principle One**, Security is best defined in terms of a state of normality, derived from a sense of confidence on the part of the public that the major risks facing them are being managed satisfactorily so that people can get on with their lives freely and with confidence. Looking at the security of individuals and communities in this way recognises that all events that threaten to disrupt normality even if global in their origin are local in their impact in terms of casualties or loss of essential services such as power and water. A principle of subsidiarity can be applied so that problems are dealt with at the lowest level at which a reasonable level of risk can be achieved and society avoids falling into the trap of 'securitizing' all its ills as national security issues.*

***Principle Two**, The boundaries of risk between national domestic and overseas spaces now overlap. The episode of the Danish cartoon illustrates the problem of globalised audiences in an internet age; equally, events outside Europe can impact quickly on our domestic security. Weaknesses in security in one country (say in public health, commercial aviation, or affecting the safety of nuclear power plants) will be the weak link that increases the risk carried by citizens of other nations.*

***Principle Three**, Today no country can provide adequate security through its own resources. Even the United States has come to accept that alliance and partnership with others is needed, within a framework of strong international institutions and rule-based international order. There is the need to encourage new powers such as China and India to continue to play by international rules. The principal levers overseas are likely to be diplomatic, or involve international development, economic and social governance programmes but as a last resort must also include the capacity to conduct multilateral military interventions overseas as part of wider international strategies, for example to manage the risks from failing states, and deny havens to terrorists.*

***Principle Four**, A citizen-centred view should be taken of the major risks to the public, requiring security policies that address both man-made threats and natural hazards, rather than the traditional emphasis on State-centred domestic security concerns for territorial integrity and the ability to detect and counter subversion by hostile powers. So security has an important psychological dimension.*

Principle Five, *Government should try to anticipate future risks: where possible acting to prevent risks arising and, when not possible, to mitigate their effects through reducing vulnerability and increasing preparedness. Anticipation implies that dangers are tackled when they are identified as 'clear and present' but have not yet become immediate. Since 2003, for example, the UK has been following a counter-terrorism strategy, CONTEST designed explicitly to be an exercise in risk management.*

Principle Six, *Governments should develop the ability to provide strategic warning of potential developments in such areas as science and technology, international relations, and social attitudes that could bear upon our future security, and ensure we have the capability to monitor threats as they arise. International relationships will be needed in intelligence and security matters, including with countries with different attitudes to our own.*

Principle Seven, *Secure external borders for both people and goods and managed immigration controls are a fundamental component of domestic security and for providing public confidence. The UK has insisted on control of its own borders and is not a member of the Schengen area and new electronic e-borders information systems are being introduced into UK borders.*

Principle Eight, *Domestic security in peacetime is primarily civil responsibility but the Armed Services should be ready and able to aid the civil power when requested with their specialist capabilities under the well-established doctrine of aid to the civil power, especially planning for circumstances in which civil resources could be overwhelmed.*

Principle Nine, *National resilience and fortitude are key determinants of domestic security at all levels, involving communities, voluntary groups and businesses as well as local and central government. UK government has a well practised doctrine for pan-government command and control in a crisis including at the strategic national government level (the Cabinet Office Briefing Room COBR). Parliament has passed the Civil Contingencies Act 2004 that in a major emergency can allow the government to take sweeping temporary emergency powers. There are arrangements to draw on the considerable technological expertise of British industry*

to ensure that the critical national infrastructure is able to support everyday life even in the face of disruptive challenges.

***Principle Ten**, As an overarching principle, nations should apply the principles of right authority, necessity and proportionality to the security measures they take and ensure that the balance between security and privacy and other rights takes place within the framework set by the Human Rights Act. They should recognise that attempts to produce absolute security are liable to do more harm than good in terms of justice and civic harmony.*

I have also tried to highlight the increasing importance of maintaining public confidence in the government's understanding of the delicate balance between liberty, freedom, privacy and security and the rule of law. As secret intelligence is increasingly seen by the public to be the hidden force driving security measures so it becomes more necessary for 'the Secret State' to be seen to have given way to 'the Protecting State'. Civil harmony and civic responsibility is as important to us as it ever was, and our communities need to have the reassurance that the security and intelligence authorities working to protect them are doing so in ways that protect their rights and uphold the fundamental values of our society. There is a danger of the public not seeing the whole picture and ending up debating individual issues such as privacy in isolation from the security context, and that increases the risk that individual issues become footballs in party political games.

What all this adds up to is the need for a 'grand understanding' of the application of such principles to emerge between political parties and public based on confidence that the government of the day will be working in good faith and to its utmost to maintain security as a state of normality in which individuals can get on with making the most of their lives as they choose, in freedom and without fear. We can express such an understanding in the form of a series of propositions representing a balance of the competing principles and interests involved. All concerned, Government, its agencies, and the public, have to accept that maintaining security today remains the primary duty of government and will have the necessary call on resources. It follows that upholding the values of a democratic, civilised society is itself a strategic national objective, including upholding the rule of law and working within the

framework of human rights, including the fundamental right to life and the absolute prohibition of torture.

Modernity brings with it huge benefits but also increasing fragility in the systems on which everyday life depends: the public should be invited to accept that there is no absolute security and chasing after it does more harm than good. Providing security is an exercise in risk management. Pre-emptive secret intelligence is an essential key to reducing the risk from terrorism. There will always be 'normal accidents' and intelligence failures, but overall the work of the intelligence and security services shift the odds in the public's favour, sometimes very significantly. If the secrets of terrorists and criminal gangs are to be uncovered therefore there will be inevitable intrusions into their privacy and that of their associates. These intrusive methods are powerful and they get results. So public trust that this machine is only to be used for public protection against major dangers will continue to be essential. The security and intelligence community have to accept in turn that ethics matter: there are 'red lines' that must not be crossed. So some opportunities will have to be passed over and the principles of proportionality, necessity and due authority will have to be followed"[9].

10

Legislation	Main provisions/changes introduced

Anti-Terrorism, Crime and Security Act 2001	• Enables the Home Secretary to indefinitely detain, without charge or trial, foreign nationals suspected of terrorism • Limits the appeals of foreign nationals detained under these circumstances to a closed special immigration commission • Grants police and security services the power to ask public bodies to disclose personal records during terrorism and criminal investigations • Enables communication service providers to retain data that can be accessed by law agencies investigating terrorism activities
Criminal and Justice Act 2003	• Amends Section 41 of *Terrorism Act 2000*, extending pre-charge detention from a period of seven days to fourteen days

Prevention of Terrorism Act 2005	• Introduced in response to a December 2004 law lords ruling the detention of foreign nationals without trial as unlawful. Creates control orders, imposed by Home Secretary against individuals suspected of involvement in terrorism-related activities that cannot be put on trial or deported. Restrictions imposed under such regime include: house arrest and restriction on place of residence. It also allows control order proceedings to be held in a closed session
Terrorism Act 2006	• Extends pre-charge detention to twenty-eight days • Creates new offences such as: encouragement or 'glorification' of terrorism or dissemination, distribution or transmission of terrorist publications • Greater powers for Home Secretary to ban groups glorifying terrorism

Counter-Terrorism Act 2008	• The original Bill included some controversial measures that were dropped by the time the Act became law. Among these: plans to create a 'reserved power' for Home Secretary to extend maximum pre-charge detention period to forty-two days (after a failed proposal for ninety days presented in 2005); use of intercept evidence in terrorism cases; provision for inquests and inquiries to be held without a jury in interest of national security. • Enables post-charge questioning of terror suspects • Introduces enhanced sentencing of offenders who commit offences with terrorist connection • Enables the use of intercept evidence in certain specified proceedings (i.e., assets freezing)

Review of Counter-Terrorism and Security Powers (January 2011)	Key recommendations include: • Replacement of control orders with Terrorism Prevention and Investigation Measures (TPIMs), designed to be less intrusive and more focused • Maximum pre-charge detention period reduced to fourteen days; it could temporarily be increased to twenty-eight days in extraordinary circumstances • Section 44 of *Terrorism Act 2000* to be repealed and replaced by a more tightly defined power enabling stop and search only in response to specific intelligence on terrorist attack • Tighter control on use of *Regulatory and Investigatory Power Act 2000* (RIPA)
Terrorism Act 2000 (Remedial) Order 2011 (March 2011)	• Provides for the redefinition of stop and search power. New tighter regime to come into force in March 2011
Terrorism Prevention and Investigation Measures Bill (December 2011)	• Formally abolishes Control Orders regime. New TPIMs regime to come into force in January 2012

[11] Information cited from the RUSI Re-Balancing Security and Justice Paper dated April 2012. www.Rusi.org/terrorism.

[12] ***Statecraft***, is the art of conducting public affairs; statesmanship. Collins English Dictionary 1985 Edition.

[13] The **50/50** recruitment of Catholics and Protestants to the Police Service of Northern Ireland (PSNI) remained in force from 2007 until the Northern Ireland Secretary Owen Paterson said that: '*having*

considered responses to a public consultation on the issue, he had decided to end the policy on March 28 2011'. http://www.belfasttelegraph.co.uk/news/local-national/northern-ireland/psni-5050-recruitment-policy-ends.

[13] *'A New Beginning: Policing in Northern Ireland'* (1999) cain.ulst.ac.uk/issues/police/patten/recommend.htm. *[Accessed 2nd March 2012].*

[14] Equality and Human Rights Commission Report (March 2010), ISBN 978-1-84206-265-4.

[15] Professor Mark McGovern, (2009), Countering Terror or Counter-Productive? Comparing Irish and British Muslim Experiences of Counter-insurgency Law and Policy. Report of a Symposium held in Cultúrlann McAdam Ó Fiaich, Falls Road, Belfast, 23-24 June 2009.

