


## The impact on the Muslim community




CAGE is an independent advocacy organisation working to empower communities impacted by the War on Terror policies worldwide. The organisation highlights and campaigns against such policies in hope to achieve a world free from oppression and injustice.

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# TABLE OF CONTENTS

|           |  |           |
|-----------|--|-----------|
| <b>01</b> | <b>INTRODUCTION</b>  | <b>9</b>  |
| <b>02</b> | <b>WHAT IS SCHEDULE 7?</b>   | <b>13</b> |
| <b>03</b> | <b>CORE ISSUES</b>   | <b>19</b> |
|           | <b>Case study:</b> The British Muslim Aid worker                                     | 20        |
|           | 3.1 Disregard for basic rights and the rule of law                                   | 21        |
|           | <b>Case study:</b> The mother who was stopped on her way home from Makkah            | 27        |
|           | <b>Case study:</b> The Muslim revert who wanted to stay with his children            | 32        |
|           | 3.2 Lack of transparency   | 34        |
|           | 3.3 Latitude for abuse   | 36        |
|           | <b>Case study:</b> The film maker working for aid agencies                           | 40        |
|           | 3.4 Inefficacy   | 43        |
|           | <b>Case study:</b> The self-employed Muslim businessman                              | 48        |
|           | <b>Case study:</b> The Aid worker who got stopped, then approached by Mi5            | 51        |
|           | 3.5 Legal challenges: European Court of Human Rights judgement                       | 55        |
|           | <b>Case study:</b> The father who quoted Quran to Mi5                                | 56        |
| <b>04</b> | <b>SCHEDULE 7 COMPARED TO OTHER STOP AND SEARCH POWERS</b>                           | <b>61</b> |
|           | 4.1 Comparison with Stop and Search under the Terrorism Act                          | 61        |
|           | 4.2 Comparison with ordinary stop and search law                                     | 64        |
|           | 4.3 Schedule 7 compared to other US border powers                                    | 65        |
|           | 4.4 Schedule 7 compared to the Prevention of Terrorism Temporary Provisions Act 1974 | 66        |
|           | <b>Case study:</b> The Muslim revert who was asked to strip                          | 69        |
| <b>05</b> | <b>CURRENT AMENDMENTS TO THE POLICY</b>  | <b>73</b> |
|           | Schedule 3 of the Counter-Terrorism and Border Security Act                          | 73        |
| <b>06</b> | <b>CONCLUSIONS</b>   | <b>77</b> |
| <b>07</b> | <b>RECOMMENDATIONS</b>   | <b>79</b> |
|           | 7.1 For government   | 79        |
|           | 7.2 For civil society  | 79        |
|           | 7.3 For communities  | 80        |
| <b>08</b> | <b>BIBLIOGRAPHY</b>  | <b>81</b> |



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## EXECUTIVE SUMMARY:

Schedule 7 to the Terrorism Act 2000 states that an 'examining officer' is empowered with a broad range of powers to interrogate, search and detain for up to six hours, any person at UK ports, for the purpose of determining if they are, or have been 'concerned' in the 'commission, preparation or instigation of acts of terrorism'.

Under this law, if stopped, you are legally obliged to answer all questions asked by the examining officer, to submit – if asked – to a search of your person and your luggage, to provide your fingerprints, your DNA and consent to photographs being taken of you, and to surrender any electronic devices on your person – as well as the passwords to those devices. Any belongings seized may also be retained by police for up to seven days.

The most recent amendments under the Counter Terrorism and Border Security Act obfuscate the principles of legal representation in respect of Schedule 7. This is achieved by allowing officers to proceed with questioning prior to legal consultation under certain conditions, and by empowering officers to exercise more direct influence over individuals' choice of legal representation.

In terms of UK law, Schedule 7 – on these facts alone – is a staggering power in terms of its violations of due process, lack of oversight, and its vulnerability to abuse. It is an affront to the principle of the rule of law and is detrimental to trust between society and state.

To highlight this, CAGE presents this first comprehensive report into the effectivity of Schedule 7 in terms of its stated purpose.

The report, the culmination of years of our experience in supporting communities impacted by the power, cites academic studies, legal cases and available statistics – as well as the testimonies of those who have been through a stop, to demonstrate the very human cost of the policy and its deep impact on society.

Statistics support the fact that Schedule 7 stops are based on religious and racial profiling. In 2014, a team of students at Cambridge University – named Operation Insight – found that 88% of its sample of those stopped under Schedule 7 at a particular airport, were Muslim.

The failure of the government to publish statistics on the religious affiliation of those stopped under Schedule 7 has only increased the volume of the accusations that it is being used predominantly, and deliberately against the Muslim community.

However, and equally troubling, is the abuse of Schedule 7 as an intimidatory and intelligence gathering tactic against activists more broadly. This fits within a wider trend of the improper use of counter-terrorism legislation and the notion of "domestic extremism" that criminalises activism.

Of the 419,000 people stopped under Schedule 7 since 2009, only 30 of them have been convicted. Most recently, despite stopping over 11,000 people in the year to March 2019, only three convictions were secured. This means that the conviction rate for Schedule 7 stops from 2009 to 2019 – the only years for which the necessary figures are available – is a mere 0.007%.

It is not clear, however, what these convictions were actually for: they can occur in the case of a failure to disclose passwords, even on the basis of client confidentiality, or a refusal to answer questions - actions that are far from 'planning acts of terrorism'.

Despite this vagueness, which raises serious questions about the utility as well as the actual purpose of Schedule 7, the number of convictions is continually used by proponents of Schedule 7 to justify the power.

To challenge these arguments, this report demonstrates clearly and definitively that Schedule 7 disregards the norms of due process at every level. Normative criminal law safeguards are discarded under a Schedule 7 stop, permitting and justifying systematic abuses against individuals including ordinary Muslims, journalists, aid workers, and lawyers. As a result, it is deeply counter-productive.

Key to this is that the stop is done without any evidence or need for suspicion, and as such it violates international privacy norms and laws, since any person – including a child – can be stopped on the basis of what police officers have admitted can simply be a "hunch".

There is also no way an individual can ever challenge this process or remove their information from the system. This means Schedule 7 is in essence a key "collection" point of a huge global surveillance and security apparatus.

To illustrate this, the report features startling human accounts of Schedule 7 experiences, including a mother who was separated from her 7-year-old son and husband for six hours, several aid workers for whom a stop was the first event in attempts by MI5 to recruit them, and a father who was separated from his three children and left wondering what was happening to them.

Schedule 7 is harmful to children:

"They searched my [7-year-old] son's hand luggage. I thought that was wrong. My son was so upset when I came out [after six hours], and he said: "Why did you take so long? What's wrong?" I just put on a bright face and ... tried to smooth it over. But the next day, he was awake early. I asked him why. He said he was thinking about why I got stopped. You don't know how this affects children."

Schedule 7 impacts aid work and the vulnerable:

"I kept asking them about what their concerns about me were. They said they are concerned about radicalisation. I said, "What is radicalisation: taking a tin of beans, to feed someone?"

Schedule 7 is a surveillance tool:

"When I got my phone back, I could see they had done something to it, since there was an extra folder on it. I realised that the battery was heating up and getting totally drained, and this was totally abnormal. But there was nothing I could do to get rid of this folder. Even restoring the phone to the factory settings. So, I got rid of the phone shortly afterwards and I got a new one."

More than their lack of demonstrable efficacy and evident surveillance function, Schedule 7 powers, are undermining the trust and relationship of the Muslim community with the state. By not only 'othering' and singling out Muslims as a suspect community through laws such as these, but also attempting to justify it, the state is reinforcing the narratives advocated by far-right organisations: that Muslims are not treated as, and will never truly be, a part of British society.

We must counter this by working for change in ways that hold true resonance with communities.

To this end, the report is a call to action to:

- Members of the different organs of the state, to repeal the Schedule 7 law, and embark on an honest and trustworthy path of change, before further abuse can take place and policies become even more counter-productive.
- Members of civil society and activist groups, we hope this report will serve as a basis for increased demands to repeal Schedule 7, and as a resource to fall back on as they pay closer attention to and document the use of new Schedule 3 powers to target individuals and groups within the emergent framing of political movements as 'hostile activity'.
- The Muslim community, we present this report both as a source of information and empowerment, but also as an act of gratitude - for the individuals who came forward to speak about their experiences, who were at all times under the impression that their words might empower others and also bring positive change for all.

The more we are emboldened to tell our stories, to tell the truth, the more people will understand the injustice and counter it by acting justly. In this way, change will surely come.

## **SCHEDULE 7: HARASSMENT AT BORDERS**

The impact on the Muslim community



# 01

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## INTRODUCTION

I took a stand in November 2016 when I was being coerced under Schedule 7 at an airport stop to surrender the passwords to my devices. I refused to hand over my passwords - and therefore access to all my professional and private data - without the prior consent of the torture survivors my organisation represents, and whose stories I was carrying with me.

Aside from the pure principle of privacy, I was protecting crucial testimony implicating high ranking officials in torture.

I found myself in court a few months later, convicted of a terrorist offence but walking out protecting my integrity and the principle of privacy intact.

That particular Schedule 7 stop was only 1 of the 20 times or more I had been stopped before, and only 1 of an average of over half a million stops that have affected individuals traveling in and out of the UK since the inception of Schedule 7 in 2000.

The effects of a Schedule 7 stop on an individual are lasting. The interrogation that takes place is part of the lived experience of a vast number of law-abiding and innocent people that are treated like criminals, with the assumption of guilt permeating the experience, and invasions of privacy commonplace.

Schedule 7 powers stand out from all other search powers in the UK. People can be questioned, searched and held without suspicion. Under Schedule 7, it is a criminal offence to not answer a question. This makes Schedule 7 an exceptional power that has become normalised into the British legal framework.

This has taken place in a fear-based environment, and it is inconsistent with the basic norms of due process, which protect an individual's right to be assumed innocent and their rights, privacy among them, to be respected.

With no right to remain silent, no absolute right to legal representation, no right to protect digital or biometric data, Schedule 7 is a power that would make any police state proud. It has no rival across the western world in its intrusive and draconian nature.

I am pleased to introduce this report by CAGE, which is the first ever report based on direct witness testimonies of people that have been interrogated under Schedule 7. The words of those who have been affected are core to this report, and what they say makes for disturbing reading.

Ordinary people recount their experiences of feeling 'humiliated', 'embarrassed', and 'treated like criminals' as they find themselves on the receiving end of a mass surveillance sledgehammer that lawmakers, politicians and the judiciary have allowed to exist for more than 17 years.

We are indebted to these individuals who have come forward to assist us with this report – and we hope that their courage inspires others to speak out and to call for an end to this policy.

For the government and those in positions of power, it is crucial that these voices are heard. Ordinary people - 99.99% of whom are completely innocent of any suspicion of wrongdoing - have been left out of the discussion about national security and protection of our freedoms.

Now a new law – the Schedule 3 to the Counter Terrorism and Border Security Act - will extend the powers of Schedule 7 even more. Among other aspects, it will extend the reach of the security services so that even more travellers will be affected and an individual who decides to take a stand against this new power, as I did with Schedule 7, could face a year in jail.

This makes it crucial, now more than ever, that we show that such laws are oppressive and have no place in a just society.

- *Muhammad Rabbani, July 2019*









## 02

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### WHAT IS SCHEDULE 7?

Schedule 7 to the Terrorism Act 2000 states that an 'examining officer' is empowered with a broad range of powers to interrogate, search and detain for up to 6 hours (originally up to 9 hours) any person at ports, airports and international rail terminals for the purpose of determining if they are, or have been 'concerned' in the 'commission, preparation or instigation of acts of terrorism'.

Under this law, if stopped, you are legally obliged to answer all questions asked by the examining officer, to submit – if asked – to a search of your person and your luggage, to provide your fingerprints, your DNA and consent to photographs being taken of you, and to surrender any electronic devices on your person – as well as the passwords to those devices. Any belongings seized may also be retained by police for up to seven days.

According to the Code of Practice for Examining Officers, as a 'detained person', you have the right to consult a solicitor in private if you request to do so. This was only relatively recently changed, as under the law as it originally stood, you had no right to a lawyer - or indeed to have a solicitor present – unless, that is, the examining officer 'reasonably believes' that not allowing this 'would be likely to prejudice the purpose of the examination'.<sup>1</sup>

However, the most recent amendments under the Counter Terrorism and Border Security Act obfuscate the principles of legal representation. This is achieved by allowing officers to proceed with questioning prior to legal consultation under certain conditions, and by empowering officers to exercise more direct influence over individuals' choice of legal representation.

To summarise: if stopped under Schedule 7, you have no right to remain silent, no right to refuse the seizure of your devices, your passwords, or your biometrics, and your right to legal representation hinges on the decision of the officer examining you.

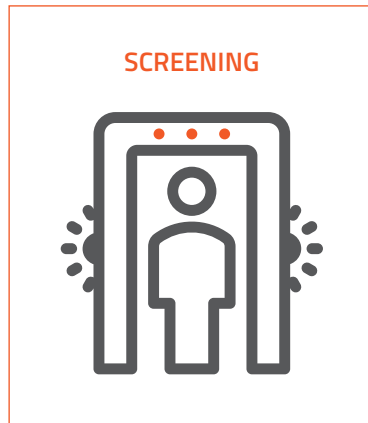
This law is enforced without any requirement for reasonable suspicion – or indeed any suspicion at all. Not only this, but all information collected from devices under Schedule 7 can be – and indeed has been – passed on to GCHQ, as revealed by The Intercept in September 2017 who received leaked documents from Edward Snowden.<sup>2</sup>

This law has been in force since 2001. However, the Home Office has only released statistics on the number of ‘examinations’ made under Schedule 7 since 2009. Even without figures for the preceding 8 years, in the period from 2009 till March 2019 alone, Home Office statistics indicate that there have been over 419,000 ‘examinations’.<sup>3</sup> This excludes those stopped for an initial ‘screening’ process.

The numbers stopped for initial ‘screenings’ are not published and, in reality, are likely to increase the total by as much as double. Our conservative estimate of the number of people stopped since 2001, including those screened, is well over 500,000 and potentially close to one million.

In the year to March 2019, there were just three convictions following a Schedule 7 stop, and in 2019 the European Court of Human Rights returned a unanimous ruling that Schedule 7 powers breach human rights and lack adequate legal safeguards against abuse.

Figure 1: Stages of a Schedule 7 Stop<sup>4</sup>



■ Screening questioning takes place in public.

During this stage you will often not be informed that this is part of a Schedule 7 stop.

Theoretically you are under no obligation to answer questions at this stage but if you fail to answer it can lead to progression to an examination. (Stage 2, below)

There is supposedly no record kept of screenings



■ If your Schedule 7 stop progresses to an examination, you will be led to a room and sat down.

You should be given a form and a leaflet on Schedule 7, and read your rights.

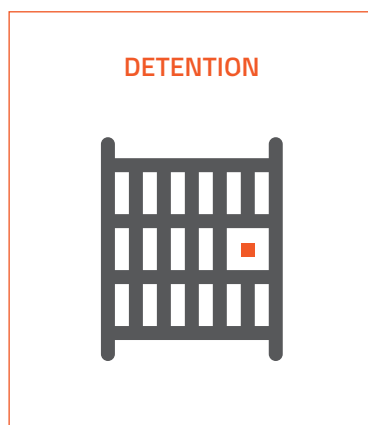
You and your luggage can be searched.

You should be offered a chance to call your lawyer (at the discretion of the examining officer), and your family.

You have no right to remain silent – you are obliged to answer all questions.

Your electronic devices can be seized and you must provide, if asked, the passwords.

Examinations cannot exceed 1 hour.



■ You are obliged to give fingerprints and DNA if asked.

You can be strip searched.

Detention cannot exceed 6 hours (including examination).

