

## Justice Sub-Committee on Policing

### Stop and Search Code of Practice (Appointed Day) (Scotland) Regulations 2017 [draft]

#### Written submission from Dr Kath Murray

This evidence is provided at the request of the Justice Sub-Committee on Policing to inform discussion on the Stop and Search Code of Practice. The findings and observations are mostly based on my doctoral research on police stop and search in post-war Scotland.<sup>1</sup>

The paper discusses the factors that facilitated the rise of stop and search in Scotland, and how these relate to the Code of Practice. Looking at police practice in the legacy era and post-reform period, the aim is to demonstrate why the Code is both necessary and proportionate. Please note that the paper was prepared in a very short time scale, and is not intended as a comprehensive review of the relevant issues.

#### Background

Initially deployed as a short-term measure, intensive or ‘volume’ stop and search dates to the early 1990s, as part of efforts to deal with violent crime in the Strathclyde region. Whilst a lack of published data precludes detailed analysis of police practice in this period, it is clear that the tactic was widely used in some areas, particularly amongst young people.<sup>2</sup> For example, Waiton states:

Following Strathclyde Police’s Operation Spotlight initiative I discovered that every young person who attended the drop-in centre had been stopped and searched. A colleague giving a talk on children’s rights at a nearby school found that all the teenagers in the class had been stopped and searched. And when he discussed this with the teacher of the class, he found that all the young people that went to her Sunday School had also been stopped and searched.<sup>3</sup>

Concern over non-statutory stop and search in Scotland surfaced in the early 2000s, following the publication of the Stephen Lawrence Inquiry report in 1999.<sup>4</sup> A study commissioned by the Scottish Executive as part of the *Stephen Lawrence Inquiry in Scotland* stated:

There is at the very least some disquiet among some officers about the concept of a “consent” or “voluntary” search, and a strong belief in some quarters that this has no place in Scottish policing, nor any basis

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<sup>1</sup> Murray, K. (2014) *The Proactive Turn: stop and search in Scotland (A study in elite power)*. PhD Thesis. University of Edinburgh.

<sup>2</sup> Reid Howie Associates, 2002. *Police stop and search among white and minority ethnic young people in Scotland*. Edinburgh: Scottish Executive (para. 2.9).

<sup>3</sup> Waiton, S. (2006) *Amoral Panic: The Construction of ‘Anti-social’ Behaviour and the Institutionalisation of Vulnerability*. PhD thesis. University of Glasgow.

<sup>4</sup> Macpherson, W. (1999) *The Stephen Lawrence inquiry*. London: The Stationary Office. Cm 4262.

in Scots law, and it would seem prudent for ACPOS to give some consideration to the whole area of consent searches, both from a civil liberties and a legal standpoint.

It is clear that, despite the views of a number of officers to the contrary, there are a very large number of consent or voluntary non-statutory searches being carried out by officers in Scotland.<sup>5</sup>

The study also noted that ‘some very young children are being subject to searches’ and recommended that ‘ACPOS give consideration to existing guidance in relation to searches and other interactions in a street setting with very young children’.<sup>6</sup> However, with no evidence of wider public anxiety, nor data to establish the scale or nature of police practice, no further action was taken.

Most forces began recording searches in 2005, at which point recorded rates in Scotland were broadly on a par with England and Wales. Recorded rates in Scotland increased steadily thereafter, peaking in 2012/13, at a rate around seven times higher than England and Wales. Whilst the national figure was principally driven by legacy Strathclyde, high search rates were also evident in other legacy forces. For example, legacy Strathclyde, Lothian and Borders and Central clustered as three of the four highest users of stop and search in Britain in 2010.<sup>7</sup>

### **Non-statutory stop and search**

Non-statutory stop and search acted as the main driver of variation between the two jurisdictions, in effect enabling a volume approach. Note however, that the proportion of non-statutory searches varied sharply across the legacy forces, reflecting different policing approaches: from 10% in legacy Northern, to around three quarters of recorded searches in legacy Strathclyde.<sup>8</sup>

Most non-statutory searches did not result in detection, for example, in 2010 around 7% of statutory searches resulted in detection, compared to 18% of statutory searches.<sup>9</sup> At the time, low detection rates tended to be rationalised by an appeal to deterrence. Viewed this way, *not* finding unlawful items was understood as evidence of a successful deterrent effect. As one press release put it, ‘Never before have Police Officers in Inverclyde carried out so many searches for weapons, yet at the same time found so few’.<sup>10</sup> Yet the relationship between search volume and offending was not substantiated<sup>11</sup> (see appendix one). Moreover, the tactic raised serious questions about legality, legitimacy and the capacity of people to freely

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<sup>5</sup> Reid Howie Associates (2002) *Police stop and search among white and minority ethnic young people in Scotland*. Edinburgh: Scottish Executive (paras. 6.11 and 5.10).

