

# When are police officers entitled to use force?

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1. Defendants often say that they were the victims of unlawful force by police officers, perhaps to explain their behaviour on arrest, or to justify their actions when charged with assaulting an emergency worker. When evaluating such claims, it helps to have a clear understanding of the circumstances in which officers are entitled to use force.
2. There are effectively two situations in which the entitlement arises. First, there are powers available only to police officers, conferred by s.117 PACE 1984; second, there are rights to use reasonable force available to all citizens.

## Section 117 PACE 1984

3. *s.117 - Power of constable to use reasonable force*

*Where any provision of this Act—*

*(a) confers a power on a constable; and*

*(b) does not provide that the power may only be exercised with the consent of some person, other than a police officer,*

*the officer may use reasonable force, if necessary, in the exercise of the power.*

4. When exercising powers conferred by PACE 1984 that do not require the consent of the subject, officers may use reasonable force – if necessary – under s.117. Those powers include stop and search (s.1); entry and search of premises (s.17); arrest (s.24); detention of a person at a police station (Part IV); search of a person (s.54); intimate search of a detained person (s.55). In some circumstances, it can include fingerprinting (s.61) and taking a non-intimate sample (s.63). It does not extend to the conduct of a visual ID procedure governed by PACE Code D, or taking an intimate sample under s.62.
5. It is well-established that officers cannot use reasonable force under s.117 unless actually purporting to exercise one of these statutory powers. In *Walker v Commissioner of the*

*Police of the Metropolis* [2014] EWCA Civ 897, [2015] 1 WLR 312, the authorities were reviewed and the following statement of principle articulated: “if a police officer, not exercising the power of arrest, detains a person in a way that goes beyond the acceptable conduct of an ordinary member of the public, then that will be false imprisonment” [23]. *Walker* was a civil claim against the police. An officer had stood in the doorway to prevent the claimant from leaving, so that he could make enquiries without actually having to arrest him. This lasted only a few seconds, and the officer did not touch the claimant. Nonetheless, it was held on appeal that this constituted detention, and the claim for false imprisonment succeeded.

6. The leading case, on which *Walker* was based, is *Collins v Wilcock* [1984] 1 WLR 1172. On that occasion, the officer had taken the arm of somebody she suspected of prostitution, to prevent her from leaving. The suspect assaulted the officer in response. When prosecuted, she contended that the officer had not been acting lawfully in ‘the execution of her duty’. This argument succeeded on appeal on the basis that, save when exercising a power of arrest, a police constable had no greater powers than a member of the public to detain another.
7. In the author’s experience, officers will sometimes handcuff suspects while they ‘figure out what’s going on’ (or words to that effect). It seems this will not be a lawful use of the s.117 power, since no statutory power under PACE is being exercised. This may found an argument that, if a defendant reacts physically, they were acting in self-defence. To make out the offence of assaulting an emergency worker, it need not be shown that the officer was acting lawfully; but it still remains open to defendants to argue that they were responding to unlawful force by acting in necessary and proportionate self-defence (see *Campbell v CPS* [2020] EWHC 3868 (Admin)). Practically speaking, this argument may succeed in circumstances where the defendant has acted instinctively in response to being grabbed; it is perhaps less likely to work if things went beyond that.
8. However, there is a further consideration. While the scope of the s.117 power is strictly circumscribed, these strictures may be evaded by reliance instead on general rights to use force which are available to all persons.

## Universal rights to use force

9. There are two sources of this entitlement to use reasonable force.

### Section 3 Criminal Law Act 1967

10. s.3 *Use of force in making arrest, etc.*

*(1) A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.*

11. The allowance for using force when making an arrest does not really add anything to the police's s.117 powers. But acting '*in the prevention of crime*' permits broader intervention. Officers are also, of course, entitled to act in self-defence.

### Preventing a breach of the peace

12. This power comes from the common law.

13. In *Howell (Error)* [1982] QB 416, it was held there is a breach of the peace "*whenever harm is actually done or is likely to be done to a person or in his presence to his property or a person is in fear of being so harmed through an assault, an affray, a riot, unlawful assembly or other disturbance*" (p.427); and that there is a power of arrest to prevent a breach of the peace where either:

- a. A breach of the peace is committed in the presence of the person making the arrest.
- b. The arrestor reasonably believes that such a breach will be committed in the immediate future by the person arrested although he has not yet committed any breach.
- c. A breach has been committed and it is reasonably believed that a renewal of it is threatened (p.426).

14. However, reasonable steps to prevent a breach of the peace are not limited to making an arrest. In *Albert v Lavin* [1982] AC 546, the power was construed in broader terms: "*every citizen in whose presence a breach of the peace is being, or reasonably appears to be about to be, committed has the right to take reasonable steps to make the person who is*

*breaking or threatening to break the peace refrain from doing so; and those reasonable steps in appropriate cases will include detaining him against his will” (p.565).*

15. The position was summarised more recently by Lord Bingham in *Laporte v Chief Constable* [2007] 2 AC 105: “*Every constable, and also every citizen, enjoys the power and is subject to a duty to seek to prevent, by arrest or other action short of arrest, any breach of the peace occurring in his presence, or any breach of the peace which (having occurred) is likely to be renewed, or any breach of the peace which is about to occur*” [29].
16. *Wheeldon v CPS* [2018] EWHC 249 (Admin) is a good example of how this works in practice. The defendant was being prosecuted for assaulting an emergency worker. He had attended a football match and was part of a crowd that had been goading the opposing fans. Police were escorting this group out of the stadium to prevent an incident. At one point, officers began pushing members of the group to set them in the right direction; one of them was the defendant, who then pushed back. On the defendant’s appeal, it was held that the officer had acted lawfully in pushing him, having reasonably anticipated an imminent breach of the peace.
17. Officers thus have a wide discretion to use force in these circumstances. The two main constraints are that (1) the officer’s belief must be objectively reasonable (2) the breach must be ‘imminent’. Lord Bingham’s discussion of the arguments in *Laporte* provides some helpful illustration (from paragraph 38).
18. That the power is more flexible than s.117 is indicated by obiter remarks in *Walker* [2014] EWCA Civ 897 (cited above), in which Their Lordships appeared to hint that, if the argument had been put on the basis that the officer acted to prevent a breach of the peace, then their decision might have been different.

## Summary

19. Any argument that the police used unlawful force should be carefully thought through. When cross-examining, officers should be made to state clearly what power they relied on. If they cite breach of the peace, then scrutiny should be applied to the question of whether a breach truly was imminent.
20. In any event, the use of force must always be necessary and reasonable. For example, any suggestion that handcuffs can be applied as a matter of course should be doubted. The case law on handcuffs in particular is rather nebulous, but the principle was helpfully restated in a recent civil case, *Afryie v Commissioner of Police for the City of London*

[2023] EWHC 1632 (KB): “Handcuffing is not an automatic consequence of arrest. Handcuffs should only be used where they are reasonably necessary to prevent an escape or to prevent a violent breach of the peace: *Lockley (1864) 4 F & F 155*, cited in *Blackstone’s Criminal Practice at D1.8*. Where handcuffs are used unjustifiably, their use is a trespass even in an otherwise lawful arrest: *Bibby v Chief Constable of Essex Police (2000) 164 JP 297*” [54].

21. If it can be established that there was an unlawful use of force, there are several possible implications. Where defendants are charged with assaulting an emergency worker, they may argue that they acted in self-defence. In other cases, where the prosecution relies on the defendant’s behaviour on arrest as a way of discrediting them generally, it may found an argument for exclusion of evidence under s.78 PACE.

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