## MUSLIM ORGANISATIONS' STATEMENTS ON SCHEDULE 7

“

*IHRC states that it “has long been concerned with Schedule 7 of the Terrorism Act 2000 since we started receiving reports of abuse immediately after the Terrorism Act came into force” and, as such, calls for it to be repealed due to the “draconian” nature of the powers it grants examining officers.<sup>5</sup>*

- Islamic Human Rights Commission

”

“

*MCB highlighted the need for “immediate reform”, stating: “[T]errorism cannot be confronted by alienating Muslim or any other communities. Schedule 7 clearly undermines that objective by disproportionately targeting Muslims.”<sup>6</sup>*

- Muslim Council of Britain

”

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*In a report on Schedule 7, MEND argued for reform of the law in light of its discrimination against Muslims.<sup>7</sup>*

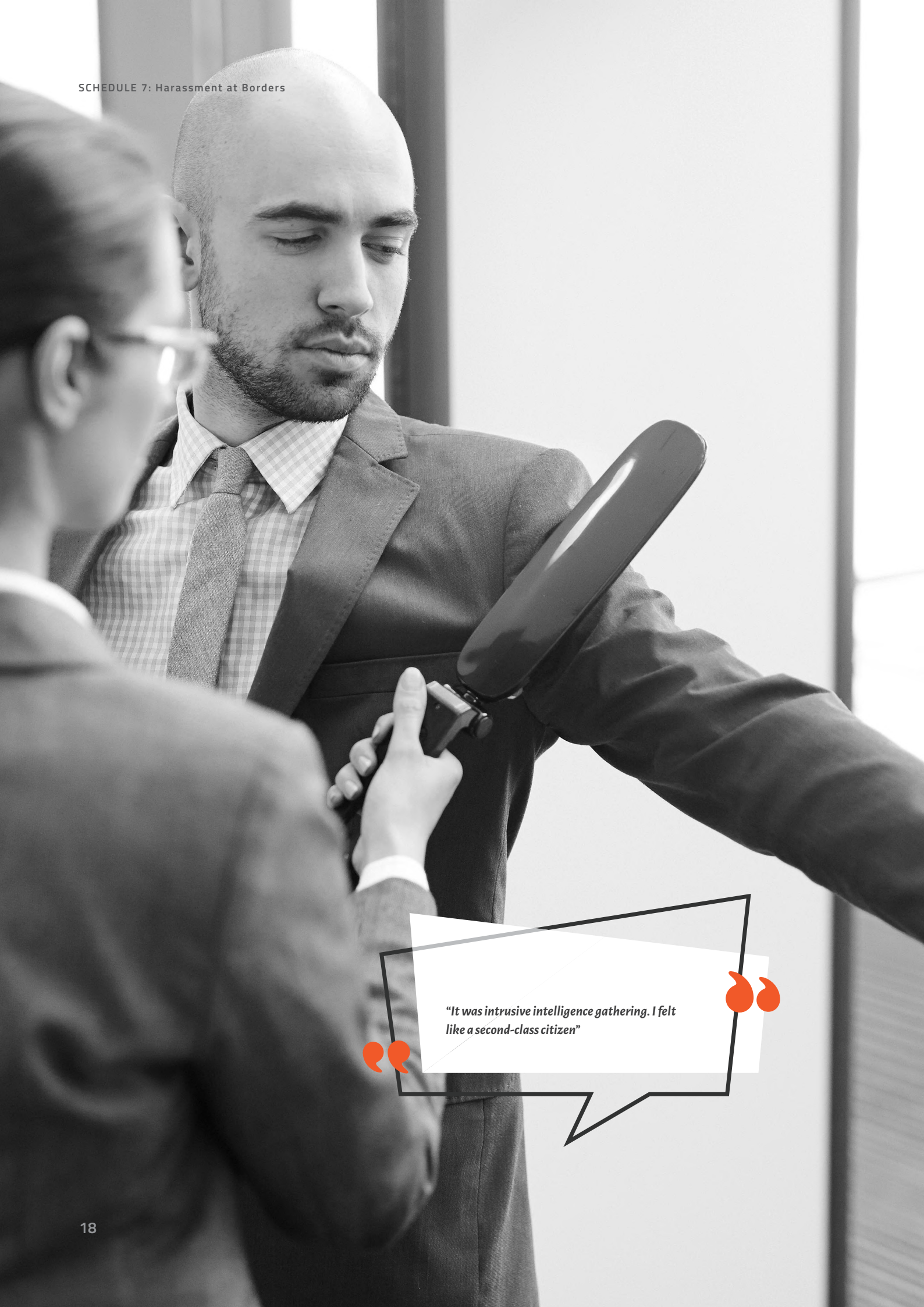
- MEND

”









*"It was intrusive intelligence gathering. I felt like a second-class citizen"*

# 03

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## CORE ISSUES

The crux of the problem with Schedule 7 is its disregard for the norms of due process. Like many other counter-terrorism laws, the usual criminal law safeguards are discarded under Schedule 7, resulting in an unjust, draconian piece of legislation which is not only unsuitable for the purpose that it is supposedly billed for, but which permits and justifies systematic abuses against individuals.

The core problems which CAGE has identified with Schedule 7 can be divided, and sub-divided into the following issues which will be covered in detail in this section:

- 3.1 Disregard for Due Process
  - 3.1.1 Basic Rights
  - 3.1.2 The Rule of Law
- 3.2 Lack of transparency
- 3.3 Latitude for abuse
  - 3.3.1 Racial and Religious Profiling
  - 3.3.2 Criminalisation of Activists
- 3.4 Inefficacy
  - 3.4.1 The Myth of Utility
  - 3.4.2 The Mi5 Connection
  - 3.4.3 Negative Impact
- 3.5 Legal challenges: European Court of Human Rights judgement

## THE BRITISH MUSLIM AID WORKER

» They said to me they are concerned about radicalisation. I said, "What is radicalisation: taking a tin of beans, to feed someone?"

*I get stopped every time I travel. It's happened at least 10 times. I was quite shocked the first time I was stopped. I had returned from Turkey. Then after that, it happened when I was returning from any location. I was stopped and questioned and searched.*

*They didn't give me any reason. They just simply said they had the right to do this. They started to ask me questions. I explained to them, I wasn't politically involved and that my travel was purely humanitarian. I was taken aback by their questions. They went through my bags and had a look at my phone. They took photos and DNA. It was very intimidating.*

*After the second time I was stopped, I called the police and told them I was travelling for the purpose of providing aid. I had nothing to hide, so I explained to the police where I was going. I documented this, and I also got a letter from my local masjid supporting the reasons for my travel.*

*I suspect they stopped me the first time because of my aid work and the views I've expressed on social media. I was always supporting aid work going into Syria, and because the British government treats anyone who is related to Syria as a person of interest, I am assuming they think I am aiding terrorist activity.*

*Now they know my movements before I even go. On one occasion I was marched off the plane. I was taken off in front of everybody. They've also made me miss my plane. That's happened to me a couple of times.*

*The Schedule 7 stops are a way of doing surveillance on me. I have known for some time that my phones have been tapped. This has affected my family. If you ask me if I have a good impression of the British counter-terrorism sector, I would say definitely no.*

*I kept asking them about what their concerns about me were. They said they are concerned about radicalisation. I said, "What is radicalisation: taking a tin of beans, to feed someone?"*

*They just can't understand that people are just doing the work I do purely for the good of humanity. They don't get it.*

*They are really targeting Muslim organisations. If it's a white organisation, or an international organisation, they don't have a problem. It's very much profiling, very much so, even when you are coming through the border control, there is definitely profiling.*

*They treat you as guilty before innocent, and it is a very brutal way of doing things. In their minds, they feel: oh, we've got him. They have that kind of attitude.*



### 3.1 Disregard for due process

In an era in which successive Prime Ministers have extolled the virtues and apparent centrality of so-called 'British values' – the list of which typically includes freedom, tolerance, and the rule of law – it seems remarkably counter-intuitive that Schedule 7 should continue as law given its total disregard for all of these stated values.

#### 3.1.1 Basic Rights:

The very fact that you can be detained – deprived of your right to liberty (Article 5 European Convention on Human Rights (ECHR)) – for up to six hours, without any requirement of reasonable suspicion, and hence without any actual need for the person stopping you to justify why they chose to do so, is deeply problematic.

Millie Graham Wood, solicitor at Privacy International, captured the crux of the problem when she said: "It allows the police to detain and question someone without any suspicion of wrongdoing. And so they are often suffered by people who have done nothing wrong"<sup>8</sup>.

Aside from criminalising ordinary people, the fact that the stop and search can occur without suspicion gives Schedule 7 enforcers special privileges. StopWatch describes Schedule 7 as a "highly intrusive stop power, which operates outside of the regulatory framework that covers other (police) powers of stop and search"<sup>9</sup>.

Former Independent Reviewer of Terrorism Legislation Max Hill even acknowledged concerns regarding the invasiveness of Schedule 7 stops in his 2018 report, stating that the searching and seizure of devices "was seen to be excessively intrusive in light of the low bar of suspicion required to use the power, granting full access to someone's professional and personal life"<sup>10</sup>.

This fact was acknowledged in *R v Gul* where despite the case not being "directly concerned with that issue", the court felt the need in its judgement to highlight that "detention of the kind provided for in [Schedule 7] represents the possibility of serious invasions of personal liberty" especially in light of the lack of requirement for suspicion<sup>11</sup>.

The far-reaching nature of this aspect of the Schedule 7 law has alarmed human rights organisations. Liberty has described Schedule 7 as "breathtakingly broad and intrusive" and highlighted that "it contravenes the basic rights to liberty and respect for private life as protected by the European Convention on Human Rights, and is therefore unlawful"<sup>12</sup>. Liberty further stated that the law was "counter-productive and in urgent need of repeal or very significant amendment"<sup>13</sup>.

What can be done during a Schedule 7 detention further undermines an individual's basic rights. Of the 201 responses that we received for a survey we carried out on people's experiences of Schedule 7 stops, 70 of those stopped had their fingerprints or DNA collected, 97 had their devices seized, and 89 were instructed to give their passwords.

That the examining officer can do all of this - search your person and your possessions, take biological samples from you, and indeed seize and retain your electronic devices containing all your data, private and professional – all without the need for any justification beyond a "hunch", seems even intuitively to be a grave challenge to the right to privacy.

Indeed, in a recent case taken to the European Court of Human Rights, the judges unanimously ruled that Schedule 7 powers breach human rights and lack adequate legal safeguards against abuse.<sup>14</sup> The ruling followed a case brought by Sylvie Beghal, a French national of Algerian descent, who was stopped after arriving with her children at East Midlands Airport on a flight from Paris in 2011.

However, as Europe seemed to take a firm stand, the British government has implemented the new Counter-terrorism and Border Security Act, which includes Schedule 3, a policy that gives border police even more powers to stop and search individuals than the current Schedule 7 law.

These powers go beyond the merely physical stop; the lack of right to remain silent compounds the violation of privacy. The fact that one must answer all questions posed, often employed with a highly intrusive line of interrogation - which has been described by the Equality and Human Rights Commission as “at best irrelevant and, at times, provocative”<sup>15</sup> - means that you are compelled to lay bare the details of your life and beliefs for state scrutiny and collection.

The violation of rights does not only impact Muslims, but activists and journalists too. The Open Rights Group have called attention to the “blanket” nature of Schedule 7 powers, and how they have been used against reporters specifically: “They have been employed against journalists and others to compel them to provide information which could breach professional privilege and confidentiality”<sup>16</sup>.

Where activists are involved, Corporate Watch has gone so far as to say that the Schedule 7 stop amounts to a wide scale surveillance operation that resembles a “fishing expedition”: “By stopping activists under Schedule 7, police are clearly trying to gather information for their databases through other means.”

The organisation went on to say that this is a “misuse of the legislation”, especially in cases where journalists researching corporates were stopped: “[Police] are fully aware that their questions don't relate to terrorist activity. If police were concerned about terrorism they would at least ask some questions about it”<sup>17</sup>.

The Schedule 7 law is a tool of a surveillance state. The fact that counter-terrorism police have abused this power to intimidate activists and journalists has been acknowledged by Amnesty International, who have stated that Schedule 7 “violates any principle of fairness” and “can be abused for petty vindictive reasons”<sup>18</sup>.

Testimonials from individuals stopped that were collected by CAGE as part of our PassWithPrivacy campaign, include evidence of interrogation on topics as wide ranging as who their friends are, their “entrepreneurial plans and status”, their earnings, what mosques they visit, how they are paying for their trip, whether or not their marriage was arranged, and their research topics at university<sup>19</sup>.

*"I had to answer any questions without a lawyer present. The questions I was asked included: would I consider myself religious? Why am I going to Turkey? Am I meeting anyone in Turkey? Do I plan to cross the border in to Syria? Do I go to the mosque? Do I support the Islamic State? Do I know who Abu Bakr al Baghdadi is? Do I sympathise with the Muslims under Israeli occupation? Do I sympathise with Muslims being killed by Americans in Iraq and Afghanistan? [...] My wife was questioned for under 10 minutes and I was relieved as I could see they were much more interested in me. My wife was asked if I was forcing her to go to Turkey. They asked her whether I was controlling or violent, how I was with the kids and whether our marriage was arranged."*

*"I felt like a common criminal. It was embarrassing in front of fellow passengers and to be the only Asian people on the flight to be stopped. The questioning about Islam was derogatory, for example they asked what I thought about jihad. They asked me about my views on Palestine, what my local masjid was, whether I was a practising Muslim and many more questions."*

*"I felt singled out, violated. I was asked about my beliefs, my sect, what mosque I prayed at, who my imam was, my political views, whether I agreed with the US-led invasion on Iraq, ISIS and so on."*

*"They claimed they were stopping me for security questions, but what have my views on how Muslims are treated in the media and by governments, and whether I feel we are oppressed, got to do with national security?. Being body searched offended me greatly too."*

All of this seems to be clearly irrelevant to the stated purpose of Schedule 7 – ascertaining if someone is concerned with the commission, preparation and instigation of acts of terrorism – and therefore points to the reality that Schedule 7 is indeed being used as a mass intelligence gathering tool.

Particularly troubling among these questions for Muslims, is the focus on religious views. Interrogating Muslims about how and why they pray, their religious observance, what schools of thought they follow and their beliefs implies that they should have to explain and indeed justify something as deeply personal as their individual conscience and practice under their faith to the state.

But because of the inherent implicit judgement within this line of questioning, it also enforces the idea that there is a nexus between religiosity and the propensity for violence – that there is an acceptable way for people to practice their faith that will prevent them from becoming ‘terrorists’ and moreover that it is the state’s place to define what this is.

The Equality and Human Rights Commission has stated that “[T]his power is eroding Muslim communities’ trust and confidence in policing”.<sup>20</sup> Not only this, but the “power to stop, detain and question an individual about their political and religious beliefs and activities, as well as those of others in their community and family, without requiring prior suspicion or other limitations, is unlawful”<sup>21</sup>.

Furthermore, CAGE’s International Director Muhammad Rabbani, who has been stopped under Schedule 7 around 20 times, has highlighted the greater issues that arise from the ability of examining officers to seize electronic devices and compel people to surrender their passwords.

In a digital era where our lives are increasingly dependent on technology, he aptly described this as “a digital strip-search”.<sup>22</sup> In the cases of Schedule 7 stops reported to CAGE from September 2016 alone, over a third of those stopped had their devices seized.

Rabbani’s arguments against allowing officers to access the passwords to his devices include the fact that on previous stops he had always complied with the search but had refused to divulge passwords. This had been accepted by officers until the last time he was stopped.

This means that the Schedule 7 stop has become more aggressive in its violation of due process and privacy, and under the new Schedule 3 law, this is indeed the case.

Rabbani was also carrying confidential information from a client, and he insisted that he could not share the information with officers without express permission from his client first. Provision is made for client confidentiality within the law, and yet in May last year, when he appealed the decision, the judge was compelled by the law to reject the appeal.

As Rabbani has highlighted during our awareness campaign, having your data accessed and collected is “more pervasive” than a mere physical search as it is no longer just your person or “the possessions you carry that are searched, it’s all your personal and professional life that’s online”<sup>23</sup>.

Personal conversations, family photographs, notes from your last meeting in the office – everything and anything stored on your phone, laptop, tablet or hard drive – can all be brought under the microscope, and, as has already been revealed, can be passed on to and stored by GCHQ<sup>24</sup>.

The Courage Foundation recently drew attention to this “highly coercive power” as being more than about privacy, especially for professionals: “Documents from the Snowden archive show there is a direct channel for Schedule 7 material through to GCHQ. The threats to legal and journalistic privilege and other professional duties of confidentiality is clear”<sup>25</sup>.

Hill even stated in his January 2018 report that after meeting with Muslim organisations around the country, many of them echoed CAGE's concerns "that the Government has shared personal information of those stopped under Schedule 7 with foreign governments"<sup>26</sup>.