<sup>6</sup> *ibid.* (paras. 6.13 and 6.11).

<sup>7</sup> Murray, K. (2014) *Stop and search in Scotland: an evaluation*. Glasgow: Scottish Centre for Crime and Justice Research (page 3)

<sup>8</sup> *ibid.* (page 4).

<sup>9</sup> Murray, K. (2014) *Stop and search in Scotland: an evaluation*. Glasgow: Scottish Centre for Crime and Justice Research

<sup>10</sup> Scottish Government news release( 7 November 2010) *Knife carrying down 35 per cent*

<sup>11</sup> Scottish Police Authority (2014) *Scrutiny Review – Police Scotland’s Stop and Search Policy and Practice*.

consent to the police.<sup>12, 13</sup> This was compounded by the age-distribution of searches and the fact that young people were significantly more likely to be searched on a non-statutory basis, compared to older age-groups.

Whilst the reliability of Police Scotland statistics has since been called in question,<sup>14</sup> it is clear that search rates in the legacy era and post-reform period were exceptionally high. For instance, we could more than halve the number of purported searches recorded in 2012/13, and the search rate would still far outstrip recorded rates in England and Wales. More recently, a self-report survey of secondary school children in Scottish and English cities indicated that 37% of S4 pupils in Edinburgh and Glasgow (1,142 respondents) had been stopped and searched on at least one occasion, compared to 11% in Birmingham and Sheffield (857 respondents).<sup>15</sup>

The negative impact on police-community relations has also been documented,<sup>16</sup> most recently by research commissioned by the Scottish Police Authority, which reported 'there is clear evidence that the frequent application of stop and search in an area is affecting the way that people view the police, and their willingness to engage with them in a positive or supportive manner'.<sup>17</sup>

### **Under-regulated and unaccountable**

Looking back, it is clear that the rise of volume stop and search in Scotland was facilitated, at least in part, by under-regulation, a lack of procedural safeguards – and a longstanding lack of clarity as to the limits of police search powers. In 1967, a London Scottish Office Telegram<sup>18</sup> stated 'Police powers of search are ill-defined and it is probably better not to enter into a discussion of them': in 2015, nearly five decades later, HMICS reported that officers did not have definitive guidance or a common view of what should be recorded as a stop and search.<sup>19</sup> Weak accountability and a lack of scrutiny also exacerbated the situation, in particular a lack of published data prior to 2014.

These factors are also integral to the stop and search target culture introduced by the Strathclyde Executive in the late 2000s, and subsequently rolled out nationally following the single service merger. To illustrate the point, in 2012/13 the Strathclyde Executive tasked officers with undertaking nearly half a million stop searches.<sup>20</sup> With a population of around 2.3 million, this equated to a target search rate of around 200

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<sup>12</sup> Scottish Human Rights Commission (2 February 2016) *Commission calls for end to non-statutory stop and search*. Also: SHRC presentation: *Policing and Human Rights*

<sup>13</sup> Lennon, G. (2016) *Searching for change: Scottish stop and search powers*. Edinburgh law review, 20 (2), 178–203.

<sup>14</sup> HMICS (2015) *Audit & assurance review of stop and search: phase 1*. HMICS.

<sup>15</sup> Murray, K. (2016) *Understanding and Preventing Youth Crime survey (UPYC) Early Findings: Stop and search in Glasgow and Edinburgh*.

<sup>16</sup> Reid Howie Associates (2002) *Police stop and search among white and minority ethnic young people in Scotland* Edinburgh: Scottish Executive (para. 5.8).

<sup>17</sup> Blake Stevenson (2016) *A qualitative study of the impact of Stop and Search on individuals and communities in Scotland*. Scottish Police Authority.

<sup>18</sup> National Archives of Scotland NAS HH55/1503. Telegram from London Scottish Office to Scottish Home and Health Department (8 November 1967)

<sup>19</sup> HMICS (2015) *Audit & Assurance Review of Stop and Search: Phase 1*. HMICS.

