

Lesson Three: Clarity, Certainty and the Exercise of Power

Lesson Three - Lesson Plan

PLTS:

Independent enquirers, effective participators

FUNCTIONAL SKILLS:

Writing: Identifying key points and using accurate language to demonstrate and apply knowledge

Communication: Identifying problems and resolving them

Numeracy: interpreting data and statistics

OBJECTIVES:

- Students will understand the concepts of clarity, certainty and exercise of power in the context of the law
- Students will understand the use of discretion within the law
- Students will make active connections between school rules and laws at the national level by drawing on the concepts of clarity, certainty and exercise of power
- Students will use the framework of the lesson to explore recent relevant situations

OUTCOMES:

- Students will be able to explain the idea of discretion with the law and the link with clarity and certainty
- Students will be able to identify the difference between legitimate use of power and abuse of power

KEYWORDS:

Clarity, certainty, exercise of power, exercise of discretion, legitimate and illegitimate

3.1 Introduction: Clarity, Certainty and Exercise of Power

Read the following or paraphrase for students:

In the previous lesson, we explored the fact that we all have responsibilities under the law. In order to know what we are not allowed to do, the law has to be clear. Otherwise it would be unfair to us because we might do things that the law prohibits without knowing that it is prohibited. Imagine if you were not told what the school rules were, but could be punished for breaking them. You wouldn't be able to plan your actions or know how to behave. If there is a punishment for doing something, we have to know in advance that that is the case.

We are also going to learn about what power is, who has power, why it is necessary and how it could be abused.



3.1.1 STARTER ACTIVITY: Thinking About Power – Teacher-led discussion (5 minutes)

P Write the following imaginary scenario on the board:

Imagine you are visiting a country and you are told that the law says that: 'You will be arrested and punished for anything you do wrong. The police will decide what is wrong and will decide what the punishment is.'

Ask the students to think about this rule and discuss some of the following questions:

What is the aim of this law?

What is the problem with this law?

Who is in a position of power?

Do the people in power have too much power?

Is it easy for that person to misuse his/her power?

How could the law be changed to make sure it is fair and power is not misused?



3.1.2 STARTER ACTIVITY: Thinking About Power - Background for teachers

This starter activity is designed to introduce the students to the following ideas:

The point of the law is to prevent behaviour that might cause harm. There is nothing wrong with this aim.

However, the rules are unclear and therefore uncertain and unfair to individuals. Individuals don't know what behaviour might be 'wrong' and therefore do not know what they should avoid doing.

The police have sole power to decide what is 'wrong'. It is easy for them to abuse their power since they have nothing to guide them in deciding what is wrong. They could make decisions that are subjective and could make different decisions for different people even when the behaviour has been the same.

The law could be changed to be clearer. It should give guidance on exactly what type of behaviour is illegal so that individuals know what they should not do if they do not want to be punished. Even if the law were clear, decisions on an individual's guilt should be subject to review so that individuals have the opportunity to appeal if they feel that a decision has been wrongly made.

MAIN ACTIVITIES

3.2 Clarity¹ and Certainty²



3.2.1 Clarity and Certainty

– Teacher-led introduction and discussion (10 minutes)

1. Read the following, as is:

Even if you were told what the school rules were, if they changed every day and were so complicated that you couldn't remember or understand the rules, it would still be unfair as you still might not know or be sure what the rules were.

So, in order for the law to be fair, it needs to be clear what the rule is, who it applies to, and what the penalty for breaking the law is. It needs to be understandable and not confusing.

Sometimes, the law must deal with several different circumstances. In these circumstances, laws give permission to people who put the law into effect such as government ministers to make decisions about whether and how to apply the law in different situations. This is called a discretion. This is necessary because it would be impractical for the law to spell out an infinite number of outcomes for an infinite number of situations. However, where this happens too often, or the person given the right to use the discretion is not given clear enough guidelines, there can be a problem with how clear and certain the law is which can lead to unfairness.

P 2. Write the following example on the board:

Example:

The school rules might say that:

A teacher may exclude a student from a lesson if the teacher feels that the student is interrupting the study of the other students

3. Ask the students:

Is this rule clear? Is it fair?

4. Read or paraphrase the following:

Without specific guidance on what 'interrupting' means, different teachers could have different opinions on what amounts to interruption. This could be unfair to students if teachers applied very different standards because whether or not you are excluded might depend on who your teacher happened to be.