When there is the chance that these foreign governments do not abide by the rule of law, huge concerns arise over the legality of the use of the information gathered, how it is interpreted and how, or if, an individual can ever challenge this process or remove their information from the system.

Indeed, Hill states that among the "important questions" remaining concerning Schedule 7, is the "ongoing issue of satisfactory rules governing the retention of both biometric data taken from individuals and electronic data downloaded from their devices"<sup>27</sup>. These crucial questions however are clouded by the fear-driven counter-terrorism discourse employed to justify laws like Schedule 7.



This mass data collection becomes an even greater issue for those carrying any confidential, or privileged information on their person, such as lawyers, activists, and journalists. The Index on Censorship has stated: "The legislation threatens the work of reporters and of advocacy groups like Index, who work on a daily basis with individuals under threat in their own countries and for whom anonymity and confidentiality can be a matter of life or death"<sup>28</sup>.

The Miranda case in 2016 highlighted the original deficit in the protection of privileged material at borders. Here, police seized confidential journalistic material from the partner of a Guardian journalist at Heathrow Airport. In this case, the Court of Appeal held that the then-current state of the law was incompatible with Article 10 of the ECHR "in relation to journalistic material in that it is not subject to adequate safeguards against its arbitrary exercise"<sup>29</sup>.

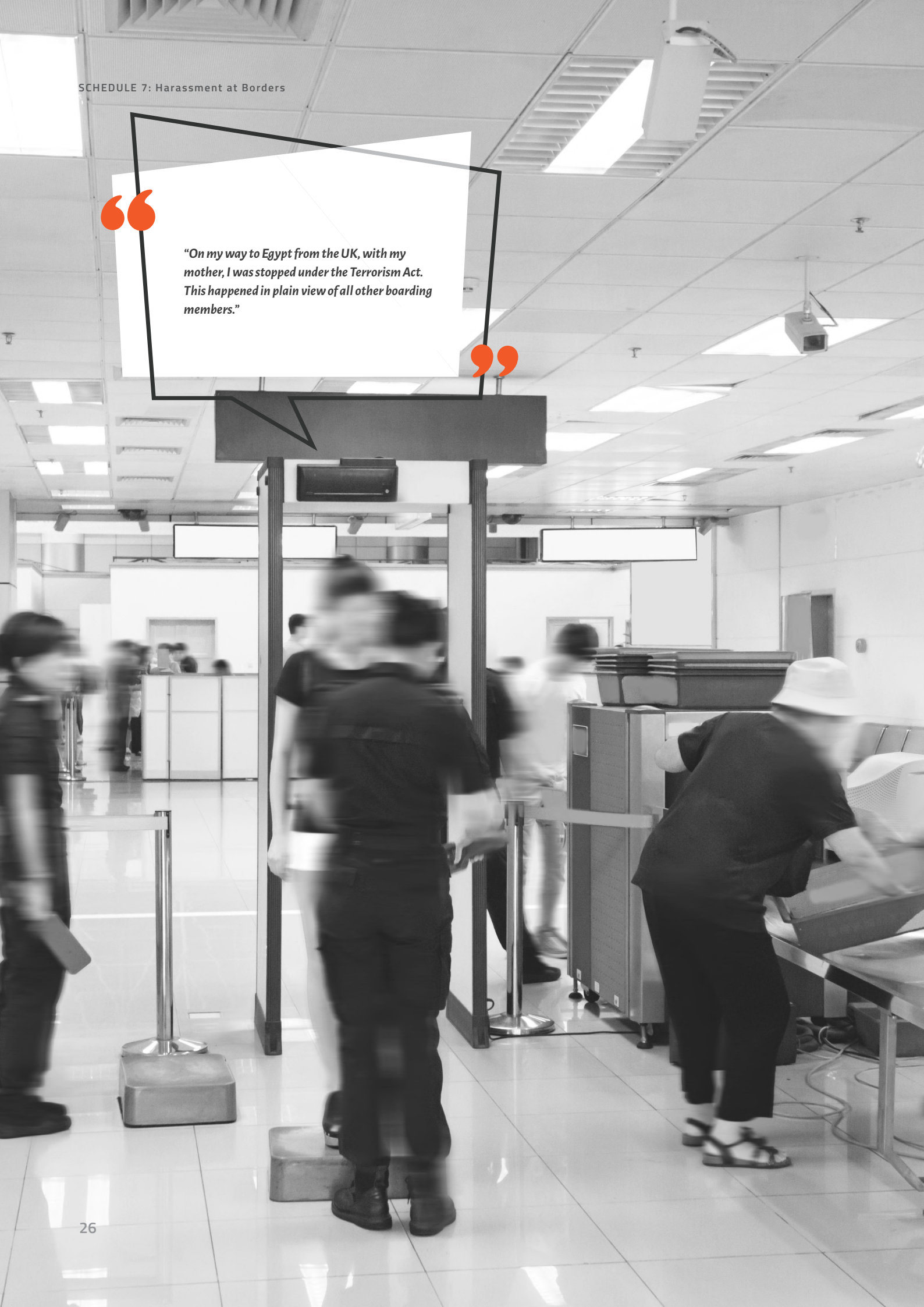
Parliament's response was to make minor amendments through the Anti-Social Behaviour, Crime and Policing Act in order to implement some exemption for privileged material – an exercise which Liberty have described as an attempt "to paper over the cracks" and merely "fiddling around the edges of this misguided and dangerous power"<sup>30</sup>.



“

*“On my way to Egypt from the UK, with my mother, I was stopped under the Terrorism Act. This happened in plain view of all other boarding members.”*

”



## THE MOTHER WHO WAS STOPPED ON HER WAY HOME FROM MAKKAH

» I kept saying please, I am worried about my son. She said: "He's old enough to tell your husband if he is worried." I kept thinking: "You don't have kids. You have no idea."

*They led me into a separate room. She asked me if I knew why I was being stopped and if I knew about Schedule 7. I said I've heard, but I don't know a lot.*

*She asked if I'd been stopped before, I said no. Never in my life. I said: "I haven't done anything wrong."*

*She was quite surprised, and so was her colleague. She said we are going to ask a few questions, and the interview is going to be recorded.*

*By this stage I was just so shocked. I was also feeling very ill. I didn't eat or sleep on the plane, as I get sick on the plane, and I only eat when I land.*

*I asked how long it was going to take. She said up to six hours.*

*I was just so shocked.*

### They took my phone and my pin

*She asked me if someone is coming to pick us up, and if there was anyone that needed to be informed that I was being questioned.*

*I said, "My husband." She said, "I can call him."*

*I thought this was so strange, because he was just a couple of rooms away, outside. Anyway, I told them to call him now as I was worried about him and my son. So they called him.*

*She asked if I had a phone, and I said yes, and she said they had to check it. And another lady came in and asked for my pin. And I said: "Why do you need the pin?"*

*I said, "I can put the pin in for you." She said, no, no — we need the pin.*

*And she said, "If we ask you for something you need to give it to us."*

*She gave me a leaflet and it made it clear.*

*I said: "I don't really understand all this on this leaflet." So, she offered me a solicitor.*

*I accepted the offer as I didn't know my rights or what they were entitled to ask for from me.*



## They took my DNA and fingerprints and searched my luggage

*They called someone, and after the call, the woman said: "They are pressurising me for your phone."*

*This man came in and he took my phone and then he asked for my number, which I didn't know because it was a new contract, and then he took my phone and he looked for it and found it. They asked if I have any other devices.*

*Another man came in and asked for my key to my luggage.*

*This really wasn't nice. We have nothing to hide, but this is not nice, having your luggage searched. They took my husband and son to another room to check my luggage. I gave them the key and the code for the suitcases. I was so ill, I just wanted to be over with it.*

*Then she said, we need to take your DNA and fingerprints.*

*And she was very clever. She said: "Let's do this quickly while we wait for the solicitor to call back."*

*I really felt like a criminal then. I have never even gone through a red light, never done anything wrong. I really didn't understand.*

*But at the time, I just wanted to go home. I let them do what they had to do.*

*She took the swab from the mouth, and my fingerprints. I was so dehydrated and ill that my fingerprints didn't come out and we had to try several times.*

## They asked about my "political views"

*She asked what I thought about the Westminster attack. I said it was wrong, I didn't agree with killing innocent people.*

*But then she started pushing me, saying, but it was politically motivated—what do you think about that? I said, I didn't agree with killing innocent people.*

*She asked about the war in Syria, Yemen—I said, oh, there is war everywhere, it's going on all over the place.*

*I was so tired after all this. That night I couldn't sleep, and I was so unwell.*

*I did keep telling them I wasn't well.*

*The whole time, between the interview, there was this lady who kept coming in and saying to me that she was there for my welfare.*

*But when I said I was sick, and asked for painkillers, she said, we can't give them to you—you can take the painkillers if you have them on you, but if you don't have them, we can't physically give them to you.*

*I didn't have them, my husband had them—and I tried to ask her to go get them from him, but she wouldn't do that either.*

*This woman also said: "I can see you have complied with the laws, and so you won't get arrested."*

*This is a person who is supposed to be looking after my welfare.*

*I was so worried about my son, and I kept saying please, I am worried about my son.*

*She said: "He's old enough to tell your husband if he is worried." I kept thinking: "You don't have kids. You have no idea."*

## This has an undetermined affect on children

*I landed at 3.30 and I was with them for about four hours.*

*When they let me go, I was starving and we went and bought a sandwich and tea and I took some painkillers.*

*They searched my husband's hand luggage and my son's hand luggage. I thought that was wrong, as I was the one who was detained.*

*My son was so upset when I came out, he said: "Why did you take so long? What's wrong?"*

*I just put on a bright face and said: "They have to ask me questions to check if I have done anything bad but I haven't so it's fine." I tried to smooth it over.*

*But the next day, on Monday he was awake early. I asked him why. He said he was thinking about why I got stopped.*

*You don't know how this affects children. My son is very quiet and shy and I think he thinks about things more than others.*

### 3.1.2 Rule of Law:

The rule of law is core among Theresa May's ever-emphasised 'British values' – this is, after all, the country of Magna Carta. Its essence is that all are subject to the law, including, and arguably especially, the state itself – "Government should be under the law, not just ordinary citizens".<sup>31</sup>

Laws like Schedule 7 undermine this precisely because they allow the state to derogate from respecting the rights and principles that legal order demands for citizens. Such fundamental procedural justice requirements as the right to remain silent, the right to legal representation, and protection against self-incrimination are side-lined under Schedule 7.

In the *Beghal v DPP* case, the state's response to the obvious challenge to the right to a fair trial posed by the compulsion to answer all questions under a Schedule 7 stop, was to suggest that "the risk of prosecution based upon answers to Schedule 7 questioning is not a real and appreciable one". This was, notably, because answers "obtained under the compulsory powers" of Schedule 7 would almost certainly "be excluded" as a breach of a right to fair trial, and moreover that "there is no known case in which such answers have been adduced in a prosecution".<sup>32</sup>

Taking this statement at face value, it raises questions about the utility of this measure. However, as Lord Kerr highlighted in his dissent in the same case, a number of objections can be raised. These include that the Director of Public Prosecutions had refused when asked, to give an undertaking that answers from Schedule 7 stops "would never form part of a prosecution case".

However, the new CTBS Act allows evidence to be adduced from a Schedule 7 stop to prove inconsistencies in testimony given in court. Without any notice of the potential for self incrimination, and without the right to remain silent, an individual's statements during a Schedule 7 and Schedule 3 stop can now be used as evidence against them.

Therefore it remains "by no means clear that evidence of those answers will automatically be excluded if there is other evidence which directly implicates the person"<sup>33</sup>. Thus, there is "a real and appreciable risk of prosecution if the answers to the questions posed prove to be self-incriminating"<sup>34</sup>.

In the same case, Lord Kerr also highlighted the considerable difficulties of oversight of the exercise of Schedule 7 powers in terms of judicial review, stating that "[a]t present, the only averment required of an officer whose use of the powers is challenged is that they were exercised for the statutory purpose" – the vaguely expressed imperative of determining whether someone is 'concerned' with terrorism.<sup>35</sup> He stresses the problem that "[o]n the current state of the law that unvarnished statement will be sufficient to insulate the exercise of the powers from further investigation or challenge" therefore undermining the viability of oversight, and therefore of accountability<sup>36</sup>.

As a society, of course, we acknowledge the necessity of interferences with people's rights in certain circumstances, such as where, in accordance with the law, they are suspected, or have been convicted of an offence. However, Schedule 7 contains no such requirement for suspicion – let alone the usual legal standard of reasonable suspicion.

In his most recent Annual Report on the operation of the Terrorism Acts in 2017, Max Hill QC echoed not only his own previous statements, but also those of his predecessor, in arguing that ideally there ought to be suspicion threshold for the use of Schedule 7, but that at a minimum, there ought to be a universal threshold of reasonable grounds to support the exercise of Schedule 7 powers<sup>37</sup>.

Multiple testimonies taken by CAGE highlight that when individuals are detained they are in fact repeatedly informed that they are under no suspicion. Indeed, in one case, an individual who was stopped even reported that an examining officer ‘menacingly’ said to him “that if he thought that I was involved in terrorism then “we’d be having a very different kind of conversation elsewhere”<sup>38</sup>.

In this light, the infringements of the rights above, and the lack of protection for those under examination, become even more problematic. Not least because it leads to the almost farcical realisation that someone who walks up to a police officer in a London street and confesses to murder has more procedural protections – more rights – than a British citizen returning from a holiday, with no suspicion upon him/her of having committed any offence.

That it remains law, is deeply troubling. It appears that the EHRC, which is primarily responsible for monitoring discrimination on the part of the British government, have failed in their duty to raise the alarm on possible breaches of discrimination law that are clearly at play here.

## THE MUSLIM REVERT WHO WANTED TO STAY WITH HIS CHILDREN

» 'I said "I'm with my kids". The officer said: "We will take your kids away"'

*I am 37 years old, and I live in London. I became a Muslim in 2001. I got married 2004/5 and I have six children, two with my previous wife and four with my current wife. When I was stopped I was with three of my children.*

*This stop in particular was because of what happened last year the same time at the same terminal. I was stopped by an officer last year and knowing what was going on, I quite blankly rebuffed his requests.*

*He was adamant that I had to come into the back to speak to him and I refused. I said I could answer questions at the desk. It caused a bit of a commotion, but in the end they questioned me at the desk.*

*This time, I saw the counter-terrorism officer at the desk, and I knew they wanted to stop me because of what had happened last time. So when I was questioned by the immigration officer, and asked to go to the back, I refused because I didn't want to be separated from my children.*

*I said 'I'm with my kids'. The officer said: "We will take your kids away".*

*When he said that, I fixed my rucksack firmly on my back, with both straps. I put it on tightly, as if I was preparing for something. This was an instinctive reaction. The officers saw this, and suddenly about six or eight of them jumped on me and physically dragged me off.*

*Someone was holding my head down so I couldn't see my children. I was shouting. I was telling people there to record what was going on.*

*I couldn't see my kids. I was trying to speak to them, and I told my children to go ahead, to just go through. I thought they would be fine as their mom was just waiting for them on the other side.*

*My kids were just left standing there. They must have been terrified; one of them was just three years old.*

### I was taken to the back office and detained

*My concern at this stage was just my kids and what was happening to them. I assumed the kids would be okay if they just went through. But I was made aware that this is not exactly what happened.*

*They didn't know what to do about the children. It was only when the border control officer stepped in, that they decided to do something with the children. My wife didn't really know where they were.*

*I don't know where they were taken. For about 30 minutes they were without their parents, and they didn't know what was going to happen to them.*

Of course my wife was very, very anxious, not seeing me or her children come through.

When they detained me, they read me the Schedule 7 law. I said to them: 'I am not going to talk to you, you're taking my children away from me'.

Imagine someone separates you from your children and then they start asking you all these silly questions, while all the time you're just thinking about what is happening to your children?

They charged me with obstructing the Schedule 7 law. I was arrested and taken to the police station. My wife had to leave the airport without me, but she had the children with her. I was held at police station for 22 hours.

During that time I saying to myself, these people are pathetic, really, that this whole thing was completely unnecessary. I mean, I have done nothing.

But this law is something that they have been pursuing for years, and after being stopped as many times as I have, you get to a zero-tolerance stage.

