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Pàrlamaid na h-Alba

Official Report

JUSTICE SUB-COMMITTEE ON POLICING

Thursday 19 June 2014

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JUSTICE SUB-COMMITTEE ON POLICING

7th Meeting 2014, Session 4

CONVENER

*Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)

COMMITTEE MEMBERS

- *John Finnie (Highlands and Islands) (Ind)
- *Alison McInnes (North East Scotland) (LD)
- *Margaret Mitchell (Central Scotland) (Con)
- *Graeme Pearson (South Scotland) (Lab)
- *Kevin Stewart (Aberdeen Central) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Brian Barbour (Scottish Police Authority)
Assistant Chief Constable Wayne Mawson (Police Scotland)
Chief Superintendent Garry McEwan (Police Scotland)

CLERK TO THE COMMITTEE

Joanne Clinton

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Justice Sub-Committee on Policing

Thursday 19 June 2014

[The Convener *opened the meeting at 13:05*]

Decision on Taking Business in Private

The Convener (Christine Grahame): Good afternoon and welcome to the seventh meeting in 2014 of the Justice Sub-Committee on Policing. I ask everyone to switch off mobile phones and other electronic devices completely as they interfere with the sound system even when switched to silent. No apologies have been received.

First of all, do members agree to take in private agenda item 3, which is consideration of our work programme?

Members *indicated agreement.*

Stop and Search

13:06

The Convener: The main item on our agenda is an evidence-taking session on stop and search, which is an issue that arose during our recent work on local policing. I welcome to the meeting Assistant Chief Constable Wayne Mawson, of local policing west, Police Scotland; Superintendent Garry McEwan, local police commander of Fife division, Police Scotland; and Brian Barbour, member of the Scottish Police Authority board. I thank Police Scotland for its briefing paper and the SPA for its report "Scrutiny Review: Police Scotland's Stop and Search Policy and Practice", both of which have been very useful.

I understand that both ACC Mawson and Mr Barbour wish to make some very brief opening remarks. I ask ACC Mawson to start, please.

Assistant Chief Constable Wayne Mawson (Police Scotland): Thank you, convener, for the opportunity to come along today and give evidence to the committee.

Stop and search is not an end in itself but one of the ways in which we keep people safe. It allows us to reduce the amount of violence, antisocial behaviour and disorder by recovering weapons, drugs, alcohol and stolen property and deterring people from carrying such things. Later today, the chief constable will announce some good performance success in Police Scotland's first year, which has led to significantly fewer victims of violence and antisocial behaviour.

Although stop and search is just one of the ways in which we keep people safe, it is clearly an effective police tactic. In the past 12 months, we have stopped and searched 25,846 young people who were in possession of alcohol. I am really concerned about that, because consuming alcohol is often the forerunner to serious violence later on and, perhaps worse still, it leads on occasion to serious sexual violence. Out of 640,000 stop searches last year, there were 34 complaints, or one in 18,844. I am keen that we treat people according to our values of integrity, fairness and respect, and according to the latest feedback from community consultation, 93.9 per cent of our communities feel that they have been treated with respect.

There are no—absolutely no—targets for volumes of stop searches. In fact, contrary to media reporting, stop and search figures went down last year—the first year of Police Scotland—by 6.2 per cent, or about 42,000 stop searches. However, the positive rate, which is the amount of alcohol, weapons and drugs that we have taken

off people of all ages, increased from 13.7 per cent to 19.3 per cent.

Nevertheless, we need to modernise some of our thinking, processes and practices, and we will absolutely and robustly take forward the SPA's recommendations, which we welcome. Some of the innovations that we have already put in place to meet them include the creation of a national stop and search unit—

The Convener: Can I just stop you there, ACC Mawson? I do not mean to be rude, but I know that the committee would like to ask questions and a lot of what you are saying is in the briefing paper from Police Scotland that we have received and which is in the public domain. Rather than rehearse what is in the paper, can you perhaps shorten your introductory remarks, so we can hear from Mr Barbour and then move on to the questions? We are very short of time today—we have to finish by 2.15—so might I ask you to do that?

Assistant Chief Constable Mawson: Absolutely, convener. I apologise—I will move straight to the conclusion.

There is a place for both legislative stop and search and consensual, proactive use of stop and search in Police Scotland because stop and search itself has definitely contributed to keeping communities—and families within those communities—much safer. However, as I have said, there is still work to be done on process, practice and training to ensure that we continue to enjoy our current high level of public support.

Brian Barbour (Scottish Police Authority): Following up on ACC Mawson's remarks, I think that stop and search is a matter of great public interest. It consumes a significant amount of police resource. The SPA undertook its scrutiny following a presentation from the deputy chief constable in August, and we have made 10 recommendations for Police Scotland and two for the SPA. I am pleased to say that Police Scotland has received the recommendations positively, and we look forward to working with it to improve policing in relation to stop and search.

The Convener: Thank you. We have the SPA report on stop and search as well.

Moving to questions from members, I call Margaret Mitchell first. I see a sudden flurry of members who want to ask questions, so I will then take Kevin Stewart, Graeme Pearson and Alison McInnes.

Margaret Mitchell (Central Scotland) (Con): Good evening—or rather, good afternoon. It feels like evening.

The Convener: Fans are on the way for the heat.

Margaret Mitchell: Police Scotland has said that stop and search is a deterrent that keeps people safe. I think that we all feel that there is a place for stop and search if it is used proportionately, but the trouble is that, as the SPA review has highlighted, there is a total lack of any robust evidence to support that position. How do you intend to address that?

Assistant Chief Constable Mawson: I think that the evidence can be found in the positive outcomes that we are seeing after the first full year of Police Scotland. With a new, more uniform approach to stop and search across the country, there have been 10 per cent reductions in violent crime—in other words, 10 per cent reductions in really serious violence. The big ticket issue for me is that complaints of disorder are down by 16 per cent. The situation is similar for antisocial behaviour. In real figures, that equates to between 50,000 to 60,000 fewer incidents of antisocial behaviour and disorder blighting our communities. My feeling is that the proof of the pudding is in the eating and that there is a place for preventative stop and search.

Margaret Mitchell: It seems to me that you have completely missed one of the crucial points in the SPA report, which is that the outcomes did not seem to have been established as the evidence is not being recorded. We have no idea how many stop and searches were actually consensual, how many of them went from being so-called consensual searches to being statutory searches or the reasons why that happened. That serves to undermine public confidence in the police as well as the relationship that the police could have with the communities that they work with.

Can you be a bit more proactive in your comments? I am getting from you a very clear indication that everything is fine and that what Police Scotland is doing just now is perfectly okay, when the SPA report makes it crystal clear that that is not the case.

Assistant Chief Constable Mawson: I thought that I had made it absolutely clear that there is a need to improve our process, practice, thinking and training. On that point, we are about to go live with a significant six-month pilot in Fife division, where Garry McEwan is the divisional commander. We will have that pilot properly evaluated by an independent academic and then decide what to take forward across the force.

Margaret Mitchell: How will you record the data? How will you be able to tell us how many stop and searches are consensual, how many have been statutory, the basis for those statutory searches and the outcomes?

Assistant Chief Constable Mawson: I was extremely keen to make what you have referred to happen, and indeed I have already made it happen. On 1 May, I introduced a new stop and search database that now records nominal details such as name, address, date of birth, the reason for the search and whether it has been consensual or legislative. We now have all that data. That is a key element that will be analysed in the Fife pilot in Garry McEwan's division, but the database is already in place right across Scotland.

I sense that a number of members' questions will be answered by all the work that we have in place, which is ready to go live in just a couple of weeks, and I wonder whether it would help if Garry McEwan gave a quick overview of that.

13:15

Margaret Mitchell: I will let other colleagues come in—

The Convener: Well, thank you, Margaret.

Margaret Mitchell: —but before we move on, convener, I have a question for Mr Barbour. How will you monitor the implementation of the recommendations?

Brian Barbour: The chief constable and the SPA's chief executive are due to report back at the board meeting in September, when we will get a formal response to the SPA's recommendations. We are also engaged with Police Scotland in developing the success criteria for stop and search under the pilot—in other words, how success will be measured. The transparency of data is important to us, because it gives us effective scrutiny.

The Convener: I hope that you have a copy of the SPA's report with you, Mr Barbour, because I did not understand something on page 10 of it. I know that Police Scotland's figures were compared with those from the Metropolitan Police because that was all that was available, but I did not understand what was being compared.

The relevant table is entitled "Statutory stop and search per officer and per 10,000 people, Police Scotland & Metropolitan Police (Apr-Dec 2013)". It says that Police Scotland undertook 287 statutory searches per 10,000 people, whereas the Metropolitan Police undertook 306 searches per 10,000 people. Does the Metropolitan Police carry out only statutory searches or does it also carry out non-statutory searches? I do not know, because the table does not tell me anything about that.

Brian Barbour: Page 10 compares statutory searches by Police Scotland with those by the Met, because non-statutory searches are not available elsewhere in the United Kingdom.

The Convener: That is helpful—now I understand. The table did not say whether the Met's searches were statutory. I tried to find that out, but I could not establish whether that was the case. So there are no non-statutory searches in the rest of the UK.

Brian Barbour: That is correct.

Kevin Stewart (Aberdeen Central) (SNP): Mr Mawson said that there were 640,000 stop and searches last year and 34 complaints. Is that right?

Assistant Chief Constable Mawson: That is correct.

Kevin Stewart: I am most interested in the Fife pilot. I note that you will deal with a number of things that relate to folks who are stopped and searched. Police Scotland's paper talks about dip sampling and subject satisfaction and goes into depth about monitoring. I think that Mr Mawson said that the new database is up and running, but I am most interested in how you will conduct the pilot. Will it be analysed by your independent academic?

Assistant Chief Constable Mawson: Yes.

Chief Superintendent Garry McEwan (Police Scotland): I will try to be brief, because I am conscious that this is a question-and-answer session. As a consequence of my previous appearance before the sub-committee—and, indeed, before that—Deputy Chief Constable Fitzpatrick made it clear to Assistant Chief Constable Mawson and me that we needed to review our stop and search practices. A gold group was convened, which the ACC chaired. We put in place a number of strands, and we thought it better to pilot those strands rather than roll them out across Scotland any time soon. We said that we would pilot, test and try to improve the approach.

The three key strands are improving data, improving confidence and improving accountability. On data, if the convener recalls our discussions about how I could tell whether someone called Christine Grahame had been stopped and searched 10 times in Fife—

The Convener: I make it clear that that was a hypothetical situation, much as I would occasionally welcome it.

Chief Superintendent McEwan: I previously said that we could not provide that information, but I can now give you an absolute reassurance that we can. With the new database that has been in place since 1 May, we can and will provide such information, which will be part of the scrutiny.

Mr Pearson, I believe, previously made the point that the details of people who were stopped and

searched were not recorded. He was right about the historical position but, since 1 May, all the details—the nominal data, ethnicity, age, date of birth, location and type of search information—have been recorded on the database and will be subject to dip sampling.

Mrs McInnes previously referred to poor governance, oversight and scrutiny. I hope that the pilot, the database and other accountability issues that we have identified will address some of the concerns that you have raised over the past few months. I thank you for those comments, because they have informed Police Scotland about the way forward.

The improved, forward-looking data is the result of a suite of new analytical products that allow me, my officers and all the officers in Police Scotland to deploy in the right areas. We have used professional judgment and previous crime trends but we now have what is called a geographic and temporal alignment tool, or GTAT, which is one of the SPA's recommendations. Officers in Fife are being trained in the tool, which, from 1 July, will inform officers about where to deploy a week on Tuesday or Wednesday instead of my having to review deployment retrospectively. It will improve information on where my officers deploy, why they are deploying there and who they are targeting. It focuses on intelligence; after all, the point is that we want to improve our intelligence products.

I hope that the improving data strand will address recommendation 3 in the SPA report, which is about the roll-out of GTAT. It will certainly test recommendation 5, which is about knowing that stop and search is focusing on the right people at the right time, and recommendation 9, which is about recording the details on the information technology system.

The second strand, which is on improving confidence, represents a big step forward for Police Scotland and for the people who are subject to stop and search, and their parents. In the pilot, which commences on 1 July and lasts six months, we will do something that we have never done before and send a letter to the parent of every child who has been subject to a stop and search, setting out that their son or daughter has been stopped and searched, the area in which it happened and the reason for it.

We are doing that for a number of reasons. As a parent, I think that it is morally right to inform parents, because it will allow them to question their child about why they were in a particular area at a particular time. Given that we focus our resources on areas of high crime, high violence and high disorder, I, as a parent, would want to know why my child was in such an area.

Furthermore, by telling people that we are stopping and searching their children, we are trying to be open and transparent. The letters, which will go out within 24 hours during the week and within 48 hours at the weekend, will go to every parent or guardian—after all, some of those involved will be looked-after children—and give the reasons behind the stop and search.

In the same strand, the introduction of the advice slip represents another positive move forward. Every person who is subject to a stop and search, whether they be a child or an adult, will get an advice slip to take away and reflect on. The slip, which I will happily share with members, outlines what stop and search is about, highlights the difference between a consensual and a legislative stop and search and provides a contact number for giving feedback to the police. Now that we are getting up to speed with IT, the advice slip comes with a QR, or quick response, code that can be scanned by mobile phones. The advice slip also contains a number of questions that I hope will improve our organisational delivery and the way in which our people conduct stop and searches.

Every officer in Fife division will have an aide-mémoire on how to conduct a stop and search, why they are doing it and the difference between a legislative and a consensual one. When we conduct a consensual or non-statutory stop and search, we have a form of words that we read out in advance to make it absolutely clear to the child or adult that they do not have to take part. That form of words is no longer something for the toolkit—it is now a must for every officer. It will be endorsed in their notebooks and checked by supervisors.

The Convener: What is that form of words?

Chief Superintendent McEwan: I have it here. It says:

“You can refuse to agree to this search as it is purely being done on a voluntary basis, do you understand that and are you still content for this voluntary search to go ahead?”

That takes me on to the next strand, which is on strengthening accountability. We have a very active independent advisory group in Fife, which has quality assessed the letters, the advice slips and the aide-mémoire. A lot of good ideas have been suggested and a lot of good changes made. The head of education in Fife Council and a number of teachers have also looked at the documents.

The Convener: What good changes were made?

Chief Superintendent McEwan: When a group of children got access to the letter, they told us that one thing that it did not contain was

something that informed parents whether the child had done anything wrong. The children said that it would be really important for their mum or dad to know that. We had forgotten about that and had not included it in the letter, but it was a point that the children gave us feedback on.

We also had some really positive comments about the language used in the letter. The original language was perhaps too formal, but it is now easily read and understood, which is really important for communities.

I will just fly through this, convener, because I am conscious that the committee has more questions.

The Convener: You have been very helpful so far, but the members are agitated. I can tell that they are, even though they look calm.

Kevin Stewart: Chief Superintendent McEwan has missed probably one of the most important parts of my question, convener. We have heard that there were 640,000 stops but only 34 complaints, which seems to me to be an extremely low number. However, the dip sampling of subject satisfaction will be extremely important to ensure that the system is completely robust. Who is going to decide who will be dip sampled? How will it be decided which subjects will be interviewed to find out whether they are satisfied? That will be extremely important in ensuring that the process is robust.

Chief Superintendent McEwan: That is a great point, and it comes back to the third strand and improving our accountability. There will be two different methodologies for dip sampling. In the first, an independent department of Police Scotland called the information management department, which, like us, has access to the police national computer, will interrogate the database and identify the subjects of some stop and searches. Once a week, it will send a letter to the supervisor of the officer who carried out the stop and search, asking them to check the notebook to ensure that the details are correct and that the stop and search was proportionate and ethical. That will be done independently and will be endorsed by the supervisor and sent back to the department.

Obviously we have not started this yet, but my independent advisory group is keen to carry out independent sampling of stop and searches to ensure that the numbers for diverse communities are not disproportionately high. That fact that the group will also have the opportunity to dip sample is a really positive move.

In the final dip sampling, which will be done by an internal divisional co-ordination unit of Fife division, phone calls will be made to 15 per cent of those who have been subject to stop and

searches in Fife over a week. They will be asked a set of questions that has been agreed by our independent advisory group and the education people and which will allow us to find out whether we can improve the way we conduct stop and search.

Kevin Stewart: Thank you.

Graeme Pearson (South Scotland) (Lab): I will try to cover three areas very quickly in my questions. With regard to Mr McEwan's reference to language, I think it only fair to note that in earlier responses from the police on this issue the language seemed prickly. I should also say that I am grateful for Brian Barbour's acknowledgement of public concern on these matters.

The Police Scotland briefing paper that we received this morning states:

"There has undoubtedly been acknowledgement of the contribution that stop and search makes".

However, the convener mentioned that the SPA's report could not find any such linkage, and the Scottish centre for crime and justice research has confirmed that it, too, has found that linkage difficult to make. I therefore find it difficult to accept the reiteration of the idea that

"There has undoubtedly been acknowledgement of the contribution"

made by stop and search, and the police need to take on board and bear in mind the fact that that undoubtedness has actually been doubted.

In his introductory remarks, Mr Mawson referred to targets. Again, the SCCJR's analysis indicates that in some areas searches have been under-recorded because the number of searches has been driven by numerical targets used by the performance management culture. At least the SCCJR seems to have clearly acknowledged that in the past there were targets. That senior management are constantly ignoring that fact worries me; after all, they have not challenged the research, said that it was wrong or acknowledged that although targets were set in the past that culture is now behind us. Can you comment on that?

13:30

Assistant Chief Constable Mawson: Certainly, Mr Pearson, and thank you for the opportunity.

With regard to the target-setting culture, my legacy force area, which was Strathclyde, had in years gone by a target for the volume of searches. Since Police Scotland came into being on 1 April last year, no such target has been set. The only target we have had is for the number of positives, which means the number of weapons, drugs,

alcohol and so on that have been taken off the street.

To be honest, I think that we have tried really hard to get that message across. We have used face-to-face meetings, email and the intranet and have got out there and given briefings ourselves. Hand on heart, I think that we are getting there now, but you are right that there was a cultural issue that we needed to tackle. We think that we have done that pretty head-on.

The Convener: Wait a wee minute—you said that you had no targets for searches but that you had targets for the number of weapons and the amount of drugs seized. Surely the corollary of having those targets is that you have to do more searches. I just wondered whether there was any way around that.

Graeme Pearson: I can save us a bit of time here, convener. I think that the witness was indicating that with more effective targeting they have increased the number of successes but not necessarily the number of searches.

Assistant Chief Constable Mawson: That is right.

The Convener: I am grateful to Graeme Pearson for his evidence.

Graeme Pearson: Okay. The second part of my question was about the success rate. You said that it was nearly 20 per cent, and my rough maths shows me that that is about 100,000 successes. Are 100,000 crime or offence reports submitted as a result of the those successes? What do you describe as “a success”? Is a success one person being found in possession among a group of 10, or do all 10 searches have to be successful?

Assistant Chief Constable Mawson: The vast majority of consensual searches are for alcohol. Not every one of those 100,000 positive stop searches will end in a crime report.

Graeme Pearson: If an underage person is found in possession of alcohol, I presume that there would be an investigation to trace who sold it to them.

Assistant Chief Constable Mawson: Yes. We do test purchase operations in local off-licences. It is more important for me, in respect of children and alcohol, however, that we follow up and make contact with the parents. That is the thrust of the Fife pilot.

Graeme Pearson: Is it only when people who are under the age of 18 are found to be in possession of alcohol that it is deemed to be a successful search?

Assistant Chief Constable Mawson: That would be recorded as a positive search. We search for alcohol because in Scotland our

relationship with alcohol is not particularly healthy. I am not the first to say that and I will not be the last.

Graeme Pearson: Would it be deemed to be a successful search if the person was over 18? If a 21-year-old is found in the street with alcohol, does that get a tick for a successful search?

Assistant Chief Constable Mawson: Yes—that would be recorded as a positive stop search for alcohol.

Chief Superintendent McEwan: We would issue a fixed penalty to an individual who was found in the street with an open container.

Graeme Pearson: An open container?

Chief Superintendent McEwan: Yes. It is not offence for an adult to walk down the street while in possession of a closed container of alcohol.

Graeme Pearson: Would it be a successful search if the person was found to be in possession of alcohol?

Chief Superintendent McEwan: No—the adult would be allowed to continue on with the closed container.

We do not necessarily issue a fixed penalty to a child because we do not want to criminalise the child. We want to take the alcohol off them, take them back to their parents or inform their parents, and put them on to an early and effective diversionary route to stop their involvement with alcohol.

I read some media commentary about how issuing of penalties leads to the criminalisation of children, so I looked at what we were doing. In 2007, Fife Constabulary sent 2,143 reports to the children's reporter and in 2013-14—the first year of Police Scotland—we sent only 335 reports to the reporter, and the rest of the children went into our youth offender management group.

We are not criminalising kids, but are looking for early and effective intervention to keep them safe and put them back on the right road.

Graeme Pearson: I want to put on the record, and have said before, that I do not object to the use of stop search in itself; it can be a very effective tool in dealing with crime. However, the question needs to be asked about the 640,000 people in Scotland who have been subjects of searches, as far as we know, and it might be more.

I am grateful for Police Scotland's change in tone and I would like to see that continue, so that we can understand that what it is doing in our name is justified.

The use of language is important, so acknowledging political concerns and talking about political debates is unhelpful. Political debate does not matter; what matters is the effect on individuals.

I do not want to be argumentative about what you said about not criminalising children, but you will have no knowledge of how many children react badly to the phenomenon of being stopped and searched and thereafter become involved in antisocial behaviour. There is just no knowing the impact on a young person.

The Convener: Before you go on, Graeme, can you explain the figure that you gave for the number of people who have been stopped and searched?

Graeme Pearson: The statistics indicate 640,000—

The Convener: That is the number of stop and searches, rather than people.

Graeme Pearson: Yes.

The Convener: There have not been 640,000 people searched.

Graeme Pearson: Yes—but there is a person at the end of each one of those pieces of paper.

The Convener: The person might be somebody who has been stopped and searched a few times. I am just trying to clarify the issue.

Graeme Pearson: Indeed. I am grateful.

In making the connection with the crime stats, would it be fair to acknowledge that there has been a significant decline in the number of young people in Scotland? Those who report offences and criminality tend to be under the age of 23 and many of the folk who commit crime are also under 23 years of age, so the ageing of communities will have some impact on the numbers of crimes reported. It would be fair to acknowledge that when deciding which of the police's actions impact on criminality.

Assistant Chief Constable Mawson: We will take on board some of what you are saying, Mr Pearson. You are right to some degree, but you cannot argue with the fact that the proactive, ethical and intelligence-led approach to stop and search, which takes cognisance of everything that Garry McEwan said and is really careful not to alienate and criminalise young people, has had a very positive effect on our communities. Crime is down significantly, as is antisocial behaviour.

In every community meeting that I go to without exception, people say "Thank you for dealing with this on our streets." That is exactly what they mandated us to do when 31,000 people were

involved in the community consultation at the start of Police Scotland.

I think that we are doing it right, but I do not want to come across as being even slightly arrogant or complacent, because we still have a way to go. The good work of the SPA has crystallised this, and what some members said in the previous evidence session has focused our minds, and we are grateful for that.

Graeme Pearson: Do you have any comment on my point about the impact on statistics of the ageing society?

Assistant Chief Constable Mawson: My answer is that there may well be an impact.

Graeme Pearson: Okay.

Assistant Chief Constable Mawson: I would like to make a point about what Garry McEwan said about how we will analyse the data in the Fife pilot. That is really complex hard work, but we will roll it out across the whole of Police Scotland if the pilot suggests that the approach has been a success.

I am keen to embed reviews of cases involving children aged 11 and under—under the age of criminal consent—and those involving people the opposite end of the spectrum, who are aged 70 and over. With my new national stop and search unit I have the capacity to review in detail every one of those searches, at both ends of the scale, right into the weeds, every single week. A report has to be presented to me, which I take to the force executive every week. That is the level of the scrutiny task that I have set, which we will have from next week.

The Convener: You are not going to go over cases that have already happened.

Assistant Chief Constable Mawson: We will review cases since 1 May, when the new stop and search database, with all the names, addresses and dates of birth, came into being.

The Convener: Are you unable to go back to look at the 223 children aged nine and under?

Assistant Chief Constable Mawson: I will not sit here and say that that is totally impossible, but to contact every one of the officers involved, get their notebooks and do all that work could be disproportionate.

I am really keen to say that we will be able to do that easily with cases that have happened since 1 May. It was the right thing to introduce that database; let us look forward.

Alison McInnes (North East Scotland) (LD): I am pleased that there is a belated acknowledgement of the need for reform of stop and search. I share the concern of Margaret

Mitchell and Graeