

Twelve month review of the Code of Practice for Stop and Search in Scotland by the Independent Advisory Group on Stop and Search

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Cabinet Secretary for Justice
St Andrew's House
Regent Road
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21 May 2019

Dear Cabinet Secretary,

**INDEPENDENT ADVISORY GROUP ON STOP AND SEARCH (IAGSS) –
TWELVE MONTH REVIEW OF OPERATION OF CODE OF PRACTICE**

As discussed in my letter of 21 December 2018, I now enclose the twelve month (and final) report of the IAGSS.

As you are aware, following the IAGSS report in September 2015 and subsequent Parliamentary procedure, the Code of Practice for Stop and Search in Scotland (“the Code”) came into force on 11 May 2017. At the request of the then Cabinet Secretary for Justice, Michael Matheson MSP, the IAGSS developed detailed proposals for a review of the operation of the Code once it had been in force for 12 months, with an interim report looking at the evidence from the first six months. The Review was to be informed primarily by data and evidence gathered by the police during the first twelve months of operation of the Code, in addition to, as agreed at a later stage, qualitative research commissioned by the Scottish Government.

REMIT OF THE REVIEW

The primary purpose of the Review was to examine the use of stop and search in Scotland following implementation of Section 65 of the Criminal Justice (Scotland) Act 2016 and introduction of the Code. Specifically, the Review was to consider four main issues which had been identified during our earlier work and associated public consultations:

- i. any potential gaps in the new or existing legislation around young people and alcohol;
- ii. any lack of clarity in the Code or possible gaps in legal powers to search in specific circumstances where intervention is necessary to promote individual safety and wellbeing or preserve life, especially in situations involving vulnerable individuals;
- iii. any increase in the use of alternative powers, such as Section 60 of the Criminal Justice and Public Order Act 1994 (“section 60”), to conduct searches; and
- iv. any concerns about the use of stop and search with regards to individuals with protected characteristics.

Our proposals for review were accepted by Mr Matheson and supported by the Police Service of Scotland (“Police Scotland”) who agreed that the various changes, most of which had been implemented ahead of 11 May 2017, should be the subject of early evaluation in light of emerging evidence. In relation to the Review, we continued to liaise with the Scottish Police Authority (“SPA”) who, of course, retain primary responsibility for oversight of Police Scotland. The SPA has been represented throughout on the IAGSS. This has been in addition to other liaison with the SPA on issues relating to stop and search.

SIX MONTH REVIEW

Professor McVie prepared the IAGSS’s report containing the interim review of the Code. This looked at data produced in the first six months of its operation. This was submitted to Mr Matheson on 5 February 2018.

TWELVE MONTH REVIEW

As you know, it was agreed that the IAGSS should take a little longer to complete the twelve month review in order that full account could be taken of all relevant material, including some which has been finalised only in 2019. Associated with this final IAGSS report containing the twelve month review, you will receive the following three reports which informed our final conclusions and recommendations:

1. Twelve Month Review of the Code of Practice for Stop and Search in Scotland: Qualitative Report, Ciaran Mulholland and Carolyn Black, Ipsos MORI Scotland, with Professor Ben Bradford, University College London, February 2019.
2. Twelve Month Review of the Code of Practice for Stop and Search in Scotland: Quantitative Report by Professor Susan McVie, February 2019
3. Report by Police Scotland on their internal evaluation of the impact of the Code of Practice

These detailed reports should be read together with this IAGSS report to provide a more complete picture. As a result, it is necessary in this final IAGSS report only to tie together the key areas which we agreed would be addressed at this stage, primarily on the basis of evidence which has emerged.

The Ipsos MORI report, commissioned following Professor McVie's detailed six-month report on the Code, focusses on the following areas:

- identifying any potential gaps in the legislation around young people and alcohol
- identifying any other potential gaps in the legislation or lack of clarity in the Code
- searches of individuals with protected characteristics.

Professor McVie's report, which provides an update of the six-month interim report, addresses the following specific areas:

- changes following implementation of the Code
- identifying legislative gaps around young people and alcohol
- other potential gaps in the legislation
- change in the use of Section 60 authorisations
- searches and seizures for people with protected characteristics
- predicting positive search outcomes.

The Police Scotland report addresses the key matters mentioned above, as well as providing an overview of the changes from a policing perspective.

Together, the reports offer a reasonably consistent picture of the new landscape around stop and search, albeit it should be noted that things are still at a relatively early stage considering the degree of change required to transform police policy, culture and practice.

Further developments in this area should continue to be considered within Police Scotland and by the SPA, but will also be capable of scrutiny by academics and others on the basis of the much improved data and information which is now publicly available.

OVERVIEW OF STOP AND SEARCH

When stop and search was highlighted as an issue in 2014, data on the extent of the practice of non-statutory or so-called “consensual” stop and search caused considerable public, media and political concern. More detailed consideration of the data led to questions regarding its reliability and, therefore, the true scale of the practice, which became a matter of additional concern. However, even allowing for issues with reliability of the data, it appeared reasonably clear that this one police tactic was being used excessively, driven at least in part by police performance targets, and often with little relative success in terms of discovering illicit items. Various concerns were raised by Her Majesty’s Inspectorate of Constabulary in Scotland and the SPA, as well as academics and the media. Performance targets had been the subject of criticism for a longer period, including by those within policing, for example, the Scottish Police Federation.

These various concerns were addressed in the work of the IAGSS, Scottish Government, Police Scotland, HMICS and the SPA, and led to the legislative and other changes which have been the subject of ongoing review.

As a result of the changes in recent years, we now have a much more reliable and accurate system of recording stop and search which allows for greater confidence in the data and more robust independent scrutiny. The number of relevant searches has reduced significantly and remains much lower than the point in time when there was concern about overuse of the tactic. It should be observed that the reduction in use of stop and search started before the introduction of the Code but continued thereafter. Evidence from the review of the first twelve months suggests this has settled down to a reasonably consistent pattern, perhaps giving us the beginnings of a better understanding of the true scale of necessary and appropriate use of stop and search. We recognise, of course, that the number of searches will vary over time and from place to place, but the information now available should assist in understanding the reasons behind any change in numbers and any such geographical variations.

Importantly, despite the considerable drop in the number of searches, there has been a statistically significant increase in the percentage of search encounters that resulted in a positive outcome, i.e. the finding of an illicit item. An increase in the recovery of illicit items is only one measure of success of police searches but it is an important one as it has wider implications for the effectiveness and perceptions of the fairness of use of the tactic. It also suggests that, supported and encouraged by specific training and the change in culture around stop and search, police officers are more discerning in their use of stop and search. In turn, this can help to promote public confidence in the legitimacy of current use of the tactic, allowing it to be seen as more proportionate and effective as well as carrying less risk of causing tension or even friction with individuals and within communities.

As a group, the IAGSS remains of the view that matters continue to progress well, with stop and search now being considered as just one of a number of appropriate tactics which may be used within everyday policing. Nevertheless, it continues to be an important tactic that should be used in appropriate circumstances and informed by evidence and intelligence that point towards 'right time, right place, right person'.

Rather than over-reliance on excessive and often counter-productive use of stop and search as happened in the past, officers are now encouraged and trained to make increased use of their skills of engagement with the public. Engagement was emphasised in the Code as a better means of securing cooperation from the public in the first instance. In addition, it is often a more effective approach in identifying whether there are reasonable grounds for suspicion.

Data around the increase in positive searches also suggests that the tactic now involves more effective use of police officer time and resource.

Turning to the four areas identified as requiring consideration in the Review, I will say a little about each.

i. POTENTIAL GAPS AROUND YOUNG PEOPLE AND ALCOHOL

A key issue considered at each stage of the review relates to searching young people for alcohol. This was one of the more controversial aspects of stop and search and a subject on which we were unable within the IAGSS to reach unanimity at the time of our initial report

in 2015. It was the subject of specific public consultation in which Government made impressive efforts to engage with young people, resulting in a powerful body of opinion against the introduction of such a power. On the other hand, it was clear that concerns remained within Police Scotland about the vulnerability of young people in situations involving alcohol, notwithstanding their power to request the surrender of alcohol by young people which remained in place. Consequently, it was agreed to examine all evidence from the first twelve months of the Code to see if the absence of a specific power to search young people for alcohol resulted in any real difficulties suggestive of a gap in police powers.

Although this was an area in which we were unable to reach a unanimous conclusion in our original report in 2015, matters were somewhat simpler for the purposes of this review as we were guided by the provision of further evidence, including detailed analysis of alcohol related police incident and hospital admissions data from the quantitative research and interviews with both police officers and young people in the qualitative research.