### **If you stop someone multiple times, you're going to gather what you can gather**

They are really wasting taxpayers' money more than anything else. But for them, it's a success because they are getting convictions. They're pushing the numbers up.

You can never tell the long-term effects of these things on children. There is a lot of stress, and you really just can't tell how this is going to play out later on in their lives.

As for me, I am not going to let this stop me. After the trial, and the court decision, I am still travelling. In fact, I am going this Friday.

I think British counter-terrorism policy it's not justly implemented. People who have done nothing wrong, that police just might not like the look of, or have a grudge against for some reason, are being targeted disproportionately. If you stop someone multiple times, you're going to gather what you can gather.

If the stops were justified, then something would come of them. But nothing comes of this. It's just like they've set out and they are trying to give me a heart attack.

It's important for Muslims to understand that this is going on. I hope for all of us to agree on this matter and help each other, in the masjid, and in the community.

### 3.2 Lack of transparency

Another of the most troubling aspects of Schedule 7 has been the lack of transparency surrounding its use. From the inception of Schedule 7, there has been a lack of openness around the law and its application. The very fact that the Home Office did not release statistics on its use for the first 8 years of its operation stands testament to this.

This has only been further and subsequently reinforced by the failure of the state to publish a breakdown of the ethnicity of those stopped under Schedule 7 – which only happened in 2011 after a freedom of information request by the Federation of Student Islamic Societies (FOSIS) – 11 years after the power first came into operation. Prior to this, previous freedom of information requests were refused because police “claimed releasing an ethnic breakdown of figures [...] could damage national security”<sup>39</sup>.

How this would be possible is deeply questionable. The very fact that the government acquiesced eventually and has since routinely published these statistics suggests the initial claim may have been false.

However, the state still refuses freedom of information requests asking for the breakdown of those stopped by religion, claiming that this information is not collected. The experience of many of those stopped under Schedule 7 belies this statement – with multiple individuals attesting to having been asked their religion, and details of their practice of it, and having had their answers recorded. Indeed, proof that religion is a required field on Schedule 7 stop forms can be found in Figure 2 – a form from CAGE International Director Muhammad Rabbani’s recent case.

A cynic might suggest that the government’s tight-lipped attitude in this regard is to avoid the potentially embarrassing fallout of statistics which prove to have been skewed. Indeed, a study conducted by a team of students at Cambridge University – named Operation Insight – found that 88% of its sample of those stopped under Schedule 7 at a particular airport, were Muslim<sup>40</sup>. If national statistics proved similar to this, the charges of religious profiling levelled against Schedule 7 would be even more difficult to assuage than the accusations of racial profiling.

Furthermore, even the statistics for Schedule 7 as published since 2009 arguably leave considerable gaps. The fact, for example, that the numbers of those stopped under Schedule 7 includes only those who reach the examination or detention phases, and yet it fails to include those who are subjected to the initial ‘screening’ process, could be a significant omission with potentially thousands more people hiding behind the statistics.

Proponents of intrusive state powers such as Schedule 7 often ask the question of why those who object to it are concerned, if they have nothing to hide. But surely the same question could then be begged of the state itself. If the powers under Schedule 7 are being used in a non-discriminatory and effective manner, then surely the publication of the data proving this would not be a problem – in fact, it would even be desirable.

That this information is not being revealed in itself speaks volumes – not only about the problematic nature of Schedule 7, but also about the problematic manner in which our government views its relationship to us, its citizens. This is because without transparency, we cannot have true accountability.



Figure 2: Scan from disclosures in the legal case The Queen v Muhammad Rabbani, 2017

**Details of Examinee**

Surname: Rabbani Maiden Name / Alias / Other: \_\_\_\_\_

First Name(s): Mohammad Abdul

Date and Place of Birth: [REDACTED]

Nationality: \_\_\_\_\_ Dual Nationality: \_\_\_\_\_

First Language: \_\_\_\_\_ Self Defined Ethnicity: \_\_\_\_\_

Marital Status: \_\_\_\_\_ Occupation: \_\_\_\_\_ Religion: \_\_\_\_\_

Passport No.: \_\_\_\_\_ Additional Passport No/Travel Document: \_\_\_\_\_

Driving Licence: \_\_\_\_\_ Seaman's Book No.: \_\_\_\_\_

UK or Home Address: \_\_\_\_\_

Other Addresses: \_\_\_\_\_

Tel. No.(s): \_\_\_\_\_

Email Address(es): \_\_\_\_\_

Social Media Details: \_\_\_\_\_

\_\_\_\_\_

Bank Details: \_\_\_\_\_

\_\_\_\_\_

**Travel Details**

Travelling from/to/via: Doha to LHR

Flight/Train/Shipping Ref: Qatar from Doha

Date/Time of Arrival/Departure: 20/11/2016 20630

Travelling with (if subject to examination, indicate ref, no.s): Alone

\_\_\_\_\_

\_\_\_\_\_

### 3.3 Lack of transparency

The potential for the abuse of the Schedule 7 law was perhaps most clearly reiterated by the recent ECHR judgement in the case of *Sylvie Beghal*, where the court concluded:

*“that when the applicant was stopped at East Midlands airport in January 2011, the power to examine persons under Schedule 7 of TACT was neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse. While it does not consider the absence of any requirement of “reasonable suspicion” alone to have been fatal to the lawfulness of the regime, when considered together with the fact that the examination could continue for up to nine hours, during which time the person would be compelled to answer questions without any right to have a lawyer present, and the possibility of judicially reviewing the exercise of the power would be limited, the Court finds that the Schedule 7 powers were not “in accordance with the law”. It follows that there has been a violation of Article 8 of the Convention.”<sup>41</sup>*

Closer to home, UK-based human rights lawyer Gareth Peirce has said: “Schedule 7 is an enormous blunderbuss that is overused and the consequences of its overuse is that it is abusive”<sup>42</sup>.

Indeed, the evidence of this abuse has been widely documented both by CAGE and other organisations concerned with such violations.

Along with the removal of the right to remain silent under Schedule 7, provisions under section 16 of the new CTBS Act hold the door open for the possibility of self-incrimination.

That is to say, during prosecution for a crime, answers that individuals stopped under Schedule 7/3 have been forced to give can be used as evidence against statements made in court to prove an inconsistency.

#### 3.3.1 Racial and Religious Profiling:

Suspicion that Schedule 7 has been used in a racially, and religiously discriminatory manner has persisted since its inception. With any power that lacks such a basic requirement as a need for the wielder to justify why they have chosen to exercise it, the selection of targets is inevitably based – at least in part – in the absence of intelligence or information, on the prejudices of the wielder of that power – and the societal and contextual stereotypes that feed them.

Schedule 7 is not unique in this respect. The now-repealed suspicion-less stop and search powers under Section 44 to the Terrorism Act were infamous for their blatantly discriminatory use almost exclusively against young black men. Hence, where black faces are the ones a racist society teaches us to criminalise, they are the victims of stop and search; where black and brown (bearded) faces are the ones that the newspapers decry as terrorists, and Muslims are the suspect community, it is they that are the victims of Schedule 7.

The potential for this abuse is astonishing when considering the Code of Practice for Schedule 7. It states that ethnic origin or religion cannot be the sole reason for a stop, but leaves entirely open the possibility that it can be “at least one of the reasons for exercising the power”<sup>43</sup>. That race or religion is not the sole reason for a stop does not mean the decision ceases to be discriminatory.

According to the Lord Nicholls in *Nagarajan v London Regional Transport* “[d]iscrimination may be on racial grounds even though it is not the sole ground for the decision”<sup>44</sup>.

Furthermore, in *Beghal vs DPP* the troubling fact emerged that “there is clearly no obvious means of policing the requirement that persons should not be stopped and questioned just because of their ethnic background or religion”, and therefore the possibility of proving that the Schedule 7 power was exercised improperly, or in a discriminatory manner is very low. This ultimately undermines the chance of scrutiny on examining officers, and also weakens the chances that potentially wronged members of the public may access justice<sup>45</sup>.

“

*“It was a quick chat for about 10 minutes but regardless we noticed how they let the Caucasian travellers go right past us, but they stopped me and my brothers because of our Asian descent, and my older brother and I had beards. They asked us silly questions and made stupid remarks [...] We felt really uncomfortable.”*

”

The publication by the government of the ethnic breakdown statistics in 2011 only seemed to reinforce claims of discrimination, with 78% of those being detained under Schedule 7 coming from ethnic minorities in 2016 (in context, ethnic minorities make up a mere 14% of the British population).<sup>46</sup>

The journalist Owen Jones called out Schedule 7, saying it “reeks of racism”, adding that “the disproportionate targeting of minority Britons is a form of state-sanctioned harassment that should concern us all.”<sup>47</sup>

In the survey carried out by CAGE, out of 201 people stopped, all but one were Muslim. As CAGE highlighted when these statistics were first published: “[T]his extreme disparity suggests racial profiling is systemic” under Schedule 7.<sup>48</sup> CAGE has not been alone in this observation which has been shared by a number of organisations including StopWatch,<sup>49</sup> and MEND.<sup>50</sup>

Rather shockingly, the former independent reviewer for terrorism legislation, David Anderson QC, attempted to justify this in his 2016 report by stating that “[s]ince 53-55% of those arrested, charged and convicted of terrorism-related offences in Great Britain in 2015 were of Asian appearance”. He went on to say that it is “unfortunate but not surprising that persons of Asian appearance made up [so high a proportion of those stopped under Schedule 7]”.<sup>51</sup>

This circular reasoning – ethnic minorities are stopped because most of those arrested are ethnic minorities – does not justify discrimination.

As Lord Kerr stresses in *Beghal v DPP*: “[I]n so far as the perceived religious belief or ethnic origin of an individual [...] is the basis on which he or she is made subject to Schedule 7 powers, this constitutes direct discrimination”, and moreover, “is entirely at odds with the notion of an enlightened, pluralistic society all of whose members are treated equally”.<sup>52</sup>

*"I was humiliated. I was 7 months pregnant and travelling with a two-year-old - the only visible Muslim on the flight..."*

*"This has made me feel alienated from British society, like I don't belong and they are suspicious and paranoid about every Muslim who travels [...] It was a horrible experience which I'm still not over. I am also terrified of flying again."*

>> "They admitted it's because I'm a white Muslim and they wanted to make sure I have no extreme views."

*"It was unnecessary, I felt it was racist as I was picked out based on the way I was dressed. No other person was asked to wait or double checked."*

*"I felt abused, singled out, treated differently for no reason. It was a clear abuse of power by the authorities as no non-Muslim / white [person] was stopped."*

*"It was quite embarrassing as people were watching. Everyone on the plane was so lovely to us and I feel as though them watching us being stopped by police and Mi5 changed their opinions of us. We had a great holiday and I feel as though being stopped just ruined our happiness on our return."*

The failure of the government to publish statistics on the religious affiliation of those stopped under Schedule 7 has not stifled the consistent accusation that it is being used predominantly, and deliberately against the Muslim community.

A number of studies support this charge – including the aforementioned Operation Insight, as well as a focus group run by the Equality and Human Rights Commission which found marked differences in the experience of Muslims and non-Muslim participants in terms of Schedule 7 stops – with the latter recalling none, and the former noting a “widespread negative impact”<sup>53</sup>. Likewise, Choudhury and Fenwick (2011), noted in their study that the “perception that Schedule 7 stops are based on religious profiling was reinforced by the questions posed to passengers”<sup>54</sup>, who – as CAGE can attest – report having been interrogated on their “religiosity” as specifically pertaining to Islam, their connection to Muslims, and their religious practices and beliefs, among other things.

## THE FILM MAKER WORKING FOR AID AGENCIES

» It was like a progression, to establish my religiosity. And the whole thing is done in such a way as to make you feel that you are doing something wrong for simply practising Islam.

*I was only stopped once. I am a filmmaker and I do a lot of work for aid organisations. I have been to Syria before, with the Unity Convoy, but while others were stopped arriving in Turkey, I wasn't stopped.*

*But in 2017, I was travelling to Amsterdam to do some work. It was a group of us and we were stopped at Dover and separated.*

*I had two different police officers coming back and forth asking me questions. During this I had a DNA sample taken from my mouth.*

*The questions were centred on my religiosity, my belief.*

*They asked me: "So you're Muslim. Do you pray?"*

*I said: "Yes I do."*

*"Do you pray regularly?"*

*"Yes I do."*

*"Do you fast?"*

*I said I did.*

*They said: "Would you consider yourself a good Muslim?"*

*I said: "I try my best. I always try to do better."*

*They asked: "Have you been on hajj and umrah?"*

*I said, no but I hoped Allah that would one day allow me to go.*

*It was like a progression, to establish my religiosity. And the whole thing is done in such a way as to make you feel that you are doing something wrong for simply practising Islam.*

### I could tell exactly what they were trying to get me to say

*They did the 'good cop', 'bad cop' thing. The 'bad cop' was questioning me, and the other one, he kept coming in and asking me if I was okay. This was to lead me into trusting them.*


*Then the next thing another guy came in, and he asked me: "Do you believe Islam is the truth?"*

*And I said, "Yes, I do."*

*"Do you believe Islam should rule the world?"*

*I said: "Yes, that is a promise from Allah."*





*Then I could see he was trying to ask another question but he wasn't sure how to put it, and I just said, you know, just ask me straight. I said: "I know what you are you trying to ask me. You want to ask me if I would do violence to achieve that. I would say no, Islam is an intellectual religion, and it has won hearts and minds and it will continue to do so, so there is no need for violence really."*

*I said: "Whether we like it or not, Islam will be established."*

*He went off after that.*

### **Then he tried to bait me with the whole Sunni-Shia thing**

*They already knew I had been to Syria and done some aid work. They had stopped my boss and his son as part of the Unity convoy. They tried to question me on that.*

*Anyway, the guy came back and he really shot himself in the foot.*

*He said: "so you're into photography and I am into writing books, and I have just written one about the Sunni-Shia divide and how it emerged in the history of Islam."*

*I just looked at him, like I knew exactly what he was doing. I could see through it totally. I think just the look on my face—he just saw that, and he knew he'd lost.*

*I then spent the next two hours telling him all about how I used to be non-Muslim, and how we used to hate the police, and I was giving him suggestions on how the police should be, not so arrogant and I was just going on and on and on, and he had to humour me and listen to me.*

*In the end he left and a little while later they came back and let me go.*

*I was detained for about six hours in all. I just felt like they were putting their feelers out.*

### **They had put some strange folder on my phone**

*Luckily, I had reset my phone. Anyway, when I got my phone back, I could see they had done something to it, since there was an extra folder on it.*

*When I accessed different parts of my phone this strange folder came up. I realised after a while that the battery was just heating up and getting totally drained, and this was totally abnormal.*

*There was nothing I could do to get rid of this folder. Even restoring the phone to the factory settings and everything. I look after my technical devices and I know how they work.*

*Anyway, so I got rid of the phone shortly afterwards and I got a new one.*



### 3.3.2 Criminalisation of activists:

Equally troubling is the abuse of Schedule 7 as an intimidatory and intelligence gathering tactic against activists. This fits within a wider trend of the improper use of counter-terrorism legislation.

In the context of a state which has legislated routine collection and retention of all of its citizens' internet records,<sup>55</sup> which feels the need to turn its teachers and doctors into regulators of the public's political and religious views, and which counts animal rights and anti-fracking campaigners as potential 'domestic extremists',<sup>56</sup> perhaps it is not surprising that the state should then choose to abuse legislation supposedly intended to protect us from terrorist attacks, to interrogate and intimidate those who now fall within the ever-widening definition of what the government considers to be a 'threat'.

CAGE has collected testimony from numerous activists and aid-workers who have found themselves subjected to the intrusive indignities of Schedule 7 stops - often repeatedly. In the CAGE Schedule 7 survey, of 201 respondents, 110 reported that they had been stopped more than once with several saying that they had lost count.

This phenomenon is not limited to Muslim activists. In an article in *The Guardian* in 2017, Owen Jones discussed his twin sister - an activist and protestor - being detained, interrogated, and having her DNA sample and fingerprints taken under Schedule 7 of the Terrorism Act, but also highlights other cases, including that of a climate change campaigner in 2009, a group of anarchists in 2012, and a peace campaigner who was interrogated on his involvement in anti-nuclear campaigns.<sup>57</sup>

Corporate Watch have also highlighted Schedule 7's troubling stipulation that an individual does not have a right to remain silent, and labelled it a 'snooping device' - something they say is "almost admitted through questions such as "we don't get a chance to talk to you very often"" which betrays the real purpose of these stops.<sup>58</sup>

This is not to prevent terrorism, but to "gather information for their databases" which they may be unable to do even if they had cause to arrest these people due to their procedural rights.<sup>59</sup> The information gathered, however, has little to do with terrorism, and more to do with the organisational structure, membership, and funding of campaign groups such as Corporate Watch and the International Solidarity Movement.<sup>60</sup>

As the Network for Police Monitoring highlights, the use of these powers in such a manner is not only 'hugely intimidating', but also 'potentially unlawful' as theoretically Schedule 7 powers ought to be limited to the purpose of the prevention of terrorism.<sup>61</sup>

A member of Corporate Watch, after being subjected to a Schedule 7 stop, summarised the point thus: "The questions being asked of us about our work have serious ramifications for freedom of speech and freedom of the press. The implication is that our work exposing corporate power can in some way be linked to terrorism."

Max Hill acknowledged the concerns around activists being stopped in his report, stating: "Concerns were voiced as to the need for specific safeguards from Schedule 7 powers required for journalists and NGO workers in light of the confidential information they may carry"<sup>62</sup>. He did not however interrogate the broader implications of this trend and what it might mean for society.



Behind every Schedule 7 stop of an activist is the implicit assumption that their activism is somehow a 'threat', somehow linked to terrorism - somehow wrong. Even in cases of individuals not associated with activism, the intrusive line of questioning about political views has been criticised for its impact in encouraging 'political apathy and disenfranchisement' among especially young Muslims being targeted<sup>63</sup>.

The question then becomes whether we consider this targeting of political activism, and the subsequent implications to be justifiable. If we do, it poses challenges. Not least the fundamental weakness, and authoritarian - almost Orwellian nature - of a society that criminalises conscience, and people that act on conscience, and that cannot accept or tolerate peaceful dissenters without criminalising them.

### 3.4 Inefficacy

Perhaps most troubling of all, however, is the simple fact that Schedule 7 does not appear to be working. Because of this, as well as due to the reasons listed above, it contributes to a toxic atmosphere, and sours relations between the government and the Muslim community.

#### 3.4.1 The Myth of Utility:

Of the 419,000 people stopped under Schedule 7 since 2009, only 300 of them have been convicted.

Despite numerous promises by various state sources including the former Independent Reviewer David Anderson QC of the invaluableness of Schedule 7, progression statistics from Schedule 7 stops are very difficult to find - another issue of lack of transparency.

It is worth stressing that utility - the fact that convictions have occurred and therefore the policy is justified - is not necessarily a measure of legality, as Lord Kerr stated in *Beghal*, "[t]he proportionality of a measure is not to be determined by its efficacy in fulfilling its objective".<sup>64</sup> Thus, even where there is overwhelming proof of the utility of Schedule 7 in protecting us, this would not legally justify its potential for abuse.

Hill in his January 2018 report also argues that the decrease in overall number of stops, and the increase in the proportion of resultant detentions indicates the "rising efficacy" of "better capture of passenger manifest data [...] and better use of targeting techniques".<sup>65</sup> This argument neither takes into account the consistently poor progression statistics associated with Schedule 7, nor the use of screening questions - the initial phase of a Schedule 7 stop which is not recorded.

The potential for screening questions to be abused is somewhat indirectly referred to where Hill states that "there may be merit in considering the extent and number of permissible screening questions where they do not lead to the use of Schedule 7 detention".<sup>66</sup>

As stated by Lord Kerr, it is also true that if a "measure is not effective to achieve its avowed aim, this is, of course, a reason to find it disproportionate".<sup>67</sup> There is certainly a case to be made that Schedule 7 is not in fact effective for purpose based on the statistics the Home Office has published which are summarised in Figures 3, 4 and 5.

Figure 3: Number of Schedule 7 Stops (Excluding Screenings)<sup>68</sup>

As the table demonstrates, not only are screenings excluded, but—as previously discussed—figures for the first 8 years of Schedule 7’s operation are also unavailable. As is evident, this power’s use is far from being on a small scale. In fact, it impacts tens of thousands of people every year.

Figure 4a: Progression Statistics for Schedule 7 Stops (Excluding Screenings)<sup>69</sup>

| Year             | 2002   | 2003   | 2004   | 2005   | 2006   | 2007   | 2008   | 2009   | 2010   | Total since 2010 |
|------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|------------------|
| <b>Charged</b>   | 0      | 3      | 1      | 1      | 6      | 3      | 3      | 2      | 8      | 81               |
| <b>Convicted</b> | 0      | 3      | 0      | 1      | 0      | 1      | 2      | 1      | 4      | 30               |
| <b>Innocent</b>  | UNAVBL | UNAVBL | UNAVBL | UNAVBL | UNAVBL | UNAVBL | UNAVBL | UNAVBL | 85,553 | 419,472          |

--> Continued

| Year             | 2011   | 2012   | 2013   | 2014   | 2015   | 2016   | 2017   | 2018   | 2019   | Total since Terrorism Act 2000 |
|------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------------------------------|
| <b>Charged</b>   | 19     | 12     | 10     | 6      | 8      | 7      | 5      | 2      | 4      | 100                            |
| <b>Convicted</b> | 3      | 1      | 4%     | 3      | 5      | 4      | 3      | 0      | 3      | 44                             |
| <b>Innocent</b>  | 65,681 | 63,901 | 57,617 | 44,115 | 31,764 | 26,163 | 18,106 | 15,391 | 11,151 | Up to 1 million                |

Figure 4b: 'Total number of stops, charged and convictions under Schedule 7 since 2010

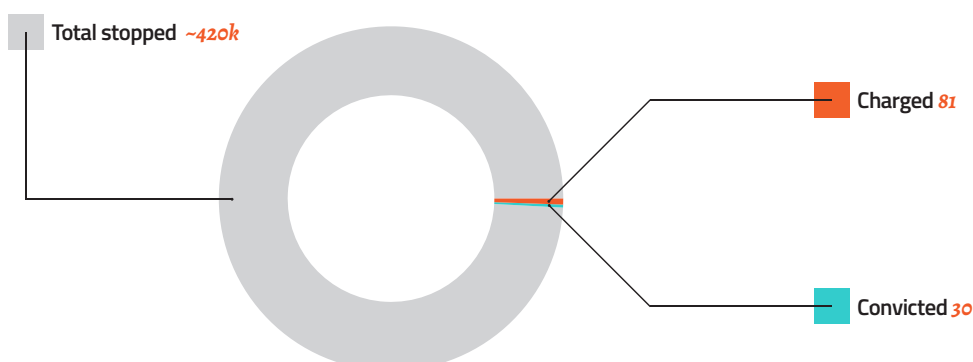


Figure 5: Progression Percentages for Schedule 7 Stops (Excluding Screenings)

| Year        | 2010    | 2011    | 2012    | 2013    | 2014    | 2015    | 2016    | 2017    | 2018     | 2019    | Total   |
|-------------|---------|---------|---------|---------|---------|---------|---------|---------|----------|---------|---------|
| % Charged   | 0.009%  | 0.029%  | 0.019%  | 0.017%  | 0.014%  | 0.025%  | 0.027%  | 0.028%  | 0.013%   | 0.036%  | 0.019%  |
| % Convicted | 0.005%  | 0.005%  | 0.002%  | 0.007%  | 0.007%  | 0.016%  | 0.015%  | 0.017%  | 0.000%   | 0.027%  | 0.007%  |
| % Innocent  | 99.995% | 99.995% | 99.998% | 99.993% | 99.993% | 99.984% | 99.985% | 99.983% | 100.000% | 99.973% | 99.993% |

Comparatively, the numbers of people charged, and then convicted of an offence under Schedule 7 is paltry. Despite stopping over 11,000 people in the year to March 2019, only three convictions were secured. As is illustrated in Figure 5 the conviction rate for Schedule 7 stops from 2010 to 2019 – the only years for which the necessary figures are available – is a mere 0.007%.

Put differently, this means that 99.993% of people examined under Schedule 7 (anywhere from 500,000 up to 1 million people have been stopped) were put through this inconvenient, intimidating and traumatic process needlessly; all of them subjected to humiliation, stress, and stripping of their civil liberties under a law which we are continually informed is keeping us safe from terrorists, but which managed only to secure 44 criminal convictions in its history, and 30 since 2010.

It is not clear, however, what these convictions were actually for – thanks to Rabbani's case, it is clear that these convictions can occur in the case of a failure to disclose passwords, even on the basis of client confidentiality, or a refusal to answer questions, both of which are acts that are far from planning acts of terrorism.

Despite this vagueness and apparent over reach the number of convictions is continually used by proponents of Schedule 7 to justify the continued use of the power.

In Hill's report, he mentions three Schedule 7 cases from 2016 - all of which ended in convictions but all were about failing to comply or obstructing a stop. The first two were fined and the last was sentenced to 7 days in prison. The terrorism charge carries with it a weight for life, having severe implications on a person's ability to secure housing, a job and even a spouse in some cases.

The crux of this issue lies in the language of the legislation itself. The very use of the phrase “concerned with” terrorism is problematic, since the word “concern” has two meanings. The first is to be anxious or worried about something. Given that most people tend to be worried about terrorism, for this to be the intended meaning would seem farcical. This would leave the second meaning of concern - to have an interest in something. An interest, however, is equally vague given that what constitutes “an interest” in terrorism for the purpose of Schedule 7 is not defined in the legislation.

It seems peculiar that the law should allow the violation of people's rights in such broad, imprecise circumstances – and not only this, but also facilitate invasive searching and questioning in order to ascertain if and where they fit within such undefined criteria.

To add to this, for many of these people, being stopped is likely to be a repeat occurrence. This is precisely due to the broad criteria. Since the vast majority who are stopped are innocent, this results in the mass gathering of information, and classification of individuals – in short, a surveillance state which intimidates and alienates its people.

As Professor Marc Sageman says in his book ‘Misunderstanding Terrorism’ when assessing the response to the threat posed by Muslims in the West more generally:

“If all the various police departments in the West collaborate and carry out a gigantic sweep by applying this profile to their respective Muslim populations in order to catch terrorists hiding in their respective societies, they would arrest all 22 terrorists that emerge in a given year. However, they would make a mistake 1 percent of the time for 25 million people, which comes to 250,000 people. Therefore, in order to catch all new 22 global neo-jihadi terrorists, they would put 250,000 Muslims in jail by mistake. This rate of error of 99.99 percent is simply not acceptable in a liberal democracy. The reason that the instrument or profile is so misleading despite the fact that it is near perfect is because there are so many more non-terrorists than terrorists.”<sup>70</sup>

Not only does this raise serious questions about the supposed proportionality of Schedule 7, but also about its utility. If the proof of this law's ability to protect us does not find purchase in official Home Office progression statistics – quite literally its ability to catch people – then where does it?

Even if Schedule 7 were effective, it would still need to be rightly used. Even Hill acknowledges this when he states that “selection for examination must not be arbitrary”<sup>71</sup>. Hill goes on to recommend that there should “at least” be an “adoption of a universal threshold, namely ‘reasonable grounds to support’ the exercise of Schedule 7 powers by the application of the criteria within the Code of Practice”<sup>72</sup>.

The fact remains that this broad, abusive power has not resulted in the foiling of political violence. Rather it has intimidated and alienated large numbers of people.

*"I felt I was stopped simply because I was a Muslim. This action is counter-productive and in my eyes actually creates terrorism and radicalises people."*

## THE SELF-EMPLOYED MUSLIM BUSINESSMAN

» The process is to intimidate you to get information out of you that will be useful to them, but I am not afraid at all. What they are trying to achieve doesn't work with me.

*I've been stopped more than seven times. Whenever I leave or enter the country I am stopped. It doesn't matter what my destination is. I am stopped because I have done some aid work in Syria and also because of my beard and my colour.*

*If you are a white man, you can go to Syria and do aid work but if you are brown man you are a terrorist.*

*They've taken my DNA three or four times and my fingerprints. They don't need do this all the time; they only need to do this once.*

*At the Heathrow stop the officers behave in a rather aggressive manner. I am a big guy and not easily intimidated and I know quite a lot.*

*The process is to intimidate you to get information out of you that will be useful to them. I am not afraid at all. I am happy to answer questions. What they are trying to achieve doesn't work with me.*

*Subhead: They want me to work with them; I told them - you should work for me*

*Once I went and dropped off my brother at the airport I had armed response units turn up and call me out and question me. It's been happening for years.*

*They want me to work with them. They asked me at Heathrow and Birmingham to work for them. But I am not interested in the offer. I have never worked for anyone.*

*The last time they offered, it was two young boys who spoke to me - I am fifty years old with a grey beard - and I just said to them, "Look you are my son's age, you can work for me, not the other way around."*

*We know what the agenda is and it's not going to stop. But it's ill-judged and ill-informed and it's going to end up in a lot of pain for Muslims.*


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*If you are a white man, you can go to Syria and do aid work but if you are brown man you are a terrorist.*

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*We know what the agenda is and it's not going to stop. But it's ill-judged and ill-informed and it's going to end up in a lot of pain for Muslims.*




### 3.4.2 The MI5 Connection:

David Anderson QC, in his report, also made much of the role of Schedule 7 as an intelligence gathering, and informant recruiting tool. As to the former of those two, we have already explored the nature of the intelligence being gathered and questioned how the line of questioning employed serves selected state-backed interests.

Testimonies collected by CAGE show that survivors of Schedule 7 stops are regularly approached to become informants. This 'disturbing practice' of targeting travellers at ports of entry and attempting to pressure them - often through financial incentives, and consistent MI5 harassment - to spy on their communities and colleagues is blatantly self-evident and yet utterly morally questionable<sup>73</sup>.

It is a shockingly prevalent issue. Of the cases of Schedule 7 stops reported to CAGE since September 2016, 15% involved MI5. Furthermore, in the more recent CAGE Schedule 7 survey, 43% reported an MI5 presence during their stops.



*"MI5 were present prior to my stop and MI6 stopped me in Turkey. It made me feel scared, overwhelmed and targeted. I was frightened as I felt they were trying to incriminate me."*

*"The officer also asked me if someone called me in the next few days would I be willing to give info on others. When he said that I felt scared. What if they went for my family?"*

Even if, however, Schedule 7 is effective for intelligence gathering and recruiting informants, beyond the moral objections, there is also a legal objection of irrelevance. The statutory purpose of a Schedule 7 stop is to determine if a person is or has been concerned in the commission, preparation or instigation of acts of terrorism. It is not to allow security services to bribe, or pressurise people in a vulnerable position into spying, nor is it there to essentially blackmail someone with arrest to force them to answer questions so you can gather intelligence on other people, or organisations. To use Schedule 7 for either of these purposes, therefore, is tantamount to the abuse of an already abusive law.

## THE AID WORKER WHO GOT STOPPED, THEN APPROACHED BY MI5

» When they gave my data back, every single Islamic nasheed and book I'd had on my phone was removed. Literally, all of it. Everything Islamic – gone..