[16] Robert Lambert. *'Why conventional wisdom on radicalization fails.* First published in 2010 by Blackwell Publishing Ltd in conjunction with the Royal Institute of International Affairs. Volume 86, Issue 4, pages 889–901, July 2010. www.chathamhouse.org/sites/.../86_4githensmazer_lambert.pdf.

[17] Rt. Hon Jack Straw MP is the MP for Blackburn and served as the Home Secretary from 1997 to 2001.

[18] John Wadham, became the Director of 'Liberty' in 1998, having served as their legal officer for eight years.

[19] Article first published on Tuesday 14th December 1999, Via the Guardian newspaper website in response to calls for greater clarity and further detail surrounding the proposed changes to the Bill. *www.guardian.co.uk/politics/1999/dec/14/jackstraw.labour[Accessed 23/1/2012]*

[20] Article first published on Tuesday 14th December 1999, Via the Guardian newspaper website in response to calls for greater clarity and further detail surrounding the proposed changes to the Bill. *www.guardian.co.uk/politics/2009/jan/19. [Accessed 3rd January 2012].*

[21] Hallsworth. S, and Lea. J, 2011, article *'Reconstructing Leviathan: Emerging contours of the security state* Published by SAGE in May 2011, http://tcr.sagepub.com/content/15/2/14.refs.html.

[22] Article exploring the use of military style training, equipment and tactics first appeared in the Daily Mail newspaper on 20th January 2012. Around 100 marines and 50 police officers rehearsed a series of high-speed drills amid fears attackers could use the waterways to launch onslaughts on London landmarks. http://www.dailymail.co.uk/news/article-2088986/London-2012-Olympics-security-Special-forces-strength-Thames.html.

[23] Bennett Obong was the lead MPA Adviser on stop and search, prior to the replacement of the Metropolitan Police Authority by the Mayor's Office for Policing and Crime (MOPC) in 2011.

[24] Published in the Daily Telegraph on the 15th July 2010. [Accessed 23/02/2012]

[25] CONTEST, The United Kingdom's Strategy for Countering Terrorism, July 2011, (Cm8123) London: HMSO.

[26] Ibid.

[27] Defining Modern Terrorism - In order to explain and provide a 'starting point' to commence this debate surrounding what is modern terrorism it is useful to attempt to understand why does defining terrorism matter? Many Nations have sought to define terrorism for a number of purposes, such as:

- criminalization;
- identification of available investigative tools;
- permission for intelligence gathering;
- identification and targeting of those who commit or support it;
- authorization of a military response (in certain circumstances);
- allocation of resources;
- determination of jurisdiction;
- International and interagency cooperation.

What has been agreed is that modern terrorism typically displays certain fundamental aspects: it, (terrorism) has some ideological or religious nature reflecting a person's or a group's conception of justice (earthly or divine), although increasingly not instrumentally tied to an identifiable, concrete political end; it has a predominantly non-state character (even if support is received directly or indirectly from states), although groups and activities are increasingly of a transnational or international nature; terror by its very nature deliberately targets innocents and civilians;

[28] The Western world, also known as the West and the Occident (taken from the Latin: *occidens* "sunset, west"; as contrasted with the Orient), and is a term generally referring to all European and heavily culturally and linguistically European nations primarily situated in the Western Hemisphere. Collins English Dictionary 2003.

[29] Paul McMahon - *British Spies and Irish Rebels: British Intelligence and Ireland, 1916-1945 (Pg 6).*

[30] Home-grown Terrorism: (Extract taken from an internet article by the author Sam Mullins - www.terrorismanalysts.com/pt/index.php/pot/article/view/12/html).

> Recently, much attention has been devoted to the 'home-grown' nature of Islamist terrorism in Western countries. This term permeates headlines, various reports and national psyches. It has been described as the "new face of terrorism," and the "main [terrorist] threat" faced by the West. However, it is a term that carries with it certain assumptions and implications that should be clarified so the public may gain a greater understanding of contemporary threats to national security. This article examines key connotations of home-grown Islamist terrorism in an effort to assess the validity of the term and draw attention to the need for more careful specification of meaning in its application.

First, it is necessary to clarify the scope of reference. 'The West' is a very broad expression generally understood to include Australia, Canada, Western Europe, and the United States. Of course, these countries share social and political dimensions that make them comparable; however, each also has their own unique history and profile that must be taken into account when assessing individual 'home-grown' issues. Each country's immigration history and related cultural identity affects the extent to which Muslims in the West have become integrated into their 'host' societies. Hypothetically, the less integrated and more socially isolated, the greater potential for feelings of disillusionment and resentment, which may significantly increase the likelihood of one turning to terrorism. Thus, it is argued that Western European countries (their own differences notwithstanding) are far more at risk to home-grown Islamist terrorism (HGIT) than the US due in large part to a history of lax immigration and asylum laws. These policies are contributory factors behind the large number of –often unskilled and therefore deprived- Muslim immigrants to enter countries like Britain and Spain and in combination with nationalistic cultural nuances these conditions are thought to have fostered marginalisation and segregation. By contrast the US's 'cultural melting pot' and 'land of opportunity' ethos are thought to have fostered far more integrated Muslim populations that are more likely to positively identify with their host nation and to reject collective explanations for personal adversity, relative or otherwise.

Australia and Canada have been posited as lying somewhere between these two extremes. Like America, immigration has been integral to the growth of their populations, but like Europe they have maintained liberal asylum policies and social benefit systems, which may attract the 'wrong' kind of immigrants. While such claims may at times seem blunt and sweeping, it is apparent there are differences between Western countries that may at times be more relevant than their similarities. The present paper represents a brief overview of relevant matters, but for the purposes of more country-specific in-depth analyses, such differences would necessarily take on greater significance.

Working definitions of terrorism require a degree of common sense and an appreciation of the relativity of labelling. The use of politically/religiously

justified violence against non-combatants by sub-state groups or organisations is a key part of the globally accepted definitions. Specifically, Islamist terrorism is inspired by Salafi / Wahhabi ideology and championed by al-Qaeda and similar organisations across the globe. 'Home-grown' Islamist terrorism as a term seems to be largely taken for granted as being self-evident without being specifically defined. Usage of the term tends to focus on where perpetrators are from [11] and whether they receive international organisational support. [12] Each of these elements carries implications for the practice of terrorism, which allow the definition of HGIT to be broken down into several facets. Stricter definitions of HGIT would require that attempted/successful terrorists:

· Were born and/or spent most of their lives in the West

· Were radicalised [13] within their Western home countries

· Have trained and achieved attack-capability in their Western home countries

· Have planned/carried out attacks in their Western home countries

· And are lacking direct foreign (non-Western) international support or control

While it may be rare for any one group of terrorists to fulfil all of these criteria, certain key overlapping themes commonly appear in definitions of HGIT. Notable aspects include the nationality of the terrorists and the country of radicalisation in relation to the targeted country. Also highlighted are the country of "jihadisation" and preparation involved in attack (including training, planning and procurement of materials and weapons) and the level of international influence or cooperation at each stage (including ideological communication, training, operational advice and logistical support).

What seems like a simple straight-forward piece of terminology, is in fact, a moniker laden with assumptions and implications. It is therefore important to assess the veracity of prescribed attributes of HGIT, which revolve around a

central theme of change and development. If HGIT represents a 'new' manifestation of the ongoing terrorist threat, what exactly is new about it? In order to answer this question it is necessary to further explore the who, when, what, where, how, and why of terrorism.

[31] Gillan and Quinton, application no 4158/05. See fn. 3 [97].

[32] Home Office, Cm 8004, _Review of Counter-Terrorism and Security Powers' January 2011. Available at http://www.homeoffice.gov.uk/publications/counter-terrorism/review-of-ct-security-powers/review-findings-and-rec?view=Binary. Last accessed 6 February 2011 p. 16 [5].

[33] ibid. see fn 98, pg. 18 [16.1].

[34] *State of Exception*, translated by Kevin Attell (2005).

[35] *Habeas corpus* (Latin: "may you have [your] body") is a writ, or legal action, through which a prisoner can be released from unlawful detention, that is, detention lacking sufficient cause or evidence. The remedy can be sought by the prisoner or by another person coming to their aid. *Habeas corpus* originated in the English legal system, but it is now available in many other nations. *www.constitution.org/eng/habcorpa.htm* [Accessed 4th March 2012].

[36] Sir Oswald Ernald Mosley, 6th Baronet, of Ancoats, (16 November 1896 – 3 December 1980) was an English politician, known principally as the founder of the British Union of Fascists. He was a Member of Parliament for Harrow from 1918 to 1924 and for Smethwick from 1926 to 1931, as well as Chancellor of the Duchy of Lancaster in the Labour Government of 1929–1931. *www.britannica.com/EBchecked/.../Sir-Oswald-Mosley-6th-Baronet* [Accessed 4th March 2012].

[37] Sir Geoffrey Bindman QC, is a former chairman and vice-president of the Society of Labour Lawyers. He is chairman of the British Institute of Human Rights and an legal expert on Northern Ireland.

[38] *Mediatisation*, is where the media reinforces or increases the level of newsworthiness of a story in the popular press i.e.; Weapons of Mass Destruction, increasing the fear of a particular issue or incident or tending to receive information from one source. *www.coe.int/t/dgap/democracy/activities/key.../02.../part_i_EN.asp. [Accessed 2nd March 2012].*

[39] Published on the European Civil Liberties Network (ECLN), info@ecln.org website: http://www.ecln.org [Accessed on 19th February 2012].