There was a strong opinion expressed by some frontline police officers about the need for a power of search. I quote from the Police Scotland evaluation report:

“Despite the reported reduction in levels of alcohol consumption and incidents involving drinking alcohol in public, some officers do not believe the current legislation provides a proportionate power to effectively deal with young people in possession of alcohol that does not lead to officers potentially arresting young people who fail to surrender alcohol. Instead, in order to promote the safety and wellbeing of young people and communities, officers must rely on their ability to establish a rapport and engage positively in order to persuade the surrender of alcohol.”

On this possibility of a resort to arrest, in her February 2019 report, Professor McVie says:

“Unfortunately, it was impossible to determine whether there had been an increase in the use of arrests to deal with young people who refused to hand over alcohol as Police Scotland could not provide these data.”

The Ipsos MORI Scotland report of February 2019 stated:

“When speaking hypothetically about a situation where a young person might refuse to hand over suspected alcohol, police officers were emphatic that they would not arrest an under-age person for refusing to hand over the alcohol – even though they knew that they have the power to do so. There was a feeling that this would be contrary to the wider drive to decriminalise young people and encourage police officers to put the welfare of young people at the centre of their interactions. Instead, police said that they would either let the young people go, or take them home to their parents. Only in situations where other crimes had been committed, such as criminal damage or anti-social behaviour, would they consider arresting the young person an appropriate action to take.”

This is consistent with the anecdotal evidence from Police Scotland.

Considering the three reports and other information gathered within the first twelve months of operation of the Code, the short answer for review purposes is that there is insufficient evidence to justify the introduction of a power to search young people for alcohol. The arguments for and against such a power remain, but, informed by the evidence, **we recommend that no such general power be introduced.**

We offer one qualification to this recommendation, informed by the now seemingly annual Troon beach gathering of young people on sunny bank holidays, which was raised by Police Scotland as an infrequent but typical exemplar. The Troon beach events involve a large-scale but relatively spontaneous or at least quickly planned assembly of young people, many of whom bring alcohol with them concealed in bags. While there is insufficient evidence to justify the creation of a general power to search young people for alcohol, **we recommend that work be done to explore the possibility of specific legislative provision for a power of search related to gatherings such as those at Troon beach. As before, the views of young people and those working with young people should be sought during consultation on any such power.** Such a power would require to be exercised on an intelligence-led and risk-assessed basis, not simply any time there was a gathering of young people. A power of search for alcohol in such circumstances would need to be available for exercise at short notice, but would be needed only for a specified time-limited period and geographical area. It occurred to us that the Section 60 model might be considered as a starting-point, albeit it may require modification to ensure that it captured this type of particular situation and nothing beyond that.

ii. POSSIBLE LEGISLATIVE GAP REGARDING PRESERVATION OF LIFE

As highlighted previously, a gap has been identified in relation to searches that are considered necessary in order to preserve life, but for which there is no specific legislative provision for a power of search. The Code makes clear that police officers must take all steps necessary to protect life (paragraph 3.4). This is in line with the overarching duty of officers to protect life and property and the principle that the main purpose of policing is to improve the safety and well-being of persons, localities and communities in Scotland (as set out respectively in sections 20 and 32 of the Police and Fire Reform (Scotland) Act 2012). Only a small number (76) of such searches are recorded as having occurred between the 11th of May 2017 and the 31st of December 2018 (of which, 34 were during the review period) however, it is an important issue to which we said we would return in our final report. It is also a matter of concern raised by officers in the qualitative research by Ipsos MORI as requiring clarification. As anticipated in our interim report on the six month stage of review, **we recommend that there should be specific legislative provision to cover situations involving protection or preservation of life.**

While it is not for the IAGSS to frame the specific legislative provision, we are aware that drafting such a provision to enable police officers to search individuals in their own home or another private place, in circumstances where the officers may have no reason to suspect

that a crime is being committed, will need very careful attention to detail, and in particular will need to balance the respective needs and rights, so that what would undoubtedly be an interference with an individual's rights can properly be said to be justified.

In addition, while it is a matter for Government to identify a suitable legislative vehicle, we consider it necessary to reflect on the purpose of the power which is to seek to ensure the protection and preservation of life, rather than as a type of criminal power or sanction. These situations often involve mental health implications, with individuals in moments of deep crisis. It may be that suitable legislation could be found away from the field of criminal justice and within a more general public health approach, perhaps aligned to general welfare, mental health or the like.

iii. SECTION 60, CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994

This area was mentioned for consideration in the Review as we wanted to monitor any possible displacement of stop and search occurring without reasonable grounds to suspect possession of an illicit item. As it transpired, this power was authorised only on 3 occasions and, even then, was used only once, involving only 2 searches. This offered reassurance that there was no displacement. We have no recommendations in this area.

iv. PROTECTED CHARACTERISTICS

On the evidence, particularly Professor McVie's report, the relevant characteristics to which attention is drawn relate to age, sex and ethnicity.