<sup>20</sup> Murray, K. (2014) *Non-statutory stop and search* Scottish Centre for Crime and Justice Briefing 6/2014 (p.7 Table 3).

searches per 1,000 people: an extraordinarily high figure, made possible by a reliance on unregulated non-statutory tactics and a lack of proper scrutiny. As the Scott report states:

The problem is that non-statutory stop and search has been allowed to develop without a clear, or indeed any, framework for its use, with training on its use either inappropriate, unsuccessful, limited or non-existent at times. Non-statutory stop and search seems to have happened in recent years because it happened in the years before that, driven more by performance approaches and impressions of effectiveness than by evidence of its positive impact.<sup>21</sup>

### **Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland**

Against this backdrop, the introduction of the Code of Practice marks a major milestone in the regulation of stop and search in Scotland. Addressing the concerns outlined apropos legality and disproportionality, the Code sets out the principles governing stop and search as: *In accordance with the law, Necessary and Proportionate*. In line with a right-based approach to policing, the detailed guidance on reasonable suspicion signals a clear departure from previously vague and inconsistent standards, whilst the rules on monitoring and guidance address earlier gaps around scrutiny and accountability. The emphasis on communication is also important: research has repeatedly shown that people value being given a valid reason for a search.<sup>22</sup> Equally, the detailed sections on searching children and communicating with vulnerable adults strengthen the Code further.

Looking ahead, the Code will be subject to periodic review, should any gaps or problems arise, whilst any unintended changes in police practice will be monitored. It is also important that stop and search reform is linked to the wider strategic direction of Scottish policing, and not viewed in isolation. Fairness and accountability are integral to public confidence in policing and good community relations, whilst research suggests that if targeted correctly and used as part of a wider package of directed police activity, stop and search may have a significant impact on crime.<sup>23, 24, 25</sup>

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<sup>21</sup> Scott, J. (2015) *The Report of the Advisory Group on Stop and Search* Scottish Government (para. 72)..

<sup>22</sup> Stone, V. and Pettigrew, N. (2000) *The Views of the Public on Stops and Searches*, London, Home Office.

<sup>23</sup> Braga, A., Weisburd, D.L., Waring, E.J., Mazerolle, L., Spelman, W. and Gajewski, F. (1999) *Problem-oriented policing in violent crime places: a randomised controlled experiment*, *Criminology and Criminal Justice* 37(3) pp. 541-580.

<sup>24</sup> Braga, Anthony A., Andrew V. Papachristos, and David M. Hureau (2014) *The effects of hotspots policing on crime: An updated systematic review and meta-analysis*. *Justice Quarterly*, 31: 633–663

<sup>25</sup> Ratcliffe, J., Taniguchi, T., Groff, E. and Wood, J. (2011) *The Philadelphia Foot Patrol Experiment: A Randomized Controlled Trial of Police Patrol Effectiveness in Violent Crime Hotspots*, *Criminology* 46 (3) pp.795-381.

## Appendix one: Deterrence

As noted, evidence on the deterrent effect of stop and search remains unclear. For example, research on the use of stop and frisk in NYC by Weisburd et al (2015) found a significant, but small impact on crime,<sup>26</sup> whilst a recent Home Office study of Operation BLUNT 2 found no statistically significant effect from the large increase in weapon searches during the course of Operation Blunt 2.<sup>27</sup> There is also a lack of evidence on the marginal effect of stop and search, or 'how much deterrence you get for x searches'<sup>28</sup>. Taking an overview of the available evidence, Bradford states: 'research on the deterrent threat of stop/search has tended to conclude that if the power does have such an effect it is probably weak.'<sup>29</sup>

These points do not preclude the possibility of a deterrent effect. The key difficulties are first, that deterrence is exceptionally hard to measure. For example, it is difficult to disentangle the effect of stop and search from police presence or other anti-violence initiatives, such as the multi-agency work of the Violence Reduction Unit. And second, that deterrence strategies need to be balanced against the potential costs in terms of police legitimacy and public support for policing.

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<sup>26</sup> Weisburd, D., Wooditch, A., Weisburd, S. and Yang, S. (2015) '*Do Stop, Question, and Frisk Practices Deter*

*Crime?*', Criminology & Public Policy (advance publication) American Society of Criminology

<sup>27</sup> McCandless, R., Feist, A., Allan, J. and Morgan, N. (2016) *Do initiatives involving substantial increases in stop and search reduce crime? Assessing the impact of Operation BLUNT 2*. London: Home Office

<sup>28</sup> See Hales for a useful discussion on the relationship between knife crime and stop and search in London: [Stop and search and knife crime in London: what we know and what we don't](#) (23 October 2015) and [Stop and search and knife crime revisited: a small piece of the bigger picture](#) (20 December 2016).

<sup>29</sup> Bradford, B. (2016) *Stop and search and police legitimacy*. Routledge (p.31)