

# UK Supreme Court Debate Day

## Information Pack



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# 1. The UK Supreme Court

The Supreme Court is the highest court in the United Kingdom. It is the final court of appeal for all civil cases in the UK (including Scotland) and for criminal cases in England, Wales, and Northern Ireland, excluding Scotland. Any decisions made in the Supreme Court sets the precedent for all of the lower courts.

The Supreme Court is also the final court of appeal for devolution issues, where its role would be to see whether Scotland, Northern Ireland, and Wales are acting within their powers. These cases used to be heard by the Judicial Committee of the Privy Council.



The Supreme Court was established in the Constitutional Reform Act of 2005 which sought to establish a clear separation of powers between the executive, the legislature and the judiciary. It also aimed to create a more transparent and accessible judicial process.

It was in October 2009 that the judges or Law Lords were finally moved out of the Appellate Committee of the House of Lords (the former highest court of appeal) and into the newly renovated Supreme Court, which is situated on the other side of Parliament Square.

There are twelve Supreme Court justices, but they do not sit on cases at the same time. Each case is usually heard by a panel of five justices. This can be increased to seven or nine justices depending on the importance or complexity of the case. There are always an odd number of justices on a case to ensure that a majority decision can be reached. Very occasionally, eleven judges may sit on a case.

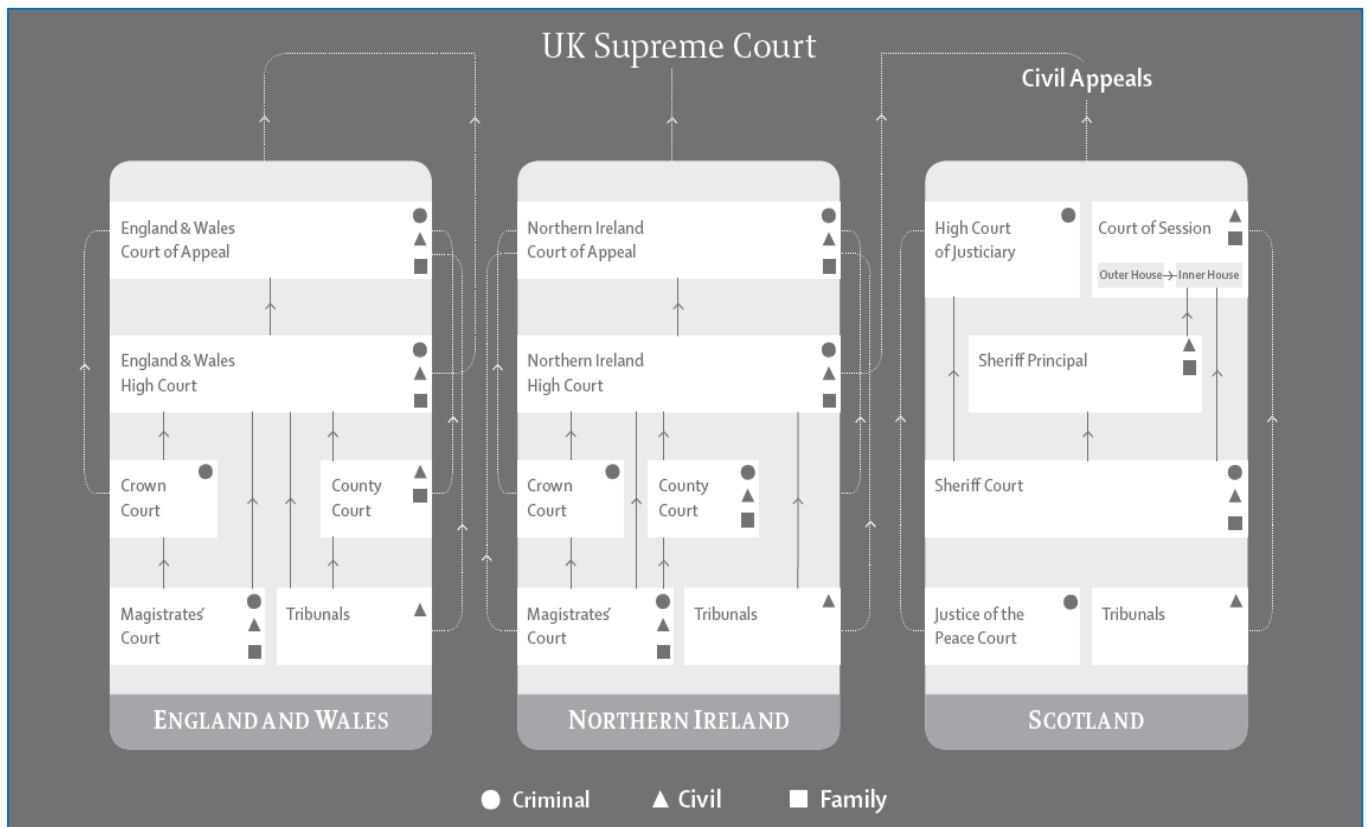
For example, during a during 'R (on the application of Miller and another (Respondents) v Secretary of State for Exiting the European Union (Appellant), a case about who had the authority to trigger Article 50, starting the process to leave the European Union, it was deemed so important that eleven judges heard the case.

Other cases have included: one about MP's expenses, one about whether letters that Prince Charles wrote to Government Departments should be published or even one about whether people should have the right to take your own life.

You can see more cases examples and the significance they have on society, on a series of videos specially made by the Royal Holloway University of London.

[https://www.youtube.com/watch?v=yrLseT6RI&list=PLSegY\\_\\_gUYIeCjbuO1dii9Oc4eCX2sx6D&index=2&t=0s](https://www.youtube.com/watch?v=yrLseT6RI&list=PLSegY__gUYIeCjbuO1dii9Oc4eCX2sx6D&index=2&t=0s)

## Hierarchy of the court system



This court chart shows the route which many cases will take before they reach the Supreme Court.

A case will have travelled through at least three courts before being heard at the Supreme Court.

Between April 2018 and March 2019, the Supreme Court heard **91** cases in total.



For more information on the Supreme Court we recommend watching our introductory video by clicking the following link:  
<https://www.youtube.com/user/UKSupremeCourt>

## 2. Stop and Search: What is it?

### Did you know?

Police have statutory powers to stop and question you at any time. In some situations, depending on the circumstances, police also have the power to search you.

Stop and search is arguably one of the most contentious police powers discussed both in the political and public realm.

Police currently have the power to stop and search citizens across the UK under a wide range of legislative acts for the purpose of preventing and detecting crime.

For a stop and search encounter to be effective and lawful, a police officer needs to have reasonable grounds of suspicion. There are however certain circumstances in which people can be stopped and searched without reasonable suspicion too, which are set out below.

Some people argue that these powers are too intrusive and can sometimes be abused by police, whilst others believe it is a good way to deter and combat crime and protect the public from any perceived harm.

A police officer has powers to stop and search you if they have 'reasonable grounds' to suspect you're carrying:

- illegal drugs
- a weapon
- stolen property
- something which could be used to commit a crime e.g. a crowbar

You can only be stopped and searched without reasonable grounds if it has been approved by a senior police officer. This can happen if it is suspected that:

- serious violence could take place
- you're carrying a weapon or have used one
- you're in a specific location or area

Before you are searched the police officer must tell you:

- their name and police station
- what they expect to find e.g. example drugs
- the reason they want to search you, for example if it looks like you're hiding something
- why they are legally allowed to search you
- that you can have a record of the search and if this isn't possible at the time, how you can get a copy

Powers to stop and search must be used fairly and responsibly by the police and without unlawful discrimination.

The Metropolitan Police believes that stop and search is most likely to be fair and effective when:

- the search is justified, lawful and stands up to public scrutiny
- the officer has genuine and objectively reasonable suspicion they will find a prohibited article or item for use in crime
- the person understands why they have been searched and feels that they have been treated with respect
- the search was necessary and was the most proportionate method the police officer could use to establish whether the person has such an item

The Equality Act 2010 sets out clear guidelines to protect individuals from unfair treatment and makes it unlawful for police officers to discriminate against any person on the grounds of the 'protected characteristics', which are as follows: age, disability, gender reassignment, race, religion or belief, sex and sexual orientation, marriage and civil partnership, pregnancy and maternity when exercising their powers.

**Here are some widely known stop and search powers used by police forces across England and Wales:**

## **S60 Criminal Justice and Public Order Act 1994**

When a section 60 authorisation is in force in a particular area, police officers are allowed to stop and search any person or vehicle for offensive weapons or dangerous instruments, **regardless** of whether they have grounds for suspicion or not.

In order for this to happen police must be granted special permission by a senior police officer who can authorise stop and search, if they believe incidents of serious violence may arise or that people are carrying offensive weapons in a specific area.

No reasonable suspicion required.

## **PACE section 1 of the Police and Criminal Evidence Act 1984**

This power allows the police to stop and search people or vehicles in a public place for offensive weapons, stolen goods, or items that could be used for criminal damage.

This is one of the most frequently used powers to conduct stop and search in England and Wales. In the year ending March 2017, it accounted for 99.8% of stop and searches in England and Wales.

Reasonable suspicion required

## **Section 47A of the Terrorism Act 2000**

Section 47A allows police to stop and search someone or a vehicle, without reasonable suspicion, in order to prevent acts of terrorism. Searches under this power may only be authorised by a senior police officer, in a specific area for a defined period where the police reasonably suspect an act of terrorism will take place. Section 47A of the Terrorism Act was introduced following the repeal of Section 44 on 18 March 2011.

No reasonable suspicion required.

## **Section 43 of the Terrorism Act 2000**

Under Section 43 of the Terrorism Act 2000, police have the power to stop and search an individual if they have a reasonable suspicion that they have in their possession something which would constitute evidence that they are involved in terrorist activities.

According to the Met Police 646 people were searched under the Terrorism Act between June 2016 and June 2017.

Reasonable suspicion required



## **Schedule 7 of the Terrorism Act**

Schedule 7 of the Terrorism Act 2000 allows examining officers (police, immigration or custom officers) to stop and search individuals at airports, shipping ports or international rail terminals, for the purpose of determining whether an individual is or has been concerned in the commission, preparation or instigation of acts of terrorism.

Officers are permitted to stop an individual even if there is “no reasonable suspicion” that someone is involved with terrorism before they are stopped.

They are also entitled to request the production of documents, the copying and retention of materials and to search and question individuals. They can hold an individual for a maximum of 6 hours (previously 9 hours).

No reasonable suspicion required

### **What is reasonable suspicion?**

Reasonable suspicion should normally be linked to accurate and existing intelligence or information. This could relate to a certain article being carried, a suspected offender, or a person seen carrying an article known to have been stolen recently from within a certain area. Searches based on accurate and current intelligence or information are more likely to be effective.

As set out in the Police and Criminal Evidence Act 1984 reasonable grounds for suspicion depend on the circumstances of each case.

- There must be an objective basis for a police officer’s suspicion, based on facts, information, and, or intelligence. This should be relevant to the likelihood that it would help police officers find an article, in the case of searches under Section 43 of the Terrorism Act 2000, to the likelihood that the person is a terrorist.

- Reasonable suspicion should not be based on personal factors. It cannot be based on generalisations, such as identifying stereotypical groups or, categories of people as being more likely to be involved in criminal activity. Police must therefore rely on intelligence or information about the person concerned. So unless the police have a description of a suspect, a person's physical appearance, including any 'protected characteristics', or the fact that the person has a previous conviction, cannot be used alone or in combination with each other, or any other factor, as the reason for searching an individual.