An issue of particular concern prior to the introduction of the Code was the highly disproportionate use of stop and search, coupled with extremely low rates of positive detection, amongst children and young people. The quantitative research shows that the rate of search continued to fall across all age groups following the introduction of the Code and the degree of disproportionate searching amongst young people reduced significantly. Nevertheless, people in their mid to late teens continue to be most likely to be searched and positive detection rates are still lower for this age group, which suggests that the threshold of reasonable suspicion may be applied more stringently amongst adults than young people.

The vast majority of searches carried out in Scotland involve males and this has not changed. However, the research found that search rates declined more for males than for females, and searches of males were more likely to detect items than those involving females, following the introduction of the Code. There also appears to be some equivalent disparity in the use of strip searches by sex. These differences may partly be explained by the introduction of recording for searches under warrant (as this had a disproportionately greater impact on rates of search for women than men), but it is possible that other factors are at play.

It was difficult to draw robust conclusions about any ethnic disparity in the use of stop and search due to small numbers and constraints in the availability of reliable population data.

However, the overall ethnic profile of searches largely matches the population profile for Scotland and rates of search had declined, while detection rates had increased, across all ethnic groups.

Overall, we conclude that the introduction of the Code resulted in improvements for all groups with protected characteristics.

While we make no specific recommendation in this area, it appears to us that there would be value in Police Scotland and the SPA continuing to monitor certain groups with protected characteristics and taking steps to address issues where the data present evidence of unfairness or inequality.

OTHER MATTERS

SEIZURES

There has been a significant drop in the number of recorded seizures of alcohol, especially in the West of Scotland. This was discussed with officers in the NSSU as it ran contrary to our expectations. It appears that the drop may relate more to issues around recording as opposed to any significant changes in practice. The stop and search database was not designed to capture information relating to seizures, but was altered to allow officers to record such information in support of the work of the IAGSS. However, it became apparent that officers were also recording seizures on systems that were outcome focused and could provide more appropriate levels of support for those involved. Subsequent discussions involving Police Scotland internal governance, the Scottish Government and Scottish Institute Policing Research (SIPR) have resulted in a decision to stop recording seizures on the stop and search database.

We have been assured that, to the extent that it would be required, details of relevant individuals are recorded on the Vulnerable Persons Database (VPD) and Criminal Justice Systems, which, rather than simply quantifying seizures, consider outcomes. This seems to us to be more appropriate for recording purposes when it comes to seizures. Consequently, we make no recommendation on this matter.

CRIME RATES

Professor McVie has done some further independent work on the relationship between stop and search and crime rates. The preliminary findings show that there was very little relationship between the two,

either before or after the introduction of the Code. This is consistent with the bulk of international literature on the subject. Where there was a relationship, the effect was tiny. The most plausible explanation is that crime rates are driven by a vast range of factors and the impact of stop and search is likely to be very small in this wider context. This may be an area which merits further research.

TRAINING

Training has been key to much of the success of the changes to stop and search. As with all other aspects of the changes, the necessary work started well before the introduction of the Code. We are aware of the considerable work that went into preparing and delivering training to all officers throughout Police Scotland which was obviously a major undertaking. Prior to the introduction of the Code, the IAGSS visited the Police College for a presentation on training, which included seeing aspects of the training for officers; and several members of the group had the opportunity to attend live training sessions for officers. A particularly striking aspect of the training programme was the work that had been done around officer awareness of some of the issues related to stop and search for Looked After Children and Young People.

The Ipsos MORI report suggests a number of areas for further or refresher training. The abolition of non-statutory searches has brought into sharp focus the area of officer discretion and the need for a sound understanding of the basis for reasonable grounds to justify a search. While the evidence around positive searches and recoveries suggests that this has been achieved effectively, feedback in the qualitative research suggested that officers would welcome further assistance by way of training. Similarly, when it comes to engagement with young people, the qualitative research suggests that young people continue to have some concerns about aspects of engagement.