*In 2017 I was stopped three times under Schedule 7 on different trips in the space of three months.*

*During the first stop, they started by asking me a lot of things about my personal life, where I studied, my school, my grades, really irrelevant questions. Then it started about how many times I'd gone abroad. They were very slow and subtle.*

*The second part of the interview, they asked for my laptop password and phone password, and my fingerprints and DNA. Then it was questions about my religious views, whether I prayed, and how often I prayed.*

*They then asked me political questions, about what I thought about Baghdadi, and Iraq and Afghanistan. They asked me about what I thought about Assad, and that was tricky as sometimes the West loves him and sometimes they don't.*

*Eventually after six hours, they let me go. They said I was no threat.*

### The stops progressed until they took my phone and removed data

*Literally three weeks later, they stopped me again. This time was more vigorous and horrible. For five hours they took fingerprints and DNA, and when I said I didn't want to give my fingerprints and DNA they said they would arrest me if I didn't comply. So essentially, I had no rights.*

*Then they asked for my phone and laptop password. I am a videographer, I make films and I have sensitive data but they took my passwords as I had no right to refuse.*

*They saw that I had Tor browser, and they asked me why I had that.*

*When they gave my data back, every single Islamic nasheed and book I'd had on my phone was removed. Literally, all of it. Everything Islamic – gone.*

*I was questioned by three officers, three facing me and they were taking every single piece of paper out of my wallet, my bank notes, my bank card numbers.*

*I said this has nothing to do with anything. They said "we have a right to do it."*

### They are largely clueless, but threatening

*I said, "Look officer, you already determined I am not a threat, a few weeks ago."*

*They said: "A lot can change in a few weeks."*

*But they were all clueless. Two of them left, and the other one was asked to carry on the interrogation. And he just repeated what they'd asked me before.*

*They don't know what they are doing.*

*But the Assad question threw me off, because this guy is a mass murderer right, he's killing people—and I wasn't sure what the position of the UK was. I just responded: "If he kills innocent people then he is evil just like any government or state that does, and I'm sure you'll agree".*

*They also said: "We've seen you praying on CCTV, so we know you are religious."*

*In Dover, in the detention cells, they actually have a sign for the Qibla on the wall. A lot of Muslims must be getting stopped there.*

### **Then Mi5 moved in on me**

*At the last stop, a few weeks later I was held for around 30 minutes then let go. Some months later I had another stop in which they claimed it was a Schedule 7 stop but it wasn't a Schedule 7 stop, it was Mi5.*

*I asked them if it was a Schedule 7 stop but they wouldn't confirm or deny it.*

*They just asked me the usual questions and told me we know you've been stopped. They asked me where I was going, where I was staying, who was picking me up, and they asked me to contact them if I knew of anyone travelling. It was clear what they were referring to.*

*They gave me a number to call them on.*

*Now, every single time I return from a trip where I have been stopped under Schedule 7 when I left the UK, I've been stopped by Mi5 when I get back. Literally the moment I step off the plane, the men in suits are at the bottom of the stairs, waiting for me.*

### 3.4.3 Negative Impact:

However, more than their lack of demonstrable efficacy, Schedule 7 powers, and their proven abuse, are undermining the confidence and relationship of the Muslim community with the state. By not only 'othering' and singling out Muslims as a suspect community through laws such as these, but also attempting to justify this discrimination, the state is reinforcing the narratives advocated by far-right organisations, but also much of the mainstream media, that Muslims do not belong in, and are not truly part of, British society.

This sense has been articulated by individuals who have spoken to CAGE about their experiences under Schedule 7. What pervades in these testimonies is the deep feeling of embarrassment associated with being singled out, and as well as the anxiety and fear caused by these stops.





Academic studies have echoed this. Furthermore, a MEND report stated that “[q]ualitative, quantitative and anecdotal evidence suggest that experience of [Schedule 7] powers has led to wide-spread perceptions among Muslims that they will be targeted for examination” and points to “reports of Muslims being harassed and intimidated” by the questioning which is “designed to ‘build a profile’ and ‘gather information’ on the Muslim community”.<sup>74</sup>

This report described Schedule 7 as “ineffective and counterproductive” as it leaves “the massive proportion of those that are innocent” but still subjected to questioning, “alienated, embarrassed and frustrated”, thereby feeding into the belief “that the war on terror is a war on Islam and Muslims”.<sup>75</sup>

Likewise, the Equality and Human Rights Commission argued that Schedule 7 stops “are having some of the most significant negative impacts across Muslim communities” by “silently eroding [their] trust and confidence in policing”.<sup>76</sup> They also highlighted the discrepancy between the experience of non-Muslim participants in their focus group - who “did not recall any experiences of Schedule 7 stops” - and those of their Muslim counterparts who perceived “a widespread negative impact on Muslim communities”.<sup>77</sup>

This negative impact has been further explored in a report about Muslim experiences at airports aptly named “I know who I am, but who do they think I am?”. This report explores the way in which the idea of Muslims being somehow not really part of British society “develops (in part at least) out of the interactions with (British) authorities” where they find their own “claims to inclusion” refused.<sup>78</sup>

This, then, is the crux of the issue. With the state arguing that a risk factor for radicalisation is a feeling of isolation from society, surely counter-terrorism legislation which engenders precisely this feeling - not just among those Muslims stopped and their families, but also among all other passengers who see them pulled aside and singled out for these examinations - is unmistakably counter-productive.

### 3.5 Legal challenges: European Court of Human Rights judgement

In February 2019, the European Court of Human rights returned a judgement on the Case of Beghal v. the United Kingdom<sup>79</sup> unanimously ruling that Schedule 7 powers breach human rights and lack adequate legal safeguards against abuse.

The ruling followed a case brought by Sylvie Beghal, a French national of Algerian descent, who was stopped after arriving with her children at East Midlands Airport on a flight from Paris in 2011.

That year Beghal was sentenced by Leicester Magistrates' Court for wilfully failing to comply with a duty under Schedule 7.

She appealed the decision with the High Court then the Supreme Court - both of which rejected her appeal, affirming the proportionality of the stop - before lodging an application with the ECHR under the Convention for the Protection of Human Rights and Fundamental Freedoms

The European Court found that the use of Schedule 7 powers in Beghal's case "were not in accordance with the law".

Additionally it found that as of the time it was exercised, Schedule 7 on the whole "was neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse", and with regards to existing oversight of the power - in the form of the Independent Reviewer of Terrorism Legislation - that it "does not consider that [this oversight] is capable of compensating for the otherwise insufficient safeguards applicable to the operation of the Schedule 7 regime."

As of writing the government has not taken any action with regards to the ruling, nor is it clear if any action is forthcoming.

Further avenues for legal challenges to Schedule 7 remain on the table - the ECHR ruling did not consider the power of detention under Schedule 7, which the Court admits "has the potential to result in a much more significant interference with a person's rights under the Convention".

## THE FATHER WHO QUOTED QURAN TO MI5

» "I told them about what Allah says in the Quran, that we are not allowed to spy on one another. They said they had a different interpretation of that verse. I said: "Well, you keep to your interpretation and I will keep to mine."

*My family is from near the Afghan-Pakistan border. I don't travel much, maybe every three or four years I go overseas, back to visit family.*

*I've been stopped under Schedule 7 four times. The first time, I was travelling with my mother and we were going to visit family. I got to the airport with my wife, and she told me that she had seen the police officer at the border security nod at somebody. I didn't really think anything of it.*

*I am Pashtun. I have long hair and a beard, and I wear traditional Afghani-Pakistani clothing. I always dress like this because I feel more comfortable in these clothes. Maybe this was why I got stopped the first time.*

*When I got to the desk, there were two officers, one a counter-terrorism officer and the other a police officer. They asked me to fill in a form, which I did, and then they asked me to go back to another room for an interview.*

*I was with my mother, who is in her late fifties and doesn't speak English. They took us both upstairs, and as we walked in, I saw there were four other officers, and my luggage was there, so I knew something was happening.*

*My mom was very anxious. I told her not to say anything and then I had to leave her alone. They took me into a separate room, away from her. As you can imagine, an elderly woman ... she was quite stressed.*

*Subhead: They interrogated me for 11 hours because of a lecture, a flag and binoculars*

*The officers asked me questions about my whole history, my schooling, my family, everything. They asked me for my phone. I gave it to them. They took it.*

*I had one audio clip on my phone, a talk by Anwar al Awlaki called 'The Hereafter'. I also had a picture of a black flag with the shahada on it. They said this proved that I was linked to a bomb plot, and that I supported terrorism.*

*They said I wasn't flying that day. I got really worried then. After that, they said I had to wait for Mi5. This was after three hours of questioning.*

*After this, I spent eight hours with Mi5. There were so many questions, then they took so many photos, about 30 from every angle, and they took fingerprints from every finger.*

*I had binoculars in my luggage and they took these and said this was proof that I was going to the Afghan-Pakistan border and I was going to look for British soldiers with these binoculars.*

*It was ridiculous. I had the binoculars because I come from an area full of mountains and they were just for sightseeing.*

*They questioned why I had every single item in my luggage, then after nine hours they released me.*

*They said that if I enter into Pakistan, the ISI would follow me and I would be under their surveillance and they could do whatever they wanted.*

*I said fine, but I asked them to repay me for my lost flight. They didn't.*

## **They held my elderly mother for nine hours**

*My mom didn't know what to do, she was so worried and distressed. But Alhumdullillah, they released her after nine hours.*

*The next day, I got another ticket for myself and my mom, and I told her that if anyone took me aside, she should just go on ahead. But that time I got through no problem.*

*It was on the way back into the UK that they stopped me the second time. An officer grabbed me by the arm and told me to come to another room at the back.*

*They took chemical swabs from my hands and put a map in front of me and asked me where I had gone to. I told them the truth: that I had just gone about visiting family.*

*After six hours of this, they let me go, but they said they would be in contact with me.*

*A couple of days later, they phoned me, and asked me to go to the airport and meet them. I said no. Then they phoned me again, and I said I would meet them but that it had to be somewhere public like Asda. They said no.*

## **The meeting with MI5 was like a bad Hollywood film**

*The next time they called, I agreed to meet them in the city centre. They were watching me as soon as they phoned me that day.*

*They gave me instructions, talking to me on the phone, saying turn right, down that street, into that sideroad and so on, as I walked.*

*Then I got to the hotel, and the Mi5 guy was there in a suit and sunglasses and he signalled to me to follow him.*

*At the table, the Mi5 offered money for transport, but I pushed it back on the table—I knew that once I accepted money from them, then I was under their control.*

*Then they started asking me questions. Again, it was all about who I knew in the UK, about my kids and family. I cooperated as I had nothing to hide.*

*Then they asked if I wanted to work with them, and I said no. Eventually, they let me go.*

## **At the second meeting with Mi5, they threatened to take my children**

*A little while later, they asked me to meet again. This time, they took a book out, and opened it. Inside there were a lot of pictures of people, and they asked me who I knew. I said, "I didn't come to do this".*

*They were more threatening. They said if I don't agree to work for them, then they would kick my door down and take my kids from me.*

*As soon as they said that, I stood up, grabbed my phone from them, and said to them: "This is the last you hear from me; if you want to speak to me again you can get in touch with my solicitor."*

*After that I didn't hear from them again.*

*But I heard from other people who have been stopped under Schedule 7, that they had been asked about me, about what I am up to and who I know.*

## Another stop and it felt like harassment

*The third time I was stopped, it was a couple of months ago, at the airport. I knew I was going to get stopped, so I travelled without a phone. I was with my brother and he had a phone. As we went to check in, I saw them, and I knew they were waiting for me.*

*I walked straight up to them. They said, that's very brave. They took me into one room and my brother into another room.*

*They asked me where I was going, how long I was going for, whether I had been stopped before. But they knew about all of this already.*

*Then they started to ask me what I thought about Syria, and about ISIS. I told them that they, the British, had created ISIS because ISIS rose out of the chaos of Britain's actions. I said: "You are just bombing Syria. You could take Saddam out, but why can't you take Assad out?"*

*I said: "You have to understand, we as Muslims are one ummah. Whenever one part of us feels pain, we all feel the pain."*

*After about an hour I said: "Am I going to fly?" They said, yes.*

*When it was time for my flight, the one officer asked if he could walk with me. I said if that makes you feel better, you can walk with me. And he walked with me the whole way onto the plane.*

## They said CAGE was a terrorist organisation

*The fourth time I was stopped, I was coming back again. I gave my brother the phone we had been using. It was Sam and we came through immigration, and we put our passports in the scanner. When he put his down, the doors opened. When I put mine down, the doors wouldn't open.*

*The immigration officer approached me, with three others. There were two Asian officers and two white officers. They took my passport and they said I had been detained under the Terrorism Act.*

*They told me they were going to be doing DNA tests and taking more photographs. I said fine, I have nothing to hide. I was more worried about my brother than anything.*

*There were the same questions, about my wife, my kids, what schools they were at. They asked me which school of thought I follow, where I pray, which mosque I attend, which charities I support.*

*Then I said to them that I knew about Schedule 7, because of CAGE. They said: "Do you know CAGE is a terrorist organisation?"*

*This was a Muslim officer who was saying this to me. I asked him for proof that CAGE was terrorist, and they said nothing. Then they asked me what I thought about Moazzam Begg.*

*I said: "He is a good brother and you tortured him."*

*I said: "You know all about this, but when the evidence comes out, you go all quiet."*

*I told them the truth. They didn't say anything. They are really just calling any Muslim organisation they don't like a terrorist organisation.*



## DNA swabs, fingerprints and lots of photographs

*They took me from this room, into another room, and all my luggage was there. They said they were going to search my luggage.*

*I said: "I will stay and you can open it in front of me, I'm not going elsewhere." I didn't trust them. It was mainly gifts and things for the family in my bags, but they went through it all.*

*After they took my DNA, they made me sign something. I did that. I was following what CAGE said I should do, which is to just comply. The first thing they did, they took a swab from my mouth and prints from my fingers. They took 18 photos taken of me, from every angle.*

*Then came the question: "Why don't you work for us?"*

*I said: "I have a job, and I don't want to work for you."*

*They said: "Why not?"*

*I said: "I'm not a snitch."*

*I told them about what Allah says in the Quran, that we are not allowed to spy on one another. They said they had a different interpretation of that verse.*

*I said: "Well, you keep to your interpretation and I will keep to mine."*

*Subhead: By this stage they were literally begging me to work for them*

*After the session, one of the officers walked with me. He was literally begging me to work for them. I don't know why they wanted me to work for them. It doesn't matter. I would never.*

*The way the officers treated me the first and second times, it was like I was a proper criminal. They were judge and jury and they had decided I was a criminal. The times after that, I was treated well.*

*But these guys haven't got a clue about Islam. They are following a textbook. Even the Muslim officers, I asked one of them: "Do you pray?" He hesitated and said: "Very rarely".*

*They have a questionnaire in front of them, a checklist, and if you meet this criteria you are like this, you are moderate, Wahhabi and so on. But generally, they don't have a clue.*

*After all this treatment, as a Muslim, I really don't want to live here anymore. I can live comfortably here, but I don't want to.*

*Ever since the first time I got stopped, I didn't want to come back. After that, I even slept in my clothes because I was scared my house was going to get raided. I have children and I am scared they are going to take my kids off me. I am so scared of that.*

*Schedule 7 is a law that is especially made, just for the Muslims. They know this is the truth.*



“

*“I don't even know if I will be able to travel again without being questioned again.”*

”

## 4

## SCHEDULE 7 COMPARED TO OTHER STOP AND SEARCH POWERS

### 4.1 Comparison with Stop and Search under the Terrorism Act

#### A note on the old law – Section 44:

Along with Schedule 7, the Terrorism Act 2000 also originally introduced troubling stop and search powers under Section 44 (already mentioned above). These powers to stop and search, which could be exercised by a police officer against any person or vehicle within a specified area, without any requirement for reasonable suspicion, were declared incompatible with the ECHR by the European Court of Human Rights in *Gillan and Quinton v United Kingdom*<sup>80</sup>. The Court held in that case that the broadness of the power under Section 44 had led to a failure to provide safeguards against abuse and therefore violated the Article 8 right to respect for private life.

The problems with Section 44 stop and search will be familiar to critics of Schedule 7. The lack of safeguards, the lack of requirement for suspicion, the blatant discrimination, and abuse against activists – all mirror the critiques which have been raised of Schedule 7<sup>81</sup>.

And yet, the courts, in *Beghal v DPP* attempted to argue that while Section 44 might have been declared incompatible with the ECHR, Schedule 7 was not – and lost that argument<sup>82</sup>.

It was argued firstly that Schedule 7 could be distinguished on the grounds of its geographical limitation to ports of entry and exit. However, as Liberty has highlighted, in spite of this seeming geographic limitation, Schedule 7 powers “allow for even greater intrusion than the now discredited section 44, while raising all of the same concerns”<sup>83</sup>.

Moreover, as Lord Kerr highlighted in his dissent in the same case, there is a fundamental misunderstanding of the restriction to ports, given that all of the “approximately 245m passenger movements through the ports of the UK [figures from 2013]” were “potentially subject” to Schedule 7, making its reach at least as great as section 44, thereby negating the idea that geography is actually a practical limitation<sup>84</sup>.

