Stop and search – under what power?

HOW SHOULD journalists deal with police stops and searches – and with luck still file the story? Solicitor Shamik Dutta of law firm Fisher Meredith had sound guidance for June’s LFB meeting.

SHAMIK’S recent clients include comedian and journalist Mark Thomas, who won a £1200 settlement for a 12-minute detention. Shamik specialises in civil litigation against the police and “anyone with the power to detain,” and cases involving race discrimination or Human Rights Act breaches. Many of Shamik’s clients are young, but they have come from all walks of life.

Unfortunately, “if a police officer is intent on arresting you they probably will,” Shamik warns. But if you are not sure if it is a police officer, you should politely ask questions, like “Excuse me officer, can I ask under what power?”

The Police and Criminal Evidence Act 1984 (PACE) outlines the “reasonable steps” a police officer must take before making any “request” of you. The words used by the officer are important for bringing a possible action later. If they are abusive, or if they haven’t fulfilled PACE conditions before searching you, make notes, record or film the exchange. The most troublesome police powers, especially for photographers, have been found in the Terrorism Act 2000 – though police are now instructed not to use its Section 44 (see front page).

Metropolitan Police guidelines on the Act’s Section 43 state that this “does not prohibit the taking of photographs”. And use of the Section 43 power needs to be based on reasonable suspicion that there is a real terrorist act that you’re scouting for. Ask them, politely, what exactly their reasonable suspicion is.

While the Criminal Justice and Police Act 2001 (Section 19) empowers officers to “seize under lawful search” your memory stick and camera, PACE rules that police can only seize “special procedure material” of a journalistic nature with a warrant. Shamik warns that police are entitled to seize (some) items while they ascertain whether or not they’re “special procedure material.” He recommends labeling your camera, video recorder and notebooks as “special procedure material” under PACE 1984. “Be assertive and polite, ask questions”, he concludes. Ask for the basis for the stop and search. Make a detailed note of what you said and what they said. Ask them for a record. Remind them of the police codes of conduct, and of Metropolitan Police and Home Office policy. Warn them that you will make a complaint.

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Shamik’s Frequently Asked Questions are linked from the longer www.londonfreelance.org/fl/1007dutt.html

This issue went to press on 13 July. Deadline for the (online only) September issue is 2 September

LFB meetings are 7pm to 9pm at Friends’ House, Euston Road, which is accessible to people who use wheelchairs. If you need the Branch to pay for care for a child or dependent so you can attend a meeting, call a Branch officer. For updates on meetings see the Branch calendar web page at www.londonfreelance.org/meetings

Volunteer minute-takers are needed for LFB meetings for September and the rest of the year. For details of the NUJ London Photographers’ Branch meetings, see www.londonphotographers.org

Shamik is dynamic. Photo © Pennie Quinton