For example, one teacher might think that 'interrupting' could be as simple as asking someone sitting next to you for a pencil. Another teacher might think that 'interrupting' needs to be much more serious, for example, running around in the classroom and throwing things at other students. To be fair to everyone, ideally, teachers should apply similar standards.

If the school rule gave better guidance on what 'interruption' meant, then it would be less likely that different teachers would make different decisions on whether to exclude a particular student in a particular situation.

5. Add the following to the example on the board:

P**Example:**

The school rules might say that:

A teacher may exclude a student from a lesson if the teacher feels that the student is interrupting the study of the other students.

In deciding whether a student is interrupting the study of other students, the teacher should consider if the student is doing something that causes other students to lose concentration, such as moving around the classroom, speaking out of turn, or distracting other students by doing something that is irrelevant to the lesson.

6. Ask the students:

Is this rule clearer? Is it fairer?

7. Read or paraphrase the following:

The teacher still has a decision to make in the second version of the rule, but in comparison to the first version of the rule, the second version is much clearer for students to be able to know what they should not do in order not to be excluded from the classroom. In the first example, different teachers and students could have a very different idea of what 'interrupting study' meant. To be fair to everyone, and particularly to students (as they are the ones who may be excluded), it should be clear what the words in the rule mean.



3.2.2 Clarity and Certainty - Background for teachers

The example is intended to give students a basic idea of what discretion is and why overly broad discretion can be unfair to those governed by the rules. The point to get across to students is that a potential problem with broad discretion is that it relies on the judgement or opinion of the individual or authority that is exercising the discretion and we all have different judgement and opinions. This makes the outcome uncertain for those who are affected by the decision. The outcome of the decision for an individual student should not depend on his/her luck whether he/she happens to be in the class of a lenient or a strict teacher.

Taken out of the classroom context, exercising discretion differently can be much more serious when it affects the outcomes of decisions with potentially far-reaching consequences on the lives of those involved. You might wish to explain the example below to students to demonstrate this.

Deportation

Someone being potentially uprooted from his/her home and life and moved somewhere else is life-changing and has serious consequences for the individual. It would be extremely unfair if such a life-changing outcome could vary depending on the unguided opinion of the decision-maker.

The law states that anyone who is not a British citizen may be deported if the Secretary of State deems this to be conducive to the public good.³ Without guidance, this would require the judgement of the Home Secretary on what 'conducive to the public good' means. We would say that there is an element of discretion involved because based on this simple wording, with no further guidance, two different Home Secretaries could arrive at different decisions on whether a deportation is 'conducive to the public good.'

We are given one element of guidance that deporting foreign criminals will always be 'conducive to the public good.'⁴ Beyond that, the law doesn't tell us in what other situations deportation might be conducive to the public good.

The only way in which we can narrow down the meaning of 'conducive to the public good' is when decisions of the Home Secretary are disputed and cases are brought to court. Courts rule on whether the decision has been correctly made in those particular situations which allows us to understand whether or not an individual with those particular circumstances are 'conducive to the public good.'

Understanding the meaning of the law on a case by case basis makes it uncertain for the individuals involved because they do not know whether they will be penalised under the law in advance of a decision being made (unless a similar situation happens to have already been reviewed by a court.)



3.2.3 ACTIVITY 1: School Rules – Printouts for students

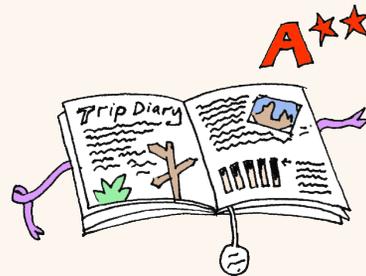
Below you will see a number of rules that aren't very clear and leave a lot of room for the individual judgement or opinion of the person putting the rules into force. Try to identify what the discretion is in each rule and have a go at writing guidance for the rules that would make it clearer what should be considered when making the decision.

Write your guidance next to each rule.

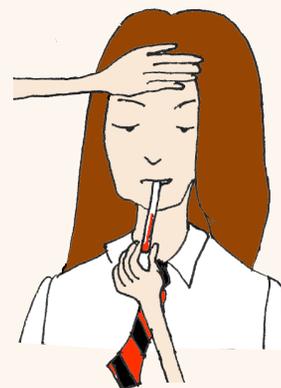
1. Students may be excluded from school for very bad behaviour.