It was also argued that the demands of a potential Schedule 7 stop fall within what can be reasonably be expected by those passing through UK borders. This argument, too, was dealt with by Lord Kerr who stressed that the nature of the questioning under Schedule 7, and the threat of criminal sanction upon failure to answer, distinguished the general area of “border controls such as the requirement to provide proof of identity and entitlement to enter”.<sup>85</sup> Moreover, he stressed that even if “people in this country are accustomed to intrusion when they move through ports of entry or exit”, this does not automatically mean that there is nothing legally objectionable about Schedule 7.<sup>86</sup>

Furthermore, Choudhuy and Fenwick (2013), in their report for the Equality and Human Rights Commission, stress that the interviews they conducted show that the experience of being stopped at an airport is “often more stressful than a stop in the street” for those involved because of the “general stress of travelling”, “concerns about missing flights”, and having families waiting for them.<sup>87</sup>

Thus, the argument attempting to distinguish Schedule 7 from the now-discredited old stop and search law does not hold water.

## The Current Law – Section 43 and Section 47A

After the case of *Gillan and Quinton v United Kingdom*,<sup>88</sup> while Section 44 was struck down, a stop and search law remained in force under Section 43 of the Terrorism Act 2000. This provision is more limited than Section 44 in the powers it bestows because it has the requirement of reasonable suspicion, which the Code of Practice stresses “should normally be linked to credible information and current intelligence”.<sup>89</sup>

Section 47A of the Terrorism Act 2000 also provides for stop and search. While similar to Section 44 in that it permits stop and search without reasonable suspicion within an authorised area, it is more limited in that there are tighter restrictions around authorisation, for example limiting it to a maximum period of 14 days.

Below (Figure 6) is a table showing the comparison between Schedule 7 and stop and search under Section 43 and Section 47A.



Figure 6: Comparison of Schedule 7 and counter-terrorism stop and search powers<sup>90</sup>

|  | Schedule 7   | Stop and Search under Section 47A   | Stop and Search under Section 43  |
|--|--|---|---|
| <b>Level of suspicion required</b>       | No suspicion required  | No suspicion required within authorised area  | Reasonable suspicion that the person is a terrorist required  |
| <b>Statutory purpose of power</b>        | to determine if a person is or has been concerned in the commission, preparation or instigation of terrorism | to discover if the individual being searched is a terrorist   | to discover whether a person has anything in their possession which may constitute evidence that they are a terrorist   |
| <b>Area of usage</b>                     | Limited to ports of entry  | Limited to “authorised areas”   | Any public area   |
| <b>Powers of seizure</b>                 | Devices can be seized and retained   | An officer may seize and retain anything they discover in the course of a search which they reasonably suspect may constitute evidence that the person is a terrorist   | An officer may seize and retain anything they discover in the course of a search which they reasonably suspect may constitute evidence that the person is a terrorist   |
| <b>Is there a right to remain silent</b> | No right to remain silent  | Right to remain silent – an officer can ask questions but “[r]easonable grounds for suspicion cannot be provided retrospectively by a conversation with the individual or by their refusal to answer any questions asked”             | Right to remain silent – an officer can ask questions but “[r]easonable grounds for suspicion cannot be provided retrospectively by a conversation with the individual or by their refusal to answer any questions asked” |
| <b>Biometric collection</b>              | Fingerprints and DNA can be collected  | No fingerprints or DNA can be collected   | No fingerprints or DNA can be collected   |
| <b>Are strip searches allowed</b>        | Strip search can be conducted  | The officer can ask you to take off your outer coat, jacket, or gloves, as well as any headgear and footwear in public – they can ask you to remove other articles of clothing only if you are taken out of public view <sup>91</sup> | The officer can ask you to remove your outer coat, jacket, or gloves in public – they can ask you to remove other articles of clothing only if they take you out of public view <sup>92</sup>                             |

## 4.2 Comparison with ordinary stop and search law

As we have already seen, Schedule 7 exceeds other counter-terrorism stop and search laws in its violations of basic rights, but the comparison with ordinary stop and search laws is even more dramatic.

The two laws outlined in the comparative table below (Figure 7) represent an example of what usually comes to mind when one thinks of stop and search. In the public mind, even these stop and search powers, carry negative connotations.

A report released in 2016 by Her Majesty's Inspectorate of Constabulary found that “[m]ost of Britain's police forces are still failing to obey rules to prevent abuse of their stop and search powers” and that “15% of stops may have been carried out without reasonable suspicion of criminality”.<sup>93</sup>

Moreover, the PACE stop and search power has a history of being “disproportionately used against innocent ethnic minority Britons”<sup>94</sup> – especially young, black men – and has been described as “a tactic of fear and humiliation” which leaves victims feeling “violated” and “humiliated”,<sup>95</sup> much like Schedule 7.

It is important to note that not only does Schedule 7 have the same effect on people, but its potential and actual abuse exceeds that of the PACE stop and search law – both because it comes with the extra stigma of not just criminality, but also terrorism, and because, as demonstrated by the table below, it allows for far greater intrusion and abuse.

**Figure 7: Comparison of Schedule 7 with ordinary criminal stop and search powers**

| Schedule 7   | Police and Criminal Evidence Act 1984 (Section 1) <sup>96</sup>   |
|--|---|
| No suspicion required  | Requires reasonable grounds for suspecting that upon searching the constable will find “stolen or prohibited articles”  |
| No right to remain silent  | Right to remain silent  |
| Fingerprints and DNA can be collected  | No fingerprints or DNA can be collected   |
| Strip search can be conducted  | In public, a person can only be required to remove their outer coat, jacket or gloves   |
| Statutory purpose = to determine if a person is or has been concerned in the commission, preparation or instigation of terrorism | Statutory purpose = a search for stolen or prohibited articles  |
| Limited to ports of entry  | Limited to any public places within the definition of Section 1(1)  |
| Devices can be seized and retained   | Only stolen goods, or “prohibited articles” may be seized<br>A prohibited article is either an offensive weapon, or something made or adapted for use in particular offences listed under Section 1(8) such as burglary, theft, fraud and criminal damage |



### 4.3 Schedule 7 in comparison to other US border powers

Recent reports and analyses have drawn parallels between the US border search and Britain's Schedule 7. Currently in the United States, the Electronic Frontier Foundation and the American Civil Liberties Union lawsuit against the Department of Homeland Security, claiming that their seizure of electronic devices at US ports without a warrant or probable cause is a violation of the Fourth Amendment has been allowed to proceed as of May 2018.<sup>97</sup> While the outcome of the case is unknown, the challenge itself mirrors similar efforts to challenge the legality of Schedule 7 in the UK.

Figure 8: Comparison of Schedule 7 and US Border Powers

| UK – Schedule 7   | USA – “the border search exception”   |
|---|---|
| Limited to points of entry and exit                                       | Limited to international borders and their “functional equivalent” <sup>98</sup>  |
| No requirement for reasonable suspicion                                   | No requirement for probable cause or warrant if a routine search<br>If a non-routine search (more intrusive), then some reasonable suspicion of illegal activity may be required<br>NB: This has been the traditional view taken by Federal courts, however, the Supreme Court has “arguably suggested that the routine/non-routine analysis may no longer be appropriate for searches of vehicles and personal property” <sup>99</sup> |
| Person and luggage can be searched  | Person and luggage can be searched  |
| Electronic devices can be searched and seized                             | Electronic devices can be searched and seized<br><b>(contested)</b>   |
| Introduced under Terrorism Act 2000                                       | Authorised by the First Congress and considered part of regular immigration and border control  |
| Strip searches allowed  | Strip searches can be allowed under a non-routine border search, so can body cavity searches and some X-ray examinations  |
| Maximum 6 hours   | No stated maximum detention time  |
| Right to speak to lawyer (subject to the discretion of examining officer) | No right to representation unless you are arrested  |
| No right to remain silent   | Right to remain silent BUT you can be denied entry or detained for failure to answer questions  |

## 4.4 Schedule 7 powers compared to the Prevention of Terrorism Temporary Provisions Act 1974

Stop and search powers at the border for the purposes of preventing and detecting terrorism did not begin with Schedule 7 in 2000. The first incarnation of such a law was in 1974 with the Prevention of Terrorism Temporary Provisions Act of that year.

The suspect community of that era was the Irish and the law as a whole was passed following the IRA bombing campaigns that characterised the era commonly known as the Troubles.

Just four days after pub bombings in November 1974 which killed 21 people<sup>101</sup>, then-Home Secretary Roy Jenkins put forward this Bill in a climate of fear.

When the Bill was announced, Jenkins himself stated that “The powers [...] are Draconian. In combination they are unprecedented in peacetime.” but that the safeguard would be “to review them within six months”.<sup>102</sup>

Similar to today, the exceptionality of the powers conferred by this law was intended to be a reassurance. However, the subsequent iterations of this law would be in effect until they were repealed and superseded by the Terrorism Act 2000.

Even these early forms of border powers bear a striking resemblance to the current Schedule 7 law both in their over reach and potential for abuse, as demonstrated by the table below:

Figure 9: Comparison of Border Controls under Prevention of Terrorism (Temporary Provisions) Acts 1974-1989 and Schedule 7

| Schedule 7  | Section 8 of Prevention of Terrorism Act 1974   |
|---|---|
| <b>Rationale for use:</b> Determining whether someone or something is or has been concerned in the commission, preparation or instigation of acts of terrorism  | <b>Rationale for use:</b> “determining whether any such person appears to be a person concerned in the commission, preparation or instigation of acts of terrorism” as well as whether a person was subject to an exclusion order   |
| <b>No requirement for reasonable suspicion</b>  | <b>No requirement for reasonable suspicion</b>  |
| <b>Powers in place permanently</b>  | <b>Emergency powers renewed annually</b>  |
| <b>Scope of powers:</b> <ul style="list-style-type: none"> <li>• Person may be detained, questioned and searched</li> <li>• Luggage may be searched</li> <li>• Vehicles may be searched</li> <li>• Electronic devices can be seized</li> <li>• Strip searches permitted</li> <li>• DNA and fingerprints can be collected</li> </ul> | <b>Scope of powers:</b> <ul style="list-style-type: none"> <li>• Person may be detained, questioned and searched</li> <li>• Luggage may be searched</li> <li>• Ships and aircraft may be boarded and searched</li> </ul>  |
| <b>Maximum duration of detention:</b> initially 9 hours, but amended to 6 hours   | <b>Maximum duration of detention:</b> initially 7 days at the examining officer's discretion, but amended to an initial 48 hours on the authority of the examining officer, and a further 5 days at the direction of the Secretary of State after a recommendation by Lord Shackleton in his review of the Act  |
| <b>Concerns about discrimination voiced</b>   | Lord Jellicoe's Review of the operation of the Prevention of Terrorism Act 1976:<br><i>“Among the major criticisms of the port controls in the evidence I received was that <b>examining officers stop for examination only those with what might be popularly supposed to be a “terrorist appearance”</b> [...] This complaint, that <b>the police tend to act on the basis of somewhat naive stereotypes</b>, was particularly strong in Northern Ireland [...] From my own observation I believe that there is some truth in this view.”<sup>103</sup></i> |
| <b>Almost negligible charge rate</b>  | According to Lord Jellicoe's Review, “the charge rate following detention at the ports is very much lower than that following arrest inland”.<br><b>From the start of 1979 to the end of 1982, “only 51 people were charged” representing a charge rate of 4%.</b> “In addition, the charges laid were on the whole not very serious” <sup>104</sup> .  |
| <b>Concerns voiced about the use of powers for other than stated purposes e.g. as an intelligence-gathering tactic</b>  | Lord Jellicoe, in his Review, stated <b>“There is an understandable temptation for examining officers to purport to use their powers of examination under this legislation for purposes for which they were not designed, such as questioning in connection with non-terrorist crime”</b> <sup>105</sup> .  |

In their own time, the Prevention of Terrorism Acts received no shortage of criticism for their draconian nature and their troubling implications for the protection of civil liberties<sup>106</sup>.

One of the fears held by its critics was not only that it “gravely erodes our civil liberties” but also “the added danger that long-term acceptance” of such laws “will corrupt our democratic system”<sup>107</sup>.

In Parliament, at the Renewal Debate for the 1976 iteration of the Prevention of Terrorism (Temporary Provisions) Act, Mr Marshall asserted the danger of entering “an insidious circular process in which draconian laws soften us up for similar laws which become the desired standard for further measures” – the transition from exceptionality to permanence, from shocking, to accepted<sup>108</sup>.

Sim and Thomas, likewise, argued that such a shift represents a “process of normalisation” which may “move the burden of responsibility from those seeking to extend anti-terrorist law on to those who seek to repeal it”<sup>109</sup>.

They also stated, presciently, that once such a law has been positioned on a permanent basis, and presented as “normal”, the onus is upon its critics as they are taken to challenge the status quo: “the burden of proof rests upon those who want to press for change”<sup>110</sup>.

The permanency of Schedule 7, and the introduction of the new Counter-Terrorism and Border Security Act – laws clearly constructed on the legacy of these initial “temporary provisions” – speaks deeply to these anxieties expressed in the 1970s.

When looking back, it is striking that policy makers have continued to consistently ignore warnings from civil society and even critics within government. As a result, these warnings uttered over 40 years ago, cast a startling echo today, and in some cases, their fears have been realised.

## THE MUSLIM REVERT WHO WAS ASKED TO STRIP

» They said they want me to take everything off, and squat down in front them. I told them no way, I would never.

*I have been stopped many times since the first time, which was in 2008. Most recently, in 2017, I was driving an ambulance to Bulgaria as part of an aid convoy, and when I got to Dover they stopped me under Schedule 7, took DNA and photographs for the second time.*

*On top of that they took my passport. I contacted my solicitor, and they showed the solicitor a letter saying why they had confiscated my passport.*

*They said they are applying to have it cancelled as they believe I am a security risk, because of what I had told them in a previous Schedule 7 interview. They claimed I said I supported IS.*

*I am certain I never said such ludicrous things. So I asked them to produce the transcript and recording of the interview but they said they had lost it.*

### A house raid and harassing phone calls

*When they realised they had no evidence, they raided my home. They took specific things, my laptop, my computer, my iPad, my phone. They were very well mannered, and said they would give the devices back. But I have not heard anything from them since.*

*Between the Schedule 7 incidents, I have had phone calls, where they have asked me to meet with them, and they have said if I talk to them, they will make my situation a little bit easier.*

*They say: "We will take you off our list." But when they say "talk with us" what they mean is they want me to work with them and be a spy, and because I refuse I am some sort of 'terrorist' sympathiser.*

*These phone calls usually happen after my travel has been interrupted, because they probably figure I am more vulnerable to giving in after I have been harassed.*

### The worst stop took place after a misunderstanding

*The worst experience I had under Schedule 7 was in 2009. I was on my way to Egypt to study, and before I left my home I had taken everything out of my bag and repacked it.*

*I had quite a large amount of money 600 pounds or so and I remember thinking, I'm not going to put that in my bag, I am going to keep it on me, so I took it out the bag. I meant to put it in my pocket. But I forgot to take the money with me. I left it at home.*

*They questioned me under Schedule 7 and I told them I was going back to Egypt to study. They asked where is your money? Because I had no money, I think they assumed I would be met at the airport and taken care of by some sort of terrorist organisation.*

*So when I said I had money, I looked like a liar. Meanwhile it was a misunderstanding.*



## I couldn't believe it when they asked me to strip

*They wanted to strip search me. Of course I had heard things about strip searches. I asked them what they meant. They said they want me to take everything off, and squat down in front of them.*

*I told them no way; I would never do it. They said they are going to do it to me, even by force. I said, I am not going to bend over in front of six men and show myself to you like that.*

*I said, I will take my trousers off, but keep my boxers on, and you can put your fingers in the elastic, and they said no we need to look and see if you have put something inside yourself. I refused.*

*They said, okay fine, and they called for the uniformed police. These police have special training to be more physical, and they are strong.*

*Still, I refused, and they dragged me and threw me on the ground. We were in a room with no speakers and cameras. At that time, 2009, none of them had it.*

## They became violent and I fought back, but then I had to give in

*When they threw me on the floor, I put my forearms on my chest so they couldn't handcuff me. Alhumdullillah I was much stronger than them, and they couldn't handcuff me.*

*But then I felt like they were just hitting me all over. I was being battered from all over. I don't know what they were hitting me with, but one or two of them had their knees in my back.*

*They were doing this, and I was shouting at them. I said I am never going to submit to you. I felt something incredibly painful, and I looked down and one officer was standing on my ankle, with these tough police boots.*

*I made eye contact with him and he lifted his entire weight onto my ankle. I couldn't tolerate that, and I put my arms out and they handcuffed me.*

## They put me in a "stress position" and dragged me through the airport

*They held me in this position. They told me it was Home Office-approved position. It's a stress position, like you are in a sitting position but with no chair, and your arms behind you, and they say, sit down and stand straight up.*