[40] Basia Spalek (2009). "COMMUNITY POLICING WITHIN A COUNTER-TERRORISM CONTEXT: THE ROLE OF TRUST WHEN WORKING WITH MUSLIM COMMUNITIES TO PREVENT TERROR CRIME". Available at: http://works.bepress.com/basia_spalek/1

[41] *"There are known knowns; there are things we know that we know. There are known unknowns; that is to say there are things that, we now know we don't know. But there are also unknown unknowns – there are things we do not know, we don't know"* Donald Rumsfeld, US Secretary of Defense.

[42] http://www.direct.gov.uk/en/governmentcitizensandrights/yourrightsandresponsibilities/dg_4002951

[43] http://www.austlii.edu.au/au/journals/JCULRev/2006/6.html - fn10.

[44] A (FC) v Secretary of State for the Home Department [2004] UKHL 56.

[45] House of Lords judgment , A and others v. SSHD, 16.12.04 commenting upon the Anti-Terrorism, Crime and Security Act (ATCSA), 2001.

[46] *www.direct.gov.uk/**nationalsecurity**strategy*

[47] **United Nations Security Council Resolution 1441** was a United Nations Security Council resolution adopted unanimously by the United Nations Security Council on 8 November 2002, offering Iraq (under Saddam Hussein) "*a final opportunity to comply with its disarmament obligations*" that had been set out in several previous resolutions (Resolution 660, Resolution 661, Resolution 678, Resolution 686, Resolution 687, Resolution 688, Resolution 707, Resolution 715, Resolution 986, and Resolution 1284).

[48] Spoken at his court hearing after being sentenced to 30 years imprisonment on 18th Match 2011, radicalised by the self proclaimed preacher Anwar al-Awlaki.

[49] The Sunday Times dated 19th February 2012. Page 23.

[50] Her Majesty's Prison Maze (known colloquially as Maze Prison, The Maze, The H Blocks or Long Kesh) was a prison in Northern Ireland that was used to house paramilitary prisoners during the Troubles from mid-1971 to mid-2000.

[51] *Jihad*, loosely translated means the struggle or religious duty of Muslims.

[52] *www.guardian.co.uk › Society*

[53] Threats Watch Website: http://threatswatch.org/rapidrecon/2007/12/allibi-alnafeer-trumpet-of-war/

[54] The Chatham House Rule originated at Chatham House with the aim of providing anonymity to speakers and to encourage openness and the sharing of information. It is now used throughout the world as an aid to free discussion. http://www.chathamhouse.org/about-us/chathamhouserule [Accessed 3/3/2012].

[55] ***Groupthink*** is a psychological phenomenon that occurs within groups of people. It is the mode of thinking that happens when the desire for harmony in a decision-making group overrides a realistic appraisal of alternatives.

[56] ***Airtime*** is where the individual is provided with appropriate and sufficient 'space' and opportunity to express their opinion or thoughts in a manner that is suited to that particular person.

[57] ***'Role-plays'*** are used extensively throughout the initial training period of police officers and therefore all the participants were used to using this medium of expression.

[58] The Great Man Theory was a popular 19th century idea according to which history can be largely explained by the impact of "great men", or heroes: highly influential individuals who, due to their personal charisma, intelligence, wisdom, or Machiavellianism utilised their power in a way that had a decisive historical impact.

The theory was popularised in the 1840s by Scottish writer Thomas Carlyle, and in 1860 Herbert Spencer formulated a decisive counter-argument that remained influential throughout the 20th century; Spencer said that such great men are the products of their societies, and that their actions would be impossible without the social conditions built before their lifetime.

[59] The trait model of leadership is based on the characteristics of many leaders - both successful and unsuccessful and is used to predict leadership effectiveness. The resulting lists of traits are then compared to those of potential leaders to assess their likelihood of success or failure. Scholars taking the trait approach attempted to identify physiological (appearance, height, and weight), demographic (age, education and socioeconomic background), personality, self-confidence, and aggressiveness), intellective (intelligence, decisiveness, judgment, and knowledge), task-related (achievement drive, initiative, and persistence), and social characteristics (sociability and cooperativeness) with leader emergence and leader effectiveness.

Successful leaders definitely have interests, abilities, and personality traits that are different from those of the less effective leaders. Through many researchers conducted in the last three decades of the 20th century, a set of core traits of successful leaders have been identified. These traits are not responsible solely to identify whether a person will be a successful leader or not, but they are essentially seen as preconditions that endow people with leadership potential.

[60] Assumptions; Leaders can be made, rather than are born. Successful leadership is based in definable, learnable behaviour. Description: Behavioural theories of leadership do not seek inborn traits or capabilities. Rather, they look at what leaders actually do. If success can be defined in terms of describable actions, then it should be relatively easy for other people to act in the same way. This is easier to teach and learn then to adopt the more ephemeral 'traits' or 'capabilities'. Discussion: Behavioural is a big leap from Trait Theory, in that it assumes that leadership capability can be learned, rather than being inherent. This opens the floodgates to leadership development, as opposed

to simple psychometric assessment that sorts those with leadership potential from those who will never have the chance. A behavioural theory is relatively easy to develop, as you simply assess both leadership success and the actions of leaders. With a large enough study, you can then correlate statistically significant behaviours with success. You can also identify behaviours which contribute to failure, thus adding a second layer of understanding.

[61] Tuckman. B., published his 'Forming Storming Norming Performing' model in 1965. He added a fifth stage, Adjourning, in the 1970s. The Forming Storming Norming Performing theory is an elegant and helpful explanation of team development, dynamics and behaviour. Similarities can be seen with other models, such as Tannenbaum and Schmidt Continuum and especially with Hersey and Blanchard's Situational Leadership model.

[62] Fiedler. F. , (1964) classified leadership situations on the basis of three major dimensions:

1. Leader-member relations: Leaders presumable have more power and influence if they have a good relationship with their members than if they have a poor relationship with them, if they re liked, respected, trusted, than if they are not.

2. Task structure: Tasks or assignments that are highly structured, spell out, or programmed give the leader more influence than tasks that are vague, nebulous and unstructured.

3. Position power: Leaders will have more power and influence if their position is vested with such prerogatives as being able to hire and fire, being able to discipline, to reprimand, and so on.

[63] Burns (1990) maintained that transactional leadership is built on reciprocity, the idea that the relationship between leader and their followers develops from the exchange of some reward, such as performance ratings, pay, recognition, and praise. It involves leaders clarifying goals and objectives, communicating to organize tasks and activities with the co-operation of their employees to ensure that wider organizational goals are met. Such a relationship depends on hierarchy and the ability to work through this mode of exchange. It requires leadership skills such as the ability to obtain results, to control through structures and processes, to solve problems, to plan and organize, and work within the structures and boundaries of the organization.

Transformational leadership, on the other hand, is concerned with engaging the hearts and minds of others. It works to help all parties achieve greater motivation, satisfaction and a greater sense of achievement. It requires trust, concern and facilitation rather than direct control. The skills required are concerned with establishing a long-term vision, empowering people to control themselves, coaching, and developing others and challenging the culture to change. In transformational leadership,

the power of the leader comes from creating understanding and trust. In contrast, in transactional leadership power is based much more on the notion of hierarchy and position.

I will claim that these concepts are ambiguous and ill constructed. If we resume the weberian distinction between descriptive theories (sociological theories) and normative theories (ethical-philosophical), it will be clear that, in a sense, "transformational leadership" is a notion that need to be understood at the normative level (how leadership ought to be) while "transactional leadership" becomes clearer at a descriptive level (how leadership do is).

Bass' Transformational Leadership Theory (1985), assumptions: Awareness of task importance motivates people. A focus on the team or organization produces better work.

Description: Bass defined transformational leadership in terms of how the leader affects followers, who are intended to trust, admire and respect the transformational leader. He identified three ways in which leaders transform followers:

- Increasing their awareness of task importance and value.
- Getting them to focus first on team or organizational goals, rather than their own interests.
- Activating their higher-order needs.

Charisma is seen as necessary, but not sufficient, for example in the way that charismatic movie stars may not make good leaders. Two key charismatic effects that transformational leaders achieve is to evoke strong emotions and to cause identification of the followers with the leader. This may be through stirring appeals. It may also may occur through quieter methods such as coaching and mentoring. Bass further noted (1990) that authentic transformational leadership is grounded in moral foundations that are based on four components:

- Idealized influence
- Inspirational motivation
- Intellectual stimulation
- Individualized consideration

...and three moral aspects:

- The moral character of the leader.
- The ethical values embedded in the leader's vision, articulation, and program (which followers either embrace or reject).

- The morality of the processes of social ethical choice and action that leaders and followers engage in and collectively pursue.

This is in contrast with pseudo-transformational leadership, where, for example, in-group/out-group 'us and them' games are used to bond followers to the leader. In contrast to Burns, who sees transformational leadership as being inextricably linked with higher order values, Bass sees it as amoral, and attributed transformational skills to people such as Adolf Hitler and Jim Jones.