These matters, along with others highlighted in the review process, have been picked up by Police Scotland in their planning for ongoing and future training. Based on some of the evidence produced by the review, and the continued extent of the use of stop and search amongst young people, we would encourage the continued involvement of young people in preparing and, where possible, delivering officer training. Importantly, we understand that Police Scotland is implementing a Trauma Informed Approach especially when dealing with children and young people, including by way of stop and search, to better understand individual's needs and the most appropriate levels of support. A key to

improved understanding is positive engagement. Planned activity with children and young people utilising dedicated resources in partnership with service providers to ensure a broad spectrum of participants will help shape future policy, guidance and training, where required.

Police Scotland has also introduced additional levels of training since the 12 month review period. This began with a review of probationer training, including stop and search inputs, by Sergeant Andy Wilson and Constable Christopher McLeish of the Operational Training Development Unit at the Scottish Police College. The NSSU have also introduced enhanced stop and search guidance for Tutor Constables given their responsibility for supervising probationary officers at Divisions. This guidance is provided as supporting documents for Tutor Constable's courses. Scenario based knowledge checks of search powers now form part of the annual Officer Safety Training courses which all officers are required to attend (the only compulsory face-to-face training for officers in the course of any year). Furthermore, the introduction of a national supervisory process where local divisional supervisors can review and monitor officers stop and search submissions to the national stop and search database is a significant step in the effective management of stop search activity.

Early indications are that this has led to improved recording practice and effective monitoring of stop and search activity. The additional training contributes to ensuring officers' stop and search activity and monitoring is carried out in line with Police Scotland's values and in compliance with the Code.

As we moved towards concluding our work, the NSSU arranged a further opportunity for the IAGSS to be updated on Probationer training on stop and search. This took place at the Police College on 17 April 2019. This was an opportune time for such a presentation, given the review of Probationer training.

Stop and search is one aspect of the initial 11 weeks of Probationer training at the Police College, featuring in week 2 (the first week involves training around human rights and the Code of Ethics). While impressed with the quality of the training, we were struck by the challenge of trying to address the policy, legislative and cultural issues involved in stop and search in such a tight timescale. It may be that, as Probationer training is reviewed, consideration might be given to expanding the time available for training on this important area as it seemed to us to be a useful example of the operation in practice of some of the key concepts from

human rights and the Code of Ethics, for example, proportionality and fairness.

As before, we were extremely impressed on our visit by the content and quality of the training, as well as the obvious commitment of the officers involved in providing it. We are grateful to Sergeant Andy Wilson and Constable Chris McLeish for their time in giving us the presentation.

PYROTECHNICS

One other matter mentioned by Police Scotland as a possible gap relates to pyrotechnics and flares, especially in relation to fans travelling to football matches. Although distinct, the potentially related issue of fireworks has been the subject of specific consultation by Scottish Government (which closed on 13 May 2019) and it may be that the issues of pyrotechnics and flares can be considered as part of that process. This area is not one on which we were able to form any views, in light of the absence of relevant evidence in our work.

CONCLUSIONS

For such a major change in police powers and culture throughout Police Scotland, the transition to exclusively statutory stop and search seems to have been remarkably effective. We acknowledge that significant change in practice within Police Scotland started before the Code came into force. Nevertheless, the evidence from the first twelve months of operation makes it clear that the introduction of the Code has itself had a further significant effect on increasing positive search results. This progress has been greatly assisted by the dedicated National Stop and Search Unit within Police Scotland which has continued to provide detailed and effective internal scrutiny. We have liaised with them on a regular basis and their assistance has been invaluable in our work as part of ongoing external scrutiny. It appears to us that implementation of such significant change would have been impossible without the commitment demonstrated by Police Scotland in the allocation of experienced, dedicated and able officers to a unit specifically tasked with the role. The NSSU is now being wound down to allow stop and search to be mainstreamed as a police tactic and supervised at divisional level. We are extremely grateful to them for all their work, cooperation and assistance over the last 4 years. We wish to make special mention of Superintendent Ian Thomson, Chief Inspector Lyn Ross, Inspector Kenny Ramsay and Inspector John McSorland. Sergeants Andy MacDonald and Alex Lavery were also very helpful, especially in relation

to working with Professor McVie around data and the development of tools to monitor stop and search effectively within Police Scotland.

HMICS have played a crucial part in confirming the problems and issues with stop and search, going back to their report in March 2015. We have benefitted greatly throughout our work from the involvement on the IAGSS of the HM Chief Inspector of Constabulary in Scotland, firstly Derek Penman and, thereafter, Gill Imery.

The SPA has continued to contribute to our work also, with two SPA representatives in attendance at our last IAGSS meeting. Given their overarching role in oversight, this has been particularly important.

I am happy to meet to discuss all four reports.

Kind regards

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