*I kept shouting at them. They hooked my arms behind my back and over my shoulder, and I was bent over. Because I was bent over it was very easy for them to control me.*


*To walk bent over like that was a very painful experience. I was begging for them to let me walk properly. There were times when I wasn't walking and I just let them drag me. They walked with me like this through the airport.*

*Once they got me into the back of the police van, they were mocking at me through the glass. I realised that this was not just a job for them, but they actually have a personal issue with Muslims.*


## The police who beat me didn't even turn up in court

*When I got to the police station, the police there saw the state I was in. The man who signed me in, said to the others that I was not fit to be put into a cell. They thought my arm was broken.*

*I found out they had charged me with assault. But even in court, the police officers refused to turn up, and some of their evidence conflicted. Officially I lost the case, but they didn't give me any punishment because they could see that it was a ridiculous situation.*







*That was the worst experience, but any time they give me a Schedule 7 and raid my house, I am more concerned with the effect on my family.*

*Since then my marriage has broken down and I don't live with my children anymore. Schedule 7 wasn't the only cause of the break-up but it definitely contributed to it. It caused a lot of heartache to the family.*

*Sometimes they would give the devices back to me, usually within seven hours. Once or twice they kept them for a few days.*

*Usually they say they will bring them to your home or you can collect them at the local police station, and it's Mi5 who come to you and meet you on these occasions. They try to convince you to work with them. So in the end, I just said take my belongings and give it back to my solicitor. On one occasion they kept my things for a year.*

### **I have no passport and my life is in limbo**

*I don't have a passport any more. They cancelled it. We tried to appeal the decision but it is very expensive, and I don't qualify for legal aid as I have a job. So I am not able to pay for the fees to challenge the decision.*

*England is my prison. I can't leave. I wonder to myself, am I ever going to get to Makkah or Madinah again? Maybe or maybe not.*

*I have repeatedly said to them, charge me with something, what you are doing to me is just not fair, I am a human being. But I don't think that even matters.*

*Even when you go to the airport, you feel very, very anxious. Many of the people I thought were my friends have abandoned me, because they don't want to be associated with me. They think my trouble will become their trouble.*

*I would advise Muslims simply, don't travel. The things that you would assume are your rights, like to be treated with common decency and the assumption of innocence before guilt, you don't have that coming into the UK. They give more rights to paedophiles than Muslims who haven't done anything. Paedophiles have to be charged within 24 hours.*

*The fact remains that I asked them to produce the proof that I support IS, and they couldn't produce the proof.*

*As a Muslim they don't tell you why, they just ask you to take your clothes off. While all of this happens, they smile at you and offer you cups of tea. They say please and thank you after every sentence, and yet they do these things to you.*





*"I felt like I was interrogated as a criminal. I felt so low and miserable."*

# 5

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## CURRENT AMENDMENTS TO LEGISLATION

### Schedule 3 to the Counter-Terrorism and Border Security Act

The government's new Counter-Terrorism and Border Security Act was passed into law in February 2019. This law has been widely criticised, including for threatening to “criminalise humanitarian assistance”<sup>111</sup>.

For this report's purpose, the focus will be on Schedule 3 of this Act, which introduced further port and border controls that not only mirror, but also build upon those of Schedule 7.

As with Schedule 7, Schedule 3 permits the same powers to stop, search, detain and seize. The provisions mirror the law and practices of Schedule 7, but also build upon them. The purpose of a Schedule 3 stop is determining whether a person, item, or vehicle is or has been engaged in “hostile activity”. This is a much broader category than even terrorism under Schedule 7.

A hostile act is defined as one which is or may be carried out on behalf of, or otherwise in the interests of a State other than the UK, and which threatens national security, threatens the economic well-being of the United Kingdom in a way relevant to the interests of national security, or is a serious crime.

It is immaterial whether the person is aware that they are or have been engaged in hostile activity, and it is immaterial whether a State has instigated, sanctioned, or is otherwise aware of the carrying out of the act. Like Schedule 7, there is no requirement for suspicion.

As with Schedule 7, a person can be detained for up to 6 hours, they can be searched - as can their vehicle, and anything on their person. The examining officer may carry out a strip search with the authorisation of a senior officer, and may collect fingerprints and DNA profiles which can be retained for up to 6 months - or indefinitely if the detainee has been convicted of a recordable offence, or is so convicted before the end of the six month period.

An examining officer can also retain any item which is given to them, searched, or found under a search, or examined. This retention can last up to seven days for examination, or for as long as the officer believes:

- it may be needed for use as evidence in criminal proceedings
- it may be needed in connection with a decision of the Secretary of State whether to make a deportation under the Immigration Act 1971
- it could be used in connection with carrying out a hostile act
- it is necessary to retain the item for the purpose of preventing death or significant injury

In the last two of those situations, the Investigatory Powers Commissioner may direct that the item be destroyed, or authorise that it be retained and used. Crucially, what it can be used for is not outlined.

An examining officer may also make a copy of any item given to them, or searched, found or examined by them. This copy may be retained for as long as is necessary to determine whether a person is or has been engaged in hostile activity, or for any of the reasons listed above.

## 5.1 Confidential Information

One area where Schedule 3 can be seen to be responding to the experience of Schedule 7 is in its specific provisions relating to confidential material - an issue raised by not only Miranda but also by CAGE.

The Act outlines that if a retained article consists of or includes confidential material (such as confidential journalistic material, personal records, or information protected by legal privilege), the Investigatory Powers Commissioner can only authorise its retention and use if s/he is satisfied that sufficient arrangements are in place for ensuring that the material is retained securely, and that the material will be used only so far as is necessary and proportionate for the following relevant purposes:

- National security
- Economic well-being of the UK
- Preventing or detecting serious crime
- Preventing death or significant injury

This, however, fails to offer any real protection for confidential material from being searched and seized in the first instance. This is because the oversight of the Investigatory Powers Commissioner only comes into play when a decision is being made whether or not to retain such material.

## 5.2 Offences

As with Schedule 7, a person commits an offence if they wilfully fail to comply with, and/or if they wilfully obstruct or seek to frustrate a search or examination. This means that failure to answer questions, provide your passwords, or provide any item requested by an examining officer is an offence. If a person is found guilty, they can be imprisoned for up to 51 weeks - almost four times the sentence limit for the same offence under Schedule 7 - and/or fined.

## 5.3 Rights

Again, these mirror those under Schedule 7, but erode basic due process principles even further by infringing upon the right of individuals to consult a solicitor in private, by undermining the:

- Right to remain silent
- Right to have one named person informed that you have been detained as soon as is reasonably practicable
- Right not to be questioned until you have been able to consult a solicitor.
- Right to consult a solicitor in person, which can be abrogated if the examining officer believes that the time it would take to do so would “be likely to prejudice the determination of the relevant matters”.
- A police officer can also delay the right to have someone informed, or to consult a solicitor, if they have reasonable grounds to believe that either would:
  - » Interfere with or harm evidence of an indictable offence
  - » Interfere with or cause physical injury to any person
  - » Alert persons who are suspected of having committed an indictable offence but who have not been arrested yet
  - » Hinder the recovery of property obtained as a result of an indictable offence
  - » Interfere with the gathering of information about the commission, preparation or instigation of acts carried out in connection with a person’s engagement in hostile activity

You do, however have a right to be informed of the reason for this delay as soon as reasonably practicable.

## 5.4 Amendments to Schedule 7 Within Schedule 3

In *Beghal v DPP*, as we have already seen, the issue of self-incrimination and the lack of the right to remain silent were raised as a threat to the right to a fair trial. An attempt to redress this issue has been made in Schedule 3 Part 3 Section 16 where a *prima facie* prohibition on the use of answers or information given orally by a person during a Schedule 7 stop “may not be used in evidence against the person in criminal proceedings”.

However, as with many of the rights granted in this Act, as we have already seen, a seemingly broad right is immediately undermined by a series of exceptions.

In this case, the prohibition specifically does not apply in particular circumstances, including on prosecution for perjury, or on prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the answer mentioned in the Schedule 7 stop. It is specified that the latter case only applies if evidence relating to the answers or information is adduced, or a question relating to it is asked by or on behalf of the person in the proceedings arising out of the prosecution.

Moreover, it is worth noting that the prohibition - limited as it is - applies only to answers or information given orally. This implicitly excludes anything given in writing, documents seized or for example, copied from seized electronic devices.

This removes the right of an individual to contextualise or explain information, which may well be interpreted wrongly from an ignorant, or outright hostile and discriminatory point-of-view - which can be given more impetus due to broad parameters that are open to abuse.

The implications of this Act, now passed into law are not only troubling for those who may be stopped and have their right to legal professional privilege curtailed, but also for the dangerous precedent it could set. In essence it indicates that the British government is willing to erode the foundations of its own legal system in the name of "counter-terrorism".



# 6

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## CONCLUSIONS

1. Schedule 7 disregards the norms of due process at every level. Normative criminal law safeguards are discarded under a Schedule 7 stop and interrogation, resulting in an unjust, draconian piece of legislation which is not only ineffective but, since it permits and justifies systematic abuses against individuals including ordinary Muslims, journalists, aid workers, and lawyers, it is deeply counter-productive.
2. The stop is done without any evidence or need for suspicion. This means that a person – including a child – can be stopped, searched, have their electronic devices seized and examined, be forced to agree to have biological samples taken, and answer all questions posed no matter how intrusive or irrelevant to the actual purpose of determining a “terrorism” motive. This is all done without the need for any justification beyond a “hunch”. It is clear then, that a “security measure” not only violates international privacy norms and laws, but is really a method of racial and religious profiling, mass collection of data and surveillance.
3. Our case interviews show that Muslims face questions about how and why they pray, their religious observance, what schools of thought they follow and their political beliefs. This line of questioning implies that Schedule 7 is part of a failed and academically discredited counter-terrorism narrative that expounds the misguided notion of a correlation between religiosity and the propensity for violence. It also reflects the state’s blatant attempts to define what is acceptable religious belief and what is not.
4. In a toxic global climate where many governments do not abide by the rule of law, those who are stopped remain justifiably anxious about how, where and by whom their data is being stored, shared and interpreted. There is also no way an individual can ever challenge this process or remove their information from the system. This means Schedule 7 is in essence a key “collection” point of a huge global surveillance and security apparatus that functions to uphold and bolster even unjust power.
5. There has been a concerted lack of transparency surrounding the use of Schedule 7. The government has failed, even upon request, to publish a breakdown of those stopped by religion, claiming that this information is not collected. But our records show officers spend considerable time and energy ascertaining the nature of a person’s beliefs and religious habits. This lack of transparency not only hints that religious profiling is taking place, but it also is a sign of a deeper malaise: the problematic manner in which our government views its relationship to its citizens, since if there is no transparency, there can’t be true accountability.

6. In targeting activists—even non-Muslim activists - Schedule 7 stops, and the policy thinking behind them, implicitly assumes that activism is somehow a ‘threat’, somehow linked to terrorism - and therefore somehow wrong. Not only does this encourage political apathy on a wide scale, but it also hastens a fundamentally weak and fear-based authoritarian society that cannot accept or tolerate peaceful dissenters without criminalising them.
7. The conviction rate for Schedule 7 stops from 2010 to 2019 is a mere 0.007%. This means that 99.993% of people examined under Schedule 7 were put through this traumatic and inconvenient experience, to secure 44 convictions in its history. It is also not clear what these convictions were actually for; they can occur in the case of a failure to disclose passwords, even on the basis of client confidentiality, or a refusal to answer questions, a far cry from planning violence. This raises serious questions about the supposed proportionality of Schedule 7, and also about its utility.
8. Schedule 7 is not an isolated practice but is part of a national and global legislative framework. It has startling similarities with a police stop-and-search under Section 43 and Section 47A of the Terrorism Act 2000, United States Border search powers and even the highly politicised and counter-productive Prevention of Terrorism Temporary Provisions Act (1974). Strikingly, however, its potential for and actual abuse exceeds that of the PACE stop and search law – put in place to target actual, evidential criminals. This means that a person who confesses to a police officer on the street that he has just committed murder or abused a child, has more rights than a person stopped under Schedule 7.
9. Testimonies collected by CAGE show that survivors of Schedule 7 stops are regularly approached to become informants by Mi5, either during the stop itself, or through harassing phone calls and house calls afterwards. This disturbing practice of targeting citizens at ports of entry and attempting to pressure them - often through financial incentives - to spy on their communities and colleagues is deeply morally questionable, and hints at a deeper and troubling, if not predatory, security agenda.
10. More than their lack of demonstrable efficacy and evident surveillance function, Schedule 7 powers, and their proven abuse, are undermining the confidence and relationship of the Muslim community with the state. By not only ‘othering’ and singling out Muslims as a suspect community through laws such as these, but also attempting to justify this discrimination, the state is reinforcing the narratives advocated by far-right organisations, but also much of the mainstream media, as well as by the “terrorist” groups they so revile: that Muslims are not treated as, and will never truly be, a part of British society. We must counter this by working for change in ways that hold true resonance with society and its communities.

# 7

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## RECOMMENDATIONS

This report has not been exhaustive. In the course of our research we came across more troubling testimonials, and issue-raising articles than could possibly be included here. However, it is clear that Schedule 7 is not only not fit for purpose, but it is ripe for, and is indeed being, abused.

### 7.1 For government

As has been demonstrated clearly throughout this report, throughout the case law, and throughout the testimonies of those who have endured it, Schedule 7's continued existence in law is thoroughly problematic. Not only is it ineffective and abusive, but it is counter-productive.

Also, as was echoed by concerned activists and opposition members even in 1974, such laws set a dangerous precedent and prepare the ground for the acceptance of authoritarianism and mass securitisation. The time has come for the government to acknowledge this and embark on an honest and trustworthy path of change, before further abuse can take place, and policies become even more counter-productive.

Our recommendation for the government is therefore simple: repeal Schedule 7 immediately.

## 7.2 For civil society

Schedule 7 (and Schedule 3 of the Counter-terrorism and Border Security Act) should rightly be seen as key issue by organisations interested in anti-surveillance, privacy and challenging mass data collection.

Schedule 7 continues a tradition of state harassment that open the door for wider criminalisation, including the 'SUS' laws and modern stop-and-search powers.

Our recommendation to relevant NGOs and civil society organisations is to demand the repeal of Schedule 7/Schedule 3; 19 years in it is untenable to aim for reforms and improvements

Organisations should pay attention to and document the use of new Schedule 3 powers to target individuals and groups on a more overtly political basis, and the emergent framing of political movements as 'hostile activity'.

They should robustly oppose the logic that exporting the model of surveillance honed on Muslims to other groups is in any way a step forward, or that parity of oppression is a desirable aim.

## 7.3 For targeted communities

For communities, the course of action is courage and compassion.

Laws like Schedule 7 are pernicious precisely because of their impact on communities. As every testimony drawn on here shows, being stopped is more than just a humiliating experience - it's a scary one. Among the problems of intelligence gathering, MI5 harassment, and discrimination, one of the most underestimated issues with Schedule 7 is the intimidation inherent within it.

Being treated like a criminal - even for a few hours - with no justification except a judgement made because your name is on a list, or because the examining officer of the day has 'hunch' you might be 'concerned' with terrorism - is an experience that can scar people and leave them afraid to travel again. The situation is exacerbated tenfold when there are children involved, and those children are separated from their parents.

More than that, an experience can leave people feeling as though what they are doing is wrong - whether it's travelling with an aid convoy, volunteering with a charity, or praying at the 'wrong' mosque. Being submitted to state scrutiny for these choices breeds unacceptable levels of self-censorship, political apathy and fear.

What is needed, therefore, is courage. Like the survivors who came forward to help us with this report, we must have the courage to know that being treated with suspicion does not make us suspects.

We must have courage to continue acting with conscience and not allowing ourselves to be cowed out of doing what's right. We must continue to support those in our community who do so, and not isolate them or fall into government's fear-based narratives.

CAGE will continue to provide a voice for those who survive these intrusions and the harassment that accompanies them. We will continue to hold the government to account for abuse, and we continue to salute the courage and unity of purpose among ordinary people who come to us and who support us. It is their trust that allows us to do this.

The more we are emboldened to tell our stories, to tell the truth, the more people will understand the injustice and counter it by acting justly. In this way, change will surely come.

## 8

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