[64] Understanding and Identifying Auditory, Visual and Kinaesthetic Learning Styles

Auditory	**Visual**	**Kinaesthetic**
Identify sounds related to an experience	Have a sharp, clear picture of an experience	Develop a strong feeling towards an experience
I **hear** you clearly, I want you to **listen** . . . This **sounds** good	Do you **make pictures** in your head Do you have **visual images** in your head as you are talking and listening to me? Can you **see** what I am saying?	Do you **feel** what you are saying? Are you in **touch** with what I am saying?
How do you **hear** this situation going? What do you **hear** that is stopping you? **Sounds** heavy.	How do you **see** the situation? What do you **see** stopping you? This **looks** good. Do you **see** what I am **showing** you?	How do you **feel** about this situation? I'm **getting a handle** on this material. Let's **move** together. Does what I am putting you in **touch** with **feel** right? Sounds **heavy**.
Word Selections	**Word Selections**	**Word Selections**

tinkling silent squeal blast screaming choking	colour clear spiral showed vivid notice	felt body sensations feel pain touch
Lecture Do you love me? Auditories complain: Kinaesthetic don't listen.	Fantasies Visuals complain: Auditories don't pay attention to them because they don't make eye contact.	Kinaesthetic complain: "Auditory and visual people are insensitive."

[65] The Government Protective Marking System

The Protective Marking System comprises five markings. In descending order of sensitivity they are:

- **TOP SECRET**
- **SECRET**
- **CONFIDENTIAL**
- **RESTRICTED**
- **PROTECT**

Unmarked material is considered 'unclassified'. The term 'UNCLASSIFIED' or 'NON' or 'NOT PROTECTIVELY

MARKED' may be used to indicate positively that a protective marking is not needed. These markings can be applied to any government assets, although they are most commonly applied to information held electronically or in paper documents. The methodology used to assess these principles within information systems is expressed in Business Impact levels – please see Security Policy No.4: Information Security and Assurance for details.

Universal controls

There are a number of specified technical controls for each level of protective marking. The controls below apply to all protectively marked information.

MANDATORY REQUIREMENT 19

Departments and Agencies must apply the following baseline controls to all protectively marked material:

a. Access is granted on a genuine 'need to know' basis.

b. Assets must be clearly and conspicuously marked. Where this is not practical (for example the asset is a building, computer etc) staff must still have the appropriate personnel security control and be made aware of the protection and controls required.

c. Only the originator or designated owner can protectively mark an asset. Any change to the protective marking requires the originator or designated owner's permission. If they cannot be traced, a marking may be changed, but only by consensus with other key recipients.

d. Assets sent overseas (including to UK posts) must be protected as indicated by the originator's marking and in accordance with any international agreement. Particular care must be taken to protect assets from foreign Freedom of Information legislation by use of national prefixes and caveats or special handling instructions.

e. No official record, held on any media, can be destroyed unless it has been formally reviewed for historical interest under the provisions of the Public Records Act.

f. A file, or group of protectively marked documents or assets, must carry the protective marking of the highest marked document or asset contained within it (eg. a file containing CONFIDENTIAL and RESTRICTED material must be marked CONFIDENTIAL).

Applying the correct protective marking

The originator or nominated owner of information, or an asset, is responsible for applying the correct protective marking. When protectively marking a document, it is recommended that a damage or 'harm test' is conducted to consider the likely impact if the asset were to be compromised and to help determine the correct level of marking required. The 'harm test' should be done by assessing the asset against the criteria for each protective marking.

If applied correctly, the Protective Marking System will ensure that only genuinely sensitive material is safeguarded. The following points should be considered when applying a protective marking:

Applying too high a protective marking can inhibit access, lead to unnecessary and expensive protective controls, and impair the efficiency of an organisation's business. Applying too low a protective marking may lead to damaging consequences and compromise of the asset.

The compromise of aggregated or accumulated information of the same protective marking, is likely to have a higher impact (particularly in relation to personal data). Generally this will not result in a higher protective marking but may require additional handling arrangements. However, if the accumulation of that data results in a more sensitive asset being created, then a higher protective marking should be considered.

The sensitivity of an asset may change over time and it may be necessary to reclassify assets. If a document is being de-classified or the marking changed, the file should also be changed to reflect the highest marking within its contents. The criteria below provide a broad indication of the type of material at each level of protective marking.

Detailed requirements, including specific details on definitions, protection, handling and disclosure instructions are contained in supplementary material within the framework.

Criteria for assessing **TOP SECRET** assets:

- threaten directly the internal stability of the United Kingdom or friendly countries;
- lead directly to widespread loss of life;
- cause exceptionally grave damage to the effectiveness or security of United Kingdom or allied forces or
- to the continuing effectiveness of extremely valuable security or intelligence operations;
- cause exceptionally grave damage to relations with friendly governments;
- cause severe long-term damage to the United Kingdom economy.

Criteria for assessing **SECRET** assets:

- raise international tension;
- to damage seriously relations with friendly governments;
- threaten life directly, or seriously prejudice public order, or individual security or liberty;
- cause serious damage to the operational effectiveness or security of United Kingdom or allied forces or
- the continuing effectiveness of highly valuable security or intelligence operations;

- cause substantial material damage to national finances or economic and commercial interests.

Criteria for assessing **CONFIDENTIAL** assets:

- materially damage diplomatic relations (i.e. cause formal protest or other sanction);
- prejudice individual security or liberty;
- cause damage to the operational effectiveness or security of United Kingdom or allied forces or the
- effectiveness of valuable security or intelligence operations;
- work substantially against national finances or economic and commercial interests;
- substantially to undermine the financial viability of major organisations;
- impede the investigation or facilitate the commission of serious crime;
- impede seriously the development or operation of major government policies;
- shut down or otherwise substantially disrupt significant national operations.

Criteria for assessing **RESTRICTED** assets:

- affect diplomatic relations adversely;
- cause substantial distress to individuals;
- make it more difficult to maintain the operational effectiveness or security of United Kingdom or allied
- forces;
- cause financial loss or loss of earning potential or to facilitate improper gain or advantage for
- individuals or companies;
- prejudice the investigation or facilitate the commission of crime;
- breach proper undertakings to maintain the confidence of information provided by third parties;
- impede the effective development or operation of government policies;

- to breach statutory restrictions on disclosure of information;
- disadvantage government in commercial or policy negotiations with others
- undermine the proper management of the public sector and its operations.

Criteria for assessing **PROTECT** (Sub-national security marking) assets:

- cause distress to individuals;
- breach proper undertakings to maintain the confidence of information provided by third parties;
- breach statutory restrictions on the disclosure of information
- cause financial loss or loss of earning potential, or to facilitate improper gain;
- unfair advantage for individuals or companies;
- prejudice the investigation or facilitate the commission of crime;
- disadvantage government in commercial or policy negotiations with others.

Special handling

Supplementary markings may be applied to protectively marked material to indicate additional information about its contents, sensitivity and handling requirements. These markings can include national caveats (e.g. UK EYES ONLY), descriptors, code words or compartmented handling regimes. In most cases, special handling requirements are only applied to highly sensitive material (e.g. intelligence material or material marked CONFIDENTIAL and above) and or criminal proceedings.

[66] The Good Friday Agreement or Belfast Agreement, sometimes referred to as the Stormont Agreement, was a major political development in the Northern Ireland peace process. The Agreement was made up of two inter-related documents, both signed in Belfast on 10th April 1998 (Good Friday): The Agreement was a multi-party agreement by most of Northern Ireland's political parties, and an international agreement between the British and Irish governments. The Democratic Unionist Party (DUP) were the only major political group to oppose the Agreement. *www.nio.gov.uk/agreement.pdf.* [Accessed on23rd November 2011].

[67] *Cm 3420 paragraphs 5.6-5.9 Research* Paper - The Terrorism Bill 99/101.

[68] ibid. paragraphs 5.10-5.15 Research Paper – The Terrorism Bill 99/101.

[69] Speech by Jack Straw recorded in HC Debs, Vol. 327, col. 999 (16 March1999), http://hansard.millbanksystem.com/commons/1999/mar/16/prevention-ofterrorism# S6CV0327P0_19990316_HOC_500. [Accessed 29th January 2011].

[70] Emergency Provisions (Northern Ireland) Act 1973 (c. 53), http://www.legislation.gov.uk/ukpga/1973/53. [Accessed 29th January 2011].

[71] Terrorism Act 2000 (c. 11), http://www.legislation.gov.uk/ukpga/2000/11. [Accessed 29th January 2011].

[72] Conor Gearty and John Kimbell. (8th March 1995) *'PTA renewal repeats one of the biggest mistakes, The British government asks parliament to renew the Prevention of Terrorism Act today. It is a 'pernicious'* law, argue Conor Gearty and John Kimbell,' *The Irish Times*, City Edition, accessed via www.lexisnexis.com.

[73] HC Library Research Paper 98/65 (15th June 1998). Northern Ireland: The Release of Prisoners, under *Northern Ireland (Sentences) Bill.*

[74] CAB/129/180/14 C (74) 139 no 80 (24th November 1974) "I.R.A. Terrorism in Great Britain", Memorandum by the Secretary of State, available via website: http://www.nationalarchives.gov.uk/documentsonline/. [Accessed 29th January 2011].

[75] Section 1.3, Colville Report: Review of the Northern Ireland (Emergency Provisions) Acts 1978 and 1987.

[76] "anti-terrorism laws have led to some of the worst human rights abuses in this country over the past 25 years, contributed to miscarriages of justice and have led to the unnecessary detention of thousands of innocent people, most of them Irish" (Wadham, John. Reply to Straw. 14th December 1999) 'No, you're turning us all into criminals,' The Guardian page 15.

[77] Noraid - the Irish Northern Aid Committee is an Irish American fund raising organisation founded after the start of the Troubles in Northern Ireland in 1969 and its aims are to provide funds to the IRA to continue the fight against the UK. *www.**noraid**.com/* [Accessed 2nd February 2012].

[78] The *Terrorism Bill,* Bill 10 of 1999-2000, RESEARCH PAPER 99/101- 13 DECEMBER 1999 (page 15). www.parliament.uk/briefing-papers/RP99-101.pdf. [Accessed 10th March 2012].

[79] CAB/129/207/4 C(79) copy no 81 (30th August 1979) Northern Ireland: Security, Memorandum by the Secretary of State for Northern Ireland and the Secretary of State for Defence (Humphrey Atkins), available via http://www.nationalarchives.gov.uk/documentsonline/. [Accessed 4th February 2012].

[80] In England and Wales, *'Sus law'* was the informal name for a the suspected person stop and search law that permitted a police officer to stop, search and potentially arrest people on suspicion of them being in breach of section 4 of the Vagrancy Act 1824.

[81] http://hansard.millbanksystems.com/commons/1998/sep/02/criminal-justice-terrorismand# - Speech to Parliament by Jack Straw on 2nd September - 1998S6CV0317P0_19980902_HOC_225. [Accessed 14th February 2012].

[82] The *Terrorism Bill,* Bill 10 of 1999-2000, RESEARCH PAPER 99/101, 13 DECEMBER 1999 page 70

[83] The Liberty 'Guide' can be located on their website under - http://www.liberty-human-rights.org.uk/issues/6-free-speech/s44-terrorism-act/index.shtml. [Accessed 4th February 2012].

[84] *www.npia.police.uk. [Accessed on 30th November 2011].*

[85] Practice Advice on Stop and Search in Relation to Terrorism 2008 (Page 3).

[86] A casual observer is a member of the public who expresses an interest or a concern when they witness a police operation in action, and is offered the opportunity to stay and watch by the police. Casual observers may or may not be people who have been searched themselves.

[87] **Checklist 1.[87] Considerations when conducting Section 44 Searches under the Terrorism Act 2000.** Officers should be reminded in briefings to consider the following points when using their powers:

- **Authorisation** – is an authorisation under Section 44 in place, and what are it geographical limits?
- **Person** – does the person they propose to stop and search fit any description provided by information or intelligence?
- **Location** – is the place where they propose to use the power, as specified in the authorisation, 'attractive' to terrorists in accordance with the briefings they have received, eg critical transport routes?
- **Time** – is it a significant period of the day, for example, is the location particularly crowded?
- **Behaviour** – is the person acting in a manner that gives cause for concern?
- **Clothing** – could the clothing conceal an article of a kind that could be used in connection with terrorism?
- **Carried Items** – could an item being carried conceal an article that could be used in connection with terrorism?
- **Explanation** – officers should be reminded of the need to explain to people being searched why they were selected and that they are not suspected of terrorism. If officers are inexperienced in the use of these powers, supervisors might wish to provide them with a suggested form of words to use.

[88] NCTT@acpo.pnn.police.uk

[89] An ACPO Advisory Message is a message informing Forces of national information that relates to a terrorist incident or intelligence

[90] Intelligence and Security Committee (2006), p.21.

[91] The 7th July 2005 London bombings (often referred to as 7/7) were a series of co-ordinated suicide attacks in London, which targeted civilians using the public transport system during the morning rush hour.

[92] the www.homeoffice.gov.uk/publications/.../inquest-**7-7**-progress-**report.**

[93] http://www.rusi.org/downloads/assets/anatomyofterror.pdf

[94] Used as part of the wider CONTEST Strategy and as part of the 'Rainbow' counter terrorism patrolling tactics. Rainbow is the operational name for a series of tactics that can be deployed across a force area.

[95] Lord Carlile, *Terrorism: Pragmatism, Populism, and Libertarianism* – The Inaugural John Creaney Memorial Lecture', March 3, 2010. http://www.policyexchange.org.uk/assets/Carlile_Transcript.pdf. [Accessed 6th February 2011].

[96] EXTRACT FROM THE METROPOLITAN POLICE AUTHORITY REPORT NO 5, DATED 30TH APRIL 2009 REGARDING THE USE OF SECTION 58A TACT 2008. 31. THERE WERE PUBLIC CONCERNS IN FEBRUARY AND MARCH THAT PHOTOGRAPHERS COULD BE STOPPED FROM TAKING PHOTOGRAPHS OF OFFICERS CARRYING OUT NORMAL DUTIES. THIS AROSE FROM REVISION OF SECTION 58A TACT AS PART OF THE TERRORISM ACT 2008. SECTION 58 MAKES IT AN OFFENCE TO "ELICIT, PUBLISH OR COMMUNICATE INFORMATION ABOUT MEMBERS OF THE ARMED FORCES, INTELLIGENCE SERVICES OR POLICE WHICH COULD BE USEFUL TO A PERSON COMMITTING OR PREPARING AN ACT OF TERRORISM". AFTER CONSULTATION WITH THE DEPARTMENT OF LEGAL SERVICES, OPERATING GUIDELINES WERE PUBLISHED GIVING GUIDANCE TO OFFICERS ON THE NEW OFFENCE. IN SUMMARY, THESE DIRECT THAT TAKING PHOTOGRAPHS OF OFFICERS IN THE COURSE OF NORMAL POLICING ACTIVITIES WOULD NOT, IN THE ABSENCE OF A LINK TO TERRORISM, BE CONSIDERED FOR THE NEW OFFENCE, AND THAT IN ORDER TO MAINTAIN THE INTEGRITY OF OTHER OPERATIONS, OFFICERS CONSIDERING THE OFFENCE MUST OBTAIN GUIDANCE FROM THE COUNTER TERRORISM COMMAND.

[97] Smith was appointed Home Secretary in Gordon Brown's first Cabinet reshuffle of 28th June 2007. Just one day into her new job bombs were found in London and a terrorist attack took place in Glasgow the following day. On 2nd June 2009, Smith confirmed that she would leave the Cabinet in the next reshuffle, expected after the local and European elections. She left office on 5th June 2009 and returned to the back benches. She was replaced by Alan Johnson MP.

[98] Senior National User – person responsible for the progress and sign-off of the National Police Improvement Agency (NPIA) writing group and adviser to both the National ACPO Lead Deputy

Commissioner Craig MacKey and the Assistant Commissioner for Specialist Operations (SO) Cressida Dick.

[99] Robert Quick joined the Police Service in 1978, serving in the Borough of Lambeth, London. In December 2002, he took charge of a police operation in east London to deal with a gunman who had taken a hostage at a flat in Hackney. For this operation he was widely praised for the restraint shown, in what was London's longest armed siege to date. He later became Chief Constable of Surrey. In 2008 he returned to London to become an assistant commissioner within Specialist Operations.

On 8 April 2009, when Quick arrived at a briefing at 10 Downing Street he inadvertently exposed a document marked *Secret d*ealing with "Operation Pathway" to photographers which compromised the counter-terrorist operation which the document concerned, forcing police in the North West of England to strike sooner than planned, making twelve arrests within hours. He resigned from his post the next day and was replaced by John Yates QPM.

[100] A '*Blanket Authority*' refers to a force-wide authority which covered the entire MPS force area.

[101] Extract detailing Lord Carlile's concerns regarding increasing numbers of stop and searches being conducted by police forces throughout the UK. Report on the operation in 2009 of the terrorism act 2000 and of part 1 of the terrorism act 2006 by Lord Carlile of Berriew Q.C.

174. I turn next to deal specifically with *sections 43-45. Section 43* provides stop and search powers connected with *sections 41* and *42. Sections 44-45* provide stop and search powers in relation to persons and vehicles within specified geographical areas, for the purpose of seizing and detaining articles of a kind that could be used in connection with terrorism. It is an offence not to comply. Such stops and searches can occur only within an area authorised by a police officer of at least the rank of or equivalent to assistant chief constable.

175. Every year since I became independent reviewer there have been severe criticisms of the provisions of *sections 44 and 45*, and of their operation. 2009 has highlighted these concerns, especially in the light of the case of *Gillan* referred to above.

176. I repeat my mantra that *terrorism related powers should be used only for terrorism-related purposes*; otherwise their credibility is severely damaged. The damage to community relations if they are used incorrectly can be considerable. The use of *section 44* has attracted particular criticism as having a negative effect on good community relations. Its purpose and deployment are poorly understood.

177. Examples of poor or unnecessary use of *section 44* abound. I have evidence of cases where the person stopped is so obviously far from any known terrorism profile that, realistically, there is not the slightest possibility of him/her being a terrorist, and no other feature to justify the stop. *Section 44* stops and searches in the past year have included a senior retired Cabinet Minister and a 64 year old Q.C., both so obviously not possible terrorists as to make the procedure laughable, were it not for the intrusion into their civil liberties. In another case the subject was a lawyer of whom the only possible factor giving rise to the stop is that he is British Asian: in no way other than on a crude racial basis could an intelligent decision have been made to stop him. Chief Officers must bear in mind that a *section 44* stop, without suspicion, is an invasion of the stopped person's freedom of movement. I believe that it is totally wrong for any person to be stopped in order to produce a racial balance in the *section 44* statistics. There is still anecdotal evidence that this is happening. I can well understand the concerns of the police that they should be free from allegations of prejudice; but it is not a good use of precious resources if they waste them on self-evidently unmerited searches. It is also an invasion of the civil liberties of the person who has been stopped, simply to 'balance' the statistics. So long as they continue, the criteria for *section 44* stops should be objectively based, irrespective of racial considerations: if an objective basis happens to produce an ethnic imbalance that may have to be regarded as a proportional consequence of operational policing.

[102] There were **269,244** stops in the year ending April 2009: Human Rights Watch, *Without Suspicion.* http://www.hrw.org/en/node/91417/section/2. [Accessed 6th February 2011].

[103] Extract taken from the MPS website *www.met.police.uk:* The Metropolitan Police Service is famed around the world and has a unique place in the history of policing. It is by far the largest of the police services that operate in greater London (the others include the City of London Police and the British Transport Police). The Royal Parks Constabulary have now become part of the Metropolitan Police Service. Founded by Sir Robert Peel in 1829, the original establishment of 1,000 officers policed a seven-mile radius from Charing Cross and a population of less than 2 million.

Today, the Metropolitan Police Service employs more than 32,500 officers together with about 14,200 police staff, 230 traffic wardens and 4,300 Police Community Support Officers (PCSOs). The MPS is also being supported by more than 3,600 volunteer police officers in the Metropolitan Special Constabulary (MSC) and its Employer Supported Policing (ESP) programme. The Metropolitan Police Services covers an area of 620 square miles and a population of 7.2 million.

Territorial Policing: is London's local police. Following a recent restructuring in 2007 most of the day-to-day policing of London is the responsibility of 33 borough operational command units (BOCUs). Reviewed on 20th June 2011.

[104] The Great Man Theory was a popular 19th century idea according to which history can be largely explained by the impact of "great men", or heroes: highly influential individuals who, due to their personal charisma, intelligence, wisdom, or Machiavellianism utilised their power in a way that had a decisive historical impact.

The theory was popularised in the 1840s by Scottish writer Thomas Carlyle, and in 1860 Herbert Spencer formulated a decisive counter-argument that remained influential throughout the 20th century; Spencer said that such great men are the products of their societies, and that their actions would be impossible without the social conditions built before their lifetime.

[105] The trait model of leadership is based on the characteristics of many leaders - both successful and unsuccessful and is used to predict leadership effectiveness. The resulting lists of traits are then compared to those of potential leaders to assess their likelihood of success or failure. Scholars taking the trait approach attempted to identify physiological (appearance, height, and weight), demographic (age, education and socioeconomic background), personality, self-confidence, and aggressiveness), intellective (intelligence, decisiveness, judgment, and knowledge), task-related (achievement drive, initiative, and persistence), and social characteristics (sociability and cooperativeness) with leader emergence and leader effectiveness.

Successful leaders definitely have interests, abilities, and personality traits that are different from those of the less effective leaders. Through many researchers conducted in the last three decades of the 20th century, a set of core traits of successful leaders have been identified. These traits are not responsible solely to identify whether a person will be a successful leader or not, but they are essentially seen as preconditions that endow people with leadership potential.

Among the core traits identified are:

- *Achievement drive:* High level of effort, high levels of ambition, energy and initiative
- *Leadership motivation:* an intense desire to lead others to reach shared goals
- *Honesty and integrity:* trustworthy, reliable, and open
- *Self-confidence:* Belief in one's self, ideas, and ability
- *Cognitive ability:* Capable of exercising good judgment, strong analytical abilities, and conceptually skilled
- *Knowledge of business:* Knowledge of industry and other technical matters

- *Emotional Maturity:* well adjusted, does not suffer from severe psychological disorders.
- *Others:* charisma, creativity and flexibility

STRENGTHS/ADVANTAGES OF TRAIT THEORY

- It is naturally pleasing theory.
- It is valid as lot of research has validated the foundation and basis of the theory.
- It serves as a yardstick against which the leadership traits of an individual can be assessed.
- It gives a detailed knowledge and understanding of the leader element in the leadership process.

LIMITATIONS OF THE TRAIT THEORY

- There is bound to be some subjective judgment in determining who is regarded as a 'good' or 'successful' leader
- The list of possible traits tends to be very long. More than 100 different traits of successful leaders in various leadership positions have been identified. These descriptions are simply generalities.
- There is also a disagreement over which traits are the most important for an effective leader
- The model attempts to relate physical traits such as, height and weight, to effective leadership. Most of these factors relate to situational factors. For example, a minimum weight and height might be necessary to perform the tasks efficiently in a military leadership position. In business organizations, these are not the requirements to be an effective leader.
- The theory is very complex

IMPLICATIONS OF TRAIT THEORY

The trait theory gives constructive information about leadership. It can be applied by people at all levels in all types of organizations. Managers can utilize the information from the theory to evaluate their position in the organization and to assess how their position can be made stronger in the organisation. They can get an in-depth understanding of their identity and the way they will affect others in the organization. This theory makes the manager aware of their strengths and weaknesses and thus they get an understanding of how they can develop their leadership qualities.

The traits approach gives rise to questions: whether leaders are born or made; and whether leadership is an art or science. However, these are not mutually exclusive alternatives. Leadership may be something of an art; it still requires the application of special skills and techniques. Even if there are certain inborn qualities that make one a good leader, these natural talents need encouragement and development. A person is not born with self-confidence. Self-confidence is developed, honesty and integrity are a matter of personal choice, motivation to lead comes from within the individual, and the knowledge of business can be acquired. While cognitive ability has its origin partly in genes, it still needs to be developed. None of these ingredients are acquired overnight.

[106] *Assumptions; Leaders can be made, rather than are born. Successful leadership is based in definable, learnable behaviour.*

Description: Behavioural theories of leadership do not seek inborn traits or capabilities. Rather, they look at what leaders actually do. If success can be defined in terms of describable actions, then it should be relatively easy for other people to act in the same way. This is easier to teach and learn then to adopt the more ephemeral 'traits' or 'capabilities'.

Discussion: Behavioural is a big leap from Trait Theory, in that it assumes that leadership capability can be learned, rather than being inherent. This opens the floodgates to leadership development, as opposed to simple psychometric assessment that sorts those with leadership potential from those who will never have the chance.

A behavioural theory is relatively easy to develop, as you simply assess both leadership success and the actions of leaders. With a large enough study, you can then correlate statistically significant behaviours with success. You can also identify behaviours which contribute to failure, thus adding a second layer of understanding.

[107] Dr Bruce Tuckman published his 'Forming Storming Norming Performing' model in 1965. He added a fifth stage, Adjourning, in the 1970s. The Forming Storming Norming Performing theory is an elegant and helpful explanation of team development, dynamics and behaviour. Similarities can be seen with other models, such as Tannenbaum and Schmidt Continuum and especially with Hersey and Blanchard's Situational Leadership model.

[108] Fiedler. F. , (1964) classified leadership situations on the basis of three major dimensions:

1. Leader-member relations: Leaders presumable have more power and influence if they have a good relationship with their members than if they have a poor relationship with them, if they re liked, respected, trusted, than if they are not.

2. Task structure: Tasks or assignments that are highly structured, spell out, or programmed give the leader more influence than tasks that are vague, nebulous and unstructured.

3. Position power: Leaders will have more power and influence if their position is vested with such prerogatives as being able to hire and fire, being able to discipline, to reprimand, and so on.

[109] James McGregor Burns (1978) in his book 'Leadership' introduces the notion of transactional and transformational leadership, which has remained one of the most popular leadership models. See endnotes for further information on Burns and Bass.

[110] Burns (1990) maintained that transactional leadership is built on reciprocity, the idea that the relationship between leader and their followers develops from the exchange of some reward, such as performance ratings, pay, recognition, and praise. It involves leaders clarifying goals and objectives, communicating to organize tasks and activities with the co-operation of their employees to ensure that wider organizational goals are met. Such a relationship depends on hierarchy and the ability to work through this mode of exchange. It requires leadership skills such as the ability to obtain results, to control through structures and processes, to solve problems, to plan and organize, and work within the structures and boundaries of the organization.

Transformational leadership, on the other hand, is concerned with engaging the hearts and minds of others. It works to help all parties achieve greater motivation, satisfaction and a greater sense of achievement. It requires trust, concern and facilitation rather than direct control. The skills required are concerned with establishing a long-term vision, empowering people to control themselves, coaching, and developing others and challenging the culture to change. In transformational leadership, the power of the leader comes from creating understanding and trust. In contrast, in transactional leadership power is based much more on the notion of hierarchy and position.

I will claim that these concepts are ambiguous and ill constructed. If we resume the weberian distinction between descriptive theories (sociological theories) and normative theories (ethical-philosophical), it will be clear that, in a sense, "transformational leadership" is a notion that need to be understood at the normative level (how leadership ought to be) while "transactional leadership" becomes clearer at a descriptive level (how leadership do is).

Bass' Transformational Leadership Theory (1985), assumptions: Awareness of task importance motivates people. A focus on the team or organization produces better work.

Description: Bass defined transformational leadership in terms of how the leader affects followers, who are intended to trust, admire and respect the transformational leader. He identified three ways in which leaders transform followers:

- Increasing their awareness of task importance and value.
- Getting them to focus first on team or organizational goals, rather than their own interests.
- Activating their higher-order needs.

Charisma is seen as necessary, but not sufficient, for example in the way that charismatic movie stars may not make good leaders. Two key charismatic effects that transformational leaders achieve are to evoke strong emotions and to cause identification of the followers with the leader. This may be through stirring appeals. It may also occur through quieter methods such as coaching and mentoring. Bass further noted (1990) that authentic transformational leadership is grounded in moral foundations that are based on four components:

- Idealised influence
- Inspirational motivation
- Intellectual stimulation
- Individualised consideration

...and three moral aspects:

- The moral character of the leader.
- The ethical values embedded in the leader's vision, articulation, and program (which followers either embrace or reject).
- The morality of the processes of social ethical choice and action that leaders and followers engage in and collectively pursue.

This is in contrast with pseudo-transformational leadership, where, for example, in-group/out-group 'us and them' games are used to bond followers to the leader. In contrast to Burns, who sees transformational leadership as being inextricably linked with higher order values, Bass sees it as amoral, and attributed transformational skills to people such as Adolf Hitler and Jim Jones.

[112] Dan Remenyi PhD (2011), *'Field Methods for Academic Research – Interviews, Focus Groups and Questionnaires'. http//www.acedemic-bookshop.com. (pages 12-25).*

[113] Sedevic, Mark T., *"An Evaluation of the Chicago Police Department's Recruit Curriculum in Emergency Response Week Relating to Terrorism Awareness and Response to Terrorism Incidents"* (2011). *Ed.D. Dissertations.* Paper 33. http://digitalcommons.olivet.edu/edd_diss/33, (Pages 23 – 28)

[114] *www.levesoninquiry.org.uk/hearings*

[115] *www.cisl.ucar.edu/nets/intro/staff/jcustard/jc.../powell-leadership.pdf*

[116] The Work Foundation – *'Exceeding Expectation: the principles of outstanding leadership' (January 2010),* www.theworkfoundation.com. (page 3).

[117] The Work Foundation – *'Exceeding Expectation: the principles of outstanding leadership' (January 2010),* www.theworkfoundation.com (page 3).

[118] **Establishing the five Ps** (taken from the Metropolitan Police Service website www.mpa.gov.uk)

1. The five Ps succinctly capture the behaviours we expect all our officers and staff to exhibit to achieve our priorities of increasing safety, improving confidence and delivering continuous improvement.

2. Activity to exemplify the Commissioner's five Ps and enable this cultural way of working is taking place across the organisation; of course, much is building on existing activity but some are newly identified initiatives that capture the spirit of the Commissioner's approach. This activity is overseen by the 5Ps Oversight Board, which has been established and is chaired by the Deputy Commissioner. The board is attended by MPS Management Board members, along with representation from MPA officers.

3. Internal communication on this approach began shortly after the Commissioner took up his post. It was launched by the Commissioner at an event for more than 2000 members of staff in February. The Communications Plan aims to ensure staff are aware of their own role in helping the MPS to deliver on these promises. Internal communication has, therefore, focused on both explaining and supporting the delivery of the key activities. In November, the Service Conference, attended by MPS senior management and MPA members, will mark progress to date.

What are the five Ps delivering?

PRESENCE

4. Presence has two elements, physically being seen to be there and through our bearing, authority and style the impact we have in the lives of Londoners, who call for our services, who see us in their daily lives or who experience us as we enforce the laws. This is at the heart of how we provide safety and

confidence to London. To deliver this the Presence strand has focused on operational changes to how we work to increase the numbers of officers seen and to improve how we are experienced - working on the long term changes that will embed and underpin this emphasis.

5. In delivery terms this has meant a focus on Town Centres, Single Patrol, Delivery of the Pledge and Intrusive Supervision. The Town Centre work has identified 32 Town Centres which have been negotiated with local partners as the primary focus of our early work. We now monitor activity, crime and disorder at those locations and are developing a menu of the most effective interventions. So far these have delivered an additional 184,000 hours patrol and 2,149 arrests. It is too early to pull out general success but in the locations where we have effectively engaged and delivered we have seen reductions in violence and disorder and very positive feedback. We are now working on greater consistency and shared learning.

6. In order to underpin the work, the Commissioner held a briefing on the 18 June 2009 for all members of the TP and CO OCU SMTs and representatives of SMTs from all other business groups. Since then we have held workshops for front line leaders (Sergeants, Inspectors and Band D police staff) to work with them on how they are going to deliver the work locally with a focus on Single Patrol, Intrusive Supervision and Pledge delivery. Of the 6,500 staff due to attend, we have so far engaged nearly 4,000 and are on track to have delivered the workshop to all relevant staff before mid October. At these workshops staff are asked to provide details of barriers to doing their job well and to commit to actions back in the workplace to bring about change. We are now running a series of workshops with TP OCUs to provide them this feedback and the list of actions and to work with this together with data from the staff survey and local confidence/satisfaction measures to develop bespoke action plans to embed change.

7. The feedback from the workshops by operational staff has been very positive with over 80% levels of satisfaction with the day, high 70% assessments that it will help them do their job better and very positive engagement by staff. A full evaluation is being carried out by the Strategic Research & Analysis Unit (SRAU) and will be submitted to the 5Ps Oversight Board in November.

8. The increased focus on the Pledge has resulted in the introduction of a pilot on 3 BOCUs (Harrow, Brent and Barnet) to explore improvements in responses to I and S calls and developing an appointment system. Emerging practice has shown us delivering a significant improvement in I and S call performance (7% and 25% respectfully) and of the 288 appointments we made in the first 2 weeks we attended exactly on time for 177 and within 15 minutes to almost all of the rest. These early results are being analysed to identify what good practice we can spread quickly across the MPS and to

see the feedback from the cards we are now regularly leaving with people who call us about the quality of our response.

9. Part of the long term plan to embed the Town Centre work is to significantly increase the number of MSC officers. We plan to achieve this by stepping up the pace of recruiting and retaining the people we attract. Learning from pilot work in Camden and exit interviews of staff shows many leave due to the lack of regular support and that recruitment processes do not support the ethos of volunteering. There are considerable opportunities to increase the productivity of staff by better equipping, tasking and briefing. To support this each Borough has introduced extra sergeants allocated to drive local recruitment, properly supervise and brief staff and ensure they are properly equipped.

PERFORMANCE

10. The MPS has consistently reduced crime over the last decade. To build on this we will manage performance by concentrating on three key areas: 1) Safety; 2) Confidence; 3) Continuous Improvement.

11. Over the years the emphasis quite rightly has been on reducing crime and disorder, and catching offenders - this performance culture is now well embedded. Under this strand we are developing our confidence, public and victim satisfaction measures together with our pledge performance to enrich our performance framework. The third element of continuous improvement is to undertake work to develop monitoring regimes to ensure we are improving our productivity in all areas of our business.

12. The Performance strand is about getting better at what we do and rigorously challenge those that do not perform, whilst rationalising the approach to performance management to enable more informed decision-making. This will help us understand and improve performance against our strategic outcomes of safety, confidence and improvement. We will create transparency on resource allocation and how it is driving performance. We will endeavour to specifically link resource allocation with outcomes and focus analysis and performance conversations on high-priority areas including productivity.

13. The Pledge is at the heart of our policing performance, promising service standards that are underpinned by local priorities for each neighbourhood. The Pledge features as a key element of the 2009/10 MPS Policing Plan and ten of the Pledge indicators are included in the MPS critical performance areas (CPAs). This ensures that performance against external promises is subject to regular Management Board level oversight.

PRODUCTIVITY

14. Whilst maintaining performance, the MPS has exceeded its Government efficiency targets for cashable and non-cashable savings. The drive to innovate and change is relentless and is part of the MPS's culture, whilst the need to find further cash savings through efficiencies is becoming ever more pressing. Productivity seeks to ensure we are more efficient by embedding value for money and improvement across the organisation.

15. The MPS continuously strives to identify further opportunities to achieve efficiency savings and has established a Service Improvement Plan (SIP), which acts as the formal process through which major improvement/efficiency activity is identified and implemented. The Service has also conducted an analysis of areas of high cost to help understand the drivers of those costs and identify opportunities to make savings in these areas. This committed approach to achieving savings in future years will be crucial to maintaining and enhancing service provision in a challenging economic climate.

16. During August, as part of the 2010-2013 budget and business planning process, we have reviewed and developed the improvement and efficiency activity within the SIP. This has increased clarity on the MPS position against the budget gap, progress and status of initiatives and identified cross-cutting organisational dependencies for Service Improvement Board to oversee going forward.

Professionalism

17. Professionalism reinforces that we must take personal responsibility for our actions and learn lessons in order to change when we need to change. We must challenge behaviour that does not live up to the highest standards through more intrusive supervision by managers and enforcing good governance. Professionalism activity is taking place across the organisation, aimed at both new and existing staff, to ensure the MPS can be a service people can trust in.

18. We are currently reviewing induction into the MPS for police officers and the extended police family to ensure the recruit experience is improved and probationary periods are managed effectively and formally recognised following completion. We are also assessing the value of pre-learning in the Initial Police Learning and Development Programme (IPLDP) process. This work supports the wider Transforming HR programme, which is scheduled to go live in December.

19. Equality and Diversity and Key Encounter principles are being integrated into key frontline training including Central Communication Command (CCC), IPLDP and PCSO as well as Leadership Academy products. This will develop awareness, skill and expertise of all employees engaged in public interactions including crime and ASB reporting, as well as stop and search. A programme has been established for developing the MPS response to the MPA Race and Faith Inquiry. Progress on this will be communicated separately to the Authority.

20. The MPS is committed to putting into place systems and processes which facilitate learning, prevent misconduct and discourage unprofessional behaviour. Since 2008, Directorate of Professional

Standards, have been delivering presentations to officers entitled 'Professional Behaviour', these presentations centre around complaints for incivility, particularly within the 'stop and search' arena and 'use of force'. Additionally the presentations provide advice along with tactical options aimed to reduce incidents of incivility to ultimately increase public confidence in the service we provide.

PRIDE

21. Pride underpins the rest of the Ps and focuses on the standards we set for dress, language and service. We are proud of delivering policing and we will strive to be the best and maintain that reputation. We value our successes by applauding our heroes and challenging those that talk us down. Every contact we have with a member of the public leaves a trace, we must think about every encounter and be proud to get it right the first time.

[119] *Reported in the Guardian Newspaper on 24th April 2009.* www.guardian.co.uk/uk. [Accessed 2nd February 2012].

[120] Part of Rt. Hon Geoff Hoon's speech at the opening ceremony at the DSEi Arms Fair on the 9th September 2003. Cited from www.guardian.co.uk/uk/2003/sep/09/military.armstrade. [*Accessed 18th April 2011].*

[121] 2007 data found in the National Office of Statistics (NOS) United Kingdom Balance of Payment (Pink Book) published in the 2008 and represents 2% of the UK Export market (this equates to everything that bring money into the UK). www.statistics.gov.uk/downloads/theme.../PinkBook_2007.pdf. *page 29.* [*Accessed 18th April 2011].*

[122] The Metropolitan Police Service at New Scotland Yard had deployed a £1m policing operation to ensure security at the Expo event. Gold for the operation was Deputy Assistant Commissioner Andy Trotter, now Chief Constable of the British Transport Police (BTP).

[123] Traditional stop and search methods would be utilised such as Section 1(2) of the Police And Criminal Evidence Act 1984, The main power, used on a daily basis by the police is contained in sec 1 of PACE. It allows police officers to stop and search a person or vehicle for stolen or prohibited articles. The power can only be exercised if the office has "reasonable grounds" for suspicion.

[124] David Blunkett. At the 1987 general election Blunkett was elected Member of Parliament (MP) for Sheffield Brightside with a large majority in a safe Labour seat. He became a party spokesman on local government, joined the shadow Cabinet in 1992 as Shadow Health Secretary and became Shadow Education Secretary in 1994. After Labour's landslide victory in the 1997 general election, he became Secretary of State for Education and Employment. At the start of the Labour government's second term in 2001, Blunkett was promoted to Home Secretary fulfilling an ambition of his. Observers saw him as a rival to Chancellor of the Exchequer Gordon Brown's hopes to succeed Blair as the next Labour Party leader and potential Prime Minister.

[125] Liberty was founded in 1934 and are also known as the National Council for Civil Liberties. Liberty is a cross party organisation at the heart of the movement for fundamental rights and freedoms in England and Wales. Liberty promote the values of individual human dignity, equal treatment and fairness as the foundations of a democratic society. Liberty campaigns to protect basic rights and freedoms through the courts, in Parliament and in the wider community. Their website states that they do this through a combination of public campaigning, test case litigation (as with the case of Gillan and Quinton), parliamentary lobbying, policy analysis and the provision of free advice and information.

[126] The Campaign Against Arms Trade (CAAT) in the UK works to end the international arms trade. Their statement: The arms business has a devastating impact on human rights and security, and damages economic development. Large scale military procurement and arms exports only reinforce a militaristic approach to international problems. In seeking to end the arms trade, CAAT's priorities are: to stop the procurement or export of arms where they might: exacerbate conflict, support aggression, or increase tension, support an oppressive regime or undermine democracy and threaten social welfare through the level of military spending. To end all government political and financial support for arms exports and to promote progressive demilitarisation within arms-producing countries. Taken directly from the CAAT website : www.**caat**.org.uk *on 12th April 2011.*

[127] Taken from an article cited from the Daily Mail. *http://www.dailymail.co.uk/news/article-1242603/Police-stop-search-powers-declared-illegal-court-blow-terror-fight.html#ixzz1Ktm9sKmm".*[Accessed 23rd May 2011].

[128] Quote from article in the Daily Mail (online) on 25th February 2010 - www.dailymail.co.uk. [Accessed 24th May 2011].

[129] In response to these three questions, Lord Justice Brooks on providing his judgement stated: *"That Parliament had envisaged that a section 44 authorisation might cover the whole of a police area as a response to a general threat of terrorist activity on a substantial scale and that the authorisation and the subsequent confirmation by the Secretary of State were not ultra vire's."The powers conferred on the police under section 44 are powers which most British people would have hoped were completely unnecessary in this country, particularly in time of peace. People have always been free to come and go in this country as they wish unless the police have reasonable cause to stop them. Parliament has, however, judged that the contemporary threats posed by international terrorism and dissident Irish terrorism are such that as a people we should be content that the police should be able to stop and search us at will for articles that might be connected with terrorism. It is elementary that if the police abuse these powers and target them disproportionately against those whom they perceive to be no particular friends of theirs the terrorists will have to that extent won. The*

right to demonstrate peacefully against an arms fair is just as important as the right to walk or cycle about the streets of London without being stopped by the police unless they have reasonable cause. If the police wish to use this extraordinary power to stop and search without cause they must exercise it in a way that does not give rise to legitimate complaints of arbitrary abuse of power. We are not, however, satisfied that the police's conduct on 9th September entitles either Mr Gillan or Ms Quinton to a public law remedy. There is just enough evidence available to persuade us that, in the absence of any evidence that these powers were being habitually used on occasions which might represent symbolic targets, the arms fair was an occasion which concerned the police sufficiently to persuade them that the use of section 44 powers was needed ..... But it was a fairly close call, and the Metropolitan Police would do well to review their training and briefing and the language of the standard forms they use for section 44 stop/searches if they wish to avoid a similar challenge in future. ..."

[130] *"My Lords, It is an old and cherished tradition of our country that everyone should be free to go about their business in the streets of the land, confident that they will not be stopped and searched by the police unless reasonably suspected of having committed a criminal offence. So jealously has this tradition been guarded that it has almost become a constitutional principle. But it is not an absolute rule. There are, and have for some years been, statutory exceptions to it. These appeals concern an exception now found in sections 44-47 of the Terrorism Act 2000 ("the 2000 Act"). The appellants challenge the use made of these sections and, in the last resort, the sections themselves. Since any departure from the ordinary rule calls for careful scrutiny, their challenge raises issues of general importance". Lord Bingham of Cornhill.*

[131] Reports submitted from the UK Independent Security Adviser, Lord Alex Carlile QC and a statement laid on behalf of the human rights group 'Liberty'.

[132] The National and MPS 'stop and search' database showed that in terms of the numbers of Black and Asian persons being stopped were 1to1 in the case of Black persons and or 1to 1.4 in the case of Asian persons. Figures available from the MPS Website - www.met.police.uk all stop and search data published monthly but three months in arrears in order to protect operational deployments of the tactic.

[133] *'Blanket Authority'* referred to by several media outlets and utilised in many subsequent articles.

[134] *'Patchwork Quilt'* termed coined by the author to describe the revised 'authority process developed by him and delivered to the MPS Lead for Section 44.

[135] Figure 5, taken from the Home Office Statistical Bulletin No; 04/11. Entitled 'Operation of police powers under the Terrorism Act 200 and subsequent legislation: Arrests, outcomes and stop and searches (Quarterly update to September 2010) ISSN 1759-7005 - Page 14.

[136] Isabella Sankey is the director of policy at Liberty (the National Council for Civil Liberties) which she joined in November 2007. Sankey leads Liberty's parliamentary lobbying and policy development, working in particular on the protection of human rights in the context of counter-terror policy.

[137] 12th May 2010, the Conservatives' and the Liberal Democrats' formed the UK's first coalition Government in 70 years.

[138] HM Government Review of Counter Terrorism and Security Powers – Review findings and Recommendations Cm 8004 published in January 2011 – ISBN: 9780101800426 also available on http://www.official-documents.gov.uk. [Accessed 25th May 2011].

[139] TACT, schedule 6B, [7(4)(b)].

[140] Home Office, 'Code of Practice (England, Wales and Scotland) for the authorisation and exercise of stop and search powers relating to section 47A of Schedule 6B to the Terrorism Act 2000' [3.6].

[141] TACT, Section 47A (4).

[142] Stone, V. & Pettigrew, N. 'The views of the public on stops and searches, Home Office, PRS (Paper 129) London 2000.

[143] Schedule 8, para. 33(3). Non-derogating control orders issued in pursuance to section 3(1)(a), Prevention of Terrorism Act 2005. See also: Brogan v United Kingdom (1988) 11 EHRR 117 (Application number 11209/84).

[144] Gillan v United Kingdom (2010) 50 EHRR 45 (app.no.4158/05) [57].

[145]

FAO: **Dr Hywel Francis MP (Chair) Joint Committee on Human ...**
www.parliament.uk/.../joint-committees/human-rights/Metropolitan_...
File Format: PDF/Adobe Acrobat May 13, 2011 – FAO: **Dr Hywel Francis MP (Chair) Joint Committee on Human Rights**. Dear **Dr** Frances,. Thank you for your letter dated the 6th April 2011.

[146] Procedural arrangements in respect of confidential submissions and protocols discussed with the Clerk of the Committee (Mr Mike Hennessy) by the author prior to documents being submitted.

[147] Report of the MPA Scrutiny on MPS Stop and Search practice

www.ligali.org/.../mpa_scrutiny_on_mps_stop_and_search_practice....

[148] Section 44 Terrorism Act 2000, Tactical Use Review. Report: 10, 7th May 2009. www.mpa.gov.uk/search/?qs=1&sc=2&qu=MPS+section+44+stop+and+search+report+2009&search

[149] Responses taken from AC Yates letter to the Joint Committee on Human Rights on 13th May 2011. Open letter posted on the Committee's web site.

[150] *www.guardian.co.uk › News › UK news. Article dated* 29 Jun 2007. [Accessed 18th July 2012].

[151] *news.bbc.co.uk/2/hi/6257194.stm, article dated* 30 Jun 2007. [Accessed 18th July 2012].

[152] Figures supplied by the MPS Performance and Information Bureau (PIB) Oct 2007- Sept 2008 provided from the MPS website.

[153] *https://tspace.library.utoronto.ca/bitstream/1807/.../1/MQ45865.pdf.*

[154] Operation Blunt 2 commenced on 19 May 2008 in response to public concern at the level of serious violence involving the use of knives. It represents a significant enhancement of existing delivery under Operation Blunt established in November 2004.