- Reasonable suspicion can also exist without specific information or intelligence and instead rely on the behaviour of a person. E.g. an officer encounters someone on the street at night, visibly trying to hide something, the officer may (depending on other circumstances) base their suspicion on the fact that this type of behaviour is often linked to stolen/prohibited articles being carried. This could for example, also apply for the purposes of Section 43 of the Terrorism Act 2000, where an officer may suspect a person is a terrorist from their behaviour, when at, or near a location, which has been identified as a potential target for terrorists.

## FACTS AND FIGURES

**277,378 stop and searches conducted throughout England and Wales up to April 2018. Under 1% of those were conducted under Section 60.**

**17% of stop and searches led to arrests, an additional 13% had 'positive outcomes'**

**70% resulted in 'no further action'**

**Across England and Wales, Black people are 9 ½ times more likely to be stopped than those who are white**

**48% of all stop and searches were conducted by the Metropolitan Police Service (London).**

**In London, there is a 4% chance of being stopped and searched if you are Black, versus 0.9 if you are white.**

**In Dorset, there is a 4.4% chance versus 0.3% and in Greater Manchester or Gwent, it is 0.3 vs 0.1%**

**Across England and Wales, use of stop and search has fallen by 80% since 2008.**

For the first time since 2011, stop and searches were also carried out under section 47a (previously s.44) of the Terrorism Act 2000. The majority of these searches (145 of 149) were carried out by the British Transport Police.

'Positive outcome' searches refer to any case where action is taken against people who've been stopped and searched. This includes arrest cases but also covers other resolutions like warnings and Penalty Notices. All cases where there is not a positive outcome are called 'No Further Actions'.

**Figure 4.1** Number of stops and searches and resultant arrests under section 1 of PACE, England and Wales<sup>1</sup>, year ending March 2007 to 2017



Source: [Stop and Search table SS\\_02](#), Home Office

**Notes:**

1. Data from 2009/10 onwards includes the British Transport Police (BTP). BTP did not provide data to the Home Office prior to 2009/10, therefore data from before this period are not directly comparable with more recent years. Although, BTP account for less than 1% of stop and searches in 2016/17.

Data taken from Home Office report on Police Powers and Procedures in England and Wales – 31 March 2017

## Stop and Search Powers in Scotland and Northern Ireland

Police forces in Scotland and Northern Ireland also have stop and search powers which allow police to stop and search individuals according to a set criteria or code of practice.

Up until 11 May 2017, Scotland was the only jurisdiction in the UK to permit the use of non-statutory stop and search, where police were allowed to ask a person to consent to a search. Following a change in law, police forces across England and Wales, Northern Ireland and Scotland can only conduct stop and search under legal authority.

To read more about stop and search powers in Scotland and Northern Ireland please look at the links provided at the end of the debate pack.

# UKSC Cases

**Case Name:** R (Roberts) v Commissioner of Police of the Metropolis and another

**Date of Hearing:** 20 and 21 October 2015 – Judicial Review

## Background Information and Case Details:

This case looks at whether there are sufficient safeguards within stop and search powers under s.60 of the Criminal Justice and Public Order Act 1994 – to be in accordance with the law for the purposes of Article 8 ‘the right to respect for private life’ of the European Convention on Human Rights (ECHR).

On 9 September 2010, Superintendent Barclay authorised police to carry out searches under s 60 for 17 hours, in response to several incidences of gang related violence that had taken place in the Haringey area.

It was decided that this was a **necessary and proportionate** response to protect members of the public from serious violence following a series of intelligence reports. This meant that police had the authority to conduct “suspiciousness” stop and search in the Haringey area.

Around 1pm on this day, Mrs Roberts, a support worker, was travelling on the 149 bus in Haringey.

She had not paid her fare. A ticket inspector checked her oyster card to find that it was invalid for this bus journey and that there were insufficient funds on the card to pay for her fare. Upon asking for her details, Mrs Roberts provided a false name and address and falsely stated that she had no identification with her.

The police were called, and a Police Constable Jacqui Reid attended the incident. Upon being asked about identification, Mrs Roberts further denied not having any and was nervously clutching her handbag at the time. It was then that PC Reid decided Mrs Roberts was holding her bag in a suspicious manner and suspected that Mrs Roberts might have an offensive weapon inside it. Mrs Roberts is a black woman of African-Caribbean heritage and was aged 37 at the time of this incident. The PC’s experience was that it was not uncommon for women of a similar age to carry weapons, and she had actually arrested a different woman earlier that day for possession of a firearm. PC Reid explained her powers under section 60 of the 1994 Act and that she would proceed to search Mrs Roberts and her bag. Mrs Roberts attempted to walk away but was eventually restrained and handcuffed.

She gave her correct name and address. PC Reid came across some bank cards, with different names to Mrs Roberts. She then arrested her on suspicion of handling stolen goods, but no further action was taken following the confirmation that the other cards were indeed Mrs Roberts' and displayed her maiden name and her son's name too.

PC Reid completed a 5090 Form, where she recorded when and where the stop and search had taken place. Mrs Roberts was interviewed at the police station following her arrest for obstructing the search and handed a copy of this form. She was later cautioned for that offence, but the caution was later quashed.

Mrs Roberts later brought judicial review proceedings alleging breaches of a number of her rights under the ECHR. Both the High Court and Court of Appeal rejected her claims. She eventually appealed to the UK Supreme Court, on the grounds that her Article 8 rights were breached and that this was not in accordance with the law (under section 4 of the Human Rights Act 1998).

The Supreme Court unanimously dismissed Mrs Robert's appeal, ruling that the stop and search power was exercised lawfully. This includes both the authorisation and the stop and search itself. It found that PC Reid acted in accordance with section 60 of the 1994 Act, and that the interference with Mrs Roberts' Article 8 rights was proportionate to the legitimate aim of preventing crime.

### **Case name: Beghal (Appellant) v Director of Public Prosecutions (Respondent)**

This case was heard at the Supreme Court in November 2014 and the judgment was given in July 2015.

### **Background information and Case Details:**

Sylvie Beghal (the Appellant) is a French national and also a resident of the UK. She is the wife of a man who is in custody in France in relation to terrorist offences. Upon her arrival at East Midlands Airport having returned from her trip to France, Mrs Beghal was stopped by UK Border Force officials.

She was stopped and searched by police officers from Leicestershire Constabulary who proceeded to conduct an 'examination' under Schedule 7 of the Terrorism Act 2000.

Upon being stopped, Mrs Beghal was not formally detained, arrested or suspected of being a terrorist but was told by the police that they needed to speak to her to establish whether she was involved in terrorist acts. Subsequently, Mrs Beghal requested a lawyer, the officers however insisted that they would not delay their examination pending the arrival of her lawyer; they allowed her to make a phone call to her lawyer instead.

Upon being interrogated, Mrs Beghal refused to answer most of the questions and was consequently charged with wilful failure to comply with the requirement to answer questions. She later pleaded guilty to this offence and received a conditional discharge.

Mrs Beghal then appealed to the High Court arguing that the Schedule 7 powers breached her human rights; citing Article 5 (right to liberty), Article 6 (privilege against self-incrimination) and Article 8 (right to respect for private and family life) of the European Convention of Human Rights (ECHR). After considering both the compatibility of Schedule 7 with the ECHR and whether the powers of Schedule 7 are a proportionate response to pre-empting terrorism, the judges ruled that Schedule 7 of the Terrorism Act 2000 did not violate her human rights and she therefore lost her case at the High Court. Mrs Beghal then appealed to the Supreme Court.

The Supreme Court dismissed Mrs Beghal's appeal by a majority of 4-1 ruling that the power was used proportionately and a necessary statutory measure in preventing and detecting terrorism. The Court said that there had been a fair balance between the rights of an individual and the interests of the community at large.

### 3. Debate Topic

#### **Debate Question:**

**Do stop and search powers strike a fair balance between the rights of the individual and the interests of society?**

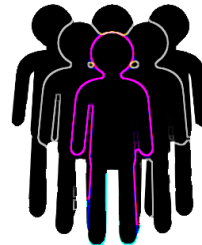


You will have to form an argument based on the UK Supreme Court cases provided in addition to the wider argument of Stop and Search and its use for the purposes of protecting people against crime.

Before you come to the Debate Day, please have a think about the different issues which are linked to this debate question.

**Here are some issues for you to consider when formulating your argument either for or against the debate question:**

- Are there sufficient safeguards in stop and search law in place to protect an individual's liberty?
- Whether there are sufficient legal statutory limitations in place to prevent stop and search powers being abused.
- Whether the examination of an individual under Schedule 7 of the Terrorism Act 2000 is compatible with an individual's human rights under the European Convention of Human Rights (ECHR)?
- What is the correct balance between the rights of the individual and the public interest in safeguarding the country from terrorism?
- Given that an individual can be stopped without reasonable suspicion – what potential challenges does this pose?
- Is it possible to preserve individual liberties whilst retaining a firm grasp on upholding national security?
- Whether stop and search is an effective tool against combating crime.



## 5. Debate Rules

During the Debate Day, your group will be split into three teams. **For**, **Against** and the **Judges**.

All groups should prepare for the debate with the intention of debating the question and ensure they also refer to Supreme Court cases as well as looking at the wider debate.

**For:** Stop and search powers **DO** strike a fair balance between the rights of the individual and the interests of society.

**Against:** Stop and search powers **DO NOT** strike a fair balance between the rights of the individual and the interests of society.



## The Judges

The Judges will listen to the arguments of both sides and have the opportunity to ask questions. They will then decide which side has given the strongest argument based on how clear and concise the arguments were; how evidence has been used to support those arguments; whether the teams were able to answer the questions and whether good teamwork was demonstrated overall.

### Debate Timetable

50 minutes preparation time

Team A (for): 10 minutes

Team B (against): 10 minutes

Break 4 minutes

Team A: 3-minute summary

Team B: 3-minute summary

Judges 10 minutes to consider and deliver judgment

## 6. Useful Links:

For more information about the UKSC Cases:

<https://www.supremecourt.uk/cases/docs/uksc-2014-0138-press-summary.pdf>

<https://www.supremecourt.uk/cases/docs/uksc-2013-0243-press-summary.pdf>

Background news articles:

<http://uksblog.com/case-comment-r-roberts-v-commissioner-of-police-of-the-metropolis-and-anor-2015-uksc-79/>

<https://www.theguardian.com/law/stop-and-search>

<https://www.met.police.uk/advice/advice-and-information/st-s/stop-and-search/stop-and-search-process/>

<https://www.bbc.co.uk/news/uk-41280778> (Parsons Green)

<https://www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law/policing/stop-and-search/latest>

<https://www.theguardian.com/law/2017/oct/26/stop-and-search-eight-times-more-likely-to-target-black-people>

<http://www.bbc.co.uk/news/uk-41849256>

## **Scotland**

<https://www.theguardian.com/uk-news/2015/sep/03/police-scotland-urged-to-end-non-statutory-stop-and-search>

<http://www.scotland.police.uk/assets/pdf/138327/306184/statutory-power>

<http://www.scotland.police.uk/about-us/police-scotland/stop-and-search/stop-and-search-improvement-plan>

## **Northern Ireland**

<https://www.nidirect.gov.uk/articles/stop-and-search>

<https://www.psni.police.uk/inside-psni/Statistics/stop-and-search-statistics/>

<https://www.gov.uk/government/publications/stop-and-search-powers-code-of-practice-ni-under-the-terrorism-act-2000>