2. Teachers may award bonus marks for exceptionally good projects.



3. Teachers may grant homework extensions to students who have a good reason for requesting one.





3.2.4 ACTIVITY 1: School Rules - Instructions for teachers (5-15 minutes)

OPTIONAL if you are showing the video (or students can also be asked to re-write just one or two of the rules)

Ask the students to work in pairs or small groups. Provide each pair or group with a hand-out. Groups may need guidance individually.



3.2.5 ACTIVITY 1: School Rules - Background for teachers

Sample answers:

1. Students may be excluded from school for very bad behaviour.
In deciding what 'very bad behaviour' means, teachers may take into account conduct towards other pupils and teachers during and outside lessons. 'Very bad behaviour' may include:
Persistent failure to turn up to lessons
Bad language and verbal abuse
Physical violence towards students and pupils
2. Teachers may award bonus marks for exceptionally good projects.
Projects that are 'exceptionally good' will include the following features:
Relevant content that shows understanding of the subject
Independent thought and analysis on the subject
Clearly written with correct grammar and punctuation
3. Teachers may grant homework extensions to students who have a good reason for requesting one.
In deciding what is a 'good reason', teachers should consider the extent to which the reason affects the ability of the student to submit homework on time, taking into account his or her personal circumstances such as family, health and personal characteristics.

3.3 Exercise of Power



3.3.1 Exercise of Power – Teacher-led introduction and discussion

Points 3, 4, and 5 are optional.

Points 1-5 should take 5-15 minutes (depending on how many points are covered.)

1. Ask students the following question:

Who has power in the UK?

What is power?

2. Ask the students to feedback to the class. As they feedback their answers, discuss the following questions as a class:

Does anyone have unlimited power?

Should anyone have unlimited power?

Why is it important to know what the boundaries of power are?

3. If time allows, present the following example to students:

Members of Parliament are allowed under parliamentary guidelines to have certain allowances (extra money on top of their salaries) and some of their expenses reimbursed in order to carry out their duties as MPs. For example, under the guidelines that existed at the time it was permitted for MPs to keep an expenses-paid second home in order for MPs to be close enough to travel to Westminster every day when Parliament is in session. They were not allowed under the rules to claim expenses for their main home, ie, the home that they lived in when they did not need to be in Parliament.

In 2009, it came to light that many MPs had been abusing the expenses system for personal gain. For example, some MPs claimed money on second homes for homes that were either empty or not being used as their accommodation while Parliament was in session. Other MPs were able to claim expenses on both their London accommodation and their main homes outside London by changing which home they were designating as their second home.

This was an abuse of power because MPs were given the benefit of having certain allowances and expenses in order to be able to carry out their jobs as MPs. The fact that they were using that benefit for personal gain meant that they were not using the benefit for the purposes intended by the parliamentary rules.

4. Ask the class:

Should MPs be given allowances and be allowed to claim some expenses?

In the discussion, it should be emphasised that there is nothing inherently wrong with the benefits or powers being conferred by parliamentary rules as long as they are used for the purposes intended. In this case the allowances and expenses are given to ensure that MPs can do their jobs effectively and do not lose out financially when they attend parliament.

5. Ask the class:

Have some MPs abused their power relating to expenses? Why?

In the discussion, the point to emphasise is that it is the abuse of the power or benefit that is wrong. Some MPs have used this power, not to facilitate the work they do, but for their own financial gain or to increase their wealth. Whether they have claimed these expenses outside or within the rules, it can still be viewed as an abuse of power.



3.3.2 Exercise of Power - Background for teachers to points 1-5 above

What is power? If you are given the power to do something, what does that mean?

The concept of power that we discuss in this section describes the authority and ability conferred on government ministers and public bodies by law to make certain decisions that affect others. However power is conferred in many other situations, for example, the authority and ability conferred by an international organisation on officials within the organisation and other individuals.

Does anyone have unlimited power? Should anyone have unlimited power? If not, why is it important to know what the boundaries of power are?

The power to affect the rights or behaviour of others is a great responsibility as it has far-reaching consequences on individual lives and on society.

The general principle is that an authority must only exercise power to the extent and for the purpose conferred on it by law and it must be exercised in a reasonable way. Exercise of power outside the purpose for which it was intended is an abuse of power.⁵

If authorities were permitted to act beyond their powers, this would go against the previously examined concept of certainty. It would also open the way for arbitrary decision-making and unfairness that could be to the detriment of individuals because authorities could make decisions based on personal preference or bias.

To determine the limits of conferred powers, we look towards the law to find out the intention of those who conferred the powers. Since it is Parliament that makes the law in the UK, we look at the law made by Parliament to find out what function Parliament had intended the public authority to carry out with that power and how it intended it to carry out that function.



3.3.3 ACTIVITY 2: Stop and Search – Teacher-led introduction

Read or paraphrase the following to the class:

Parliament has given police, through law, a range of powers to stop and search people. For example, powers have been given to police to stop and search people to recover stolen property or prohibited items, to prevent violence, or to uncover potential terrorist acts.

However, in recent years, stop and search powers have been criticised as disproportionately targeting black people. Figures show that black people are many times more likely to be searched than white people. Critics have commented that the statistics showing the disproportionate targeting of black people shows that the power to stop and search has been abused by some police officers to further a racist agenda rather than for the aim for which the powers were intended. If this were the case, then the police officers would be acting in a way that Parliament had not intended, and therefore outside the power conferred on them. We would say that there had been an abuse of power.

The government has in fact recently come to the conclusion that police stop and search powers have been misused and is looking to reform the conditions on which police are able to stop and search people.



3.3.4 ACTIVITY 2a: Stop and Search – Printout for students

You are going to watch a video called “Stop and Search: police battle for control on London streets” made by The Guardian ©

Introductory task before you watch

Read the following quotes about “Stop and Search” and, in pairs, try to guess which person from the list on the right might have said them. (Note that Brent is an area in London.)

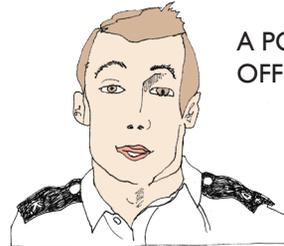
“I don’t have a problem with stop and search. I think it’s a good thing. I have a problem with the disproportionate amount of young black men who are stopped and searched.”

A BRENT
VOLUNTEER
WORKER



“Stop and search has its uses but I don’t think it is actually tackling the underlying issues when it comes to crime and community safety in Brent.”

A POLICE
OFFICER



“For me personally I think stop and search is one of my best tools in order to prevent crime and solve it”.

AN ACTIVIST
FROM BRENT
STOP AND
SEARCH
MONITORING
GROUP



“Not only is it embarrassing... It’s one of the most embarrassing things you can go through. But it is also intimidating – because it is the easiest way for a black man to go to jail.”

A LABOUR
COUNCILLOR,
BRENT



As you watch: Now watch the video and see if you were right. While you watch the video think about the difference between the legitimate use of power and abuse of power.



3.3.5 ACTIVITY 2b: Stop and Search Statistics – Printouts for students

P (Additional activity or alternative for those not showing the video)

These statistics were noted in the video and in an article by The Guardian © called, “Stop and Search: on the streets with the police”. Choose two of the following statistics that you think show an abuse of power. Why are they an abuse of power?

30 out of 43 forces in England and Wales do not use stop and search properly.

Across London, Police and Criminal Evidence Act searches for drugs, weapons, and stolen items have dropped from over half a million to 356,567.

Black people are seven times more likely to be searched than white people.

The Metropolitan police averages 9% of searches resulting in arrest. The London borough of Brent has a better record, with 21% of searches resulting in arrest.

Nearly a quarter of searches nation-wide might be done illegally.

(Source “Stop and Search: police battle for control on London streets” made by The Guardian ©).





3.3.6 ACTIVITY 2a and/or 2b: Stop and Search - Instructions for teachers



1. Divide the students into pairs or small groups. Ask them to finish the introductory task. **(5 minutes)**

2. Play the video. **(12.5 minutes)**

“Stop and Search: police battle for control on London streets”

made by The Guardian ©

<http://www.theguardian.com/law/video/2013/oct/20/stop-and-search-police-london-video>

If facilities are not available to watch the video in the class room, the introduction statements can be used without the video. An alternative discussion based on the statistics in the video can be used to generate discussion of the legitimate use of power and abuse of power.

3. Check the answer to the introductory activity. (answers below)

4. Ask the class, based on either the video or the statistics (5-10 minutes depending on whether you use the statistics)

What is the difference between the following:

a) the legitimate use of power

b) abuse of power

The point to emphasise to students is that there is nothing inherently wrong with the power itself if it is used for a legitimate purpose. As the video underlines, it is the abuse of a legitimate power that makes it illegitimate.



3.3.7 ACTIVITY 2: Stop and Search - Background for teachers

Answers to 3.3.4 Activity 2. Stop and Search.

1. "For me personally I think stop and search is one of my best tools in order to prevent crime and solve it." **Police officer**

Note for teacher: This statement shows the necessity of exercising power in order to achieve a particular purpose for the public good.

2. "I don't have a problem with stop and search. I think it's a good thing. I have a problem with the disproportionate amount of young black men who are stopped and searched." **An activist from Brent Stop and Search Monitoring Group.**

Note for teacher: This statement explains how power can be used for illegitimate purpose.

3. "Not only is it embarrassing... It's one of the most embarrassing things you can go through. But it is also intimidating – because it is the easiest way for a black man to go to jail." **A Brent volunteer worker.**

Note for teacher: This statement illustrates different treatment and outcome on the basis of race rather than for a relevant reason.

4. "Stop and search has its uses but I don't think it is actually tackling the underlying issues when it comes to crime and community safety in Brent." **A Labour councillor, Brent.**

Note for teacher: This statement shows power not achieving the purpose it was designed for.

Sample answers to 3.3.5

30 out of 43 forces in England and Wales do not use stop and search properly.

This statement could suggest illegitimate purpose or irregular procedure, both of which could amount to an abuse of power.

Across London, Police and Criminal Evidence Act searches for drugs, weapons, and stolen items have dropped from over half a million to 356,567

This statement does not show an abuse of power.

Black people are seven times more likely to be searched than white people.

This statement suggests that there is a problem with the way stop and search is being used if there is differentiation on the basis of race and could amount to an abuse of power.

The Metropolitan police averages 9% of searches resulting in arrest. The London borough of Brent has a better record, with 21% of searches resulting in arrest.

The low arrest rate suggests that police are not targeting the right people or are targeting too many people. Both could amount to an abuse of power since the power was given to prevent or solve crime and the low accuracy rate means that the purpose is not being achieved.

Nearly a quarter of searches nation-wide might be done illegally.

This statement suggests that police are not following the procedure or purpose set out in law for stop and search powers, which is in itself an abuse of the power they have been given.

3.4 Conclusion



3.4.1 Plenary

Do you agree or disagree with the following statements?

'What is written in the law is always fair, even if it is not clear exactly how we might be breaking that law and what punishment we might receive.'

'An authority must only use its power for the purpose of the law. Power must be used in a reasonable way. Using power for reasons it was not intended for, is an abuse of power.'

Footnotes:

¹ Lord Bingham writes in Chapter 4 of his book *The Rule of Law* that 'questions of legal right and liability should ordinarily be resolved by application of the law and not the exercise of discretion.'

² In Chapter 3 of Lord Bingham's *The Rule of Law* he writes that 'the law must be accessible and so far as possible intelligible, clear and predictable.'

³ s3(5)(a) Immigration Act 1971

⁴ s32(4) UK Borders Act 2007

⁵ Lord Bingham writes in Chapter 6 of *The Rule of Law* that 'Ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably.'

Lesson 3 Glossary

Abuse of power – in this context, using a power given by Parliament in a way that was not intended, or beyond the scope of what was intended

Allowances – in this context, extra money on top of a normal salary

Certainty (of the law) – where you can be sure what the law is, and what the outcome would be in a set of circumstances

Clarity (of the law) – where the law is easily understood and not confusing

Discretion – in this context, a choice given by Parliament to relevant government ministers and public bodies about whether and how to apply the law in different circumstances

Disproportionate (targeting) – targeting one group more than other groups without having an objective reason for doing so

Exercise of discretion – choosing whether and how to apply the law

Governed (by rules) – regulated

Legitimate – justifiable; can be shown to be right or reasonable

Power – in this context the legal authority and capability to make decisions which affect others

Boundaries of power – limits of power

Conferred powers – powers given by Parliament to government ministers or public bodies to make decisions

Exercise of power – using a power that you have

Predictable law – where the law is clear and certain and the outcome can therefore be easily predicted in a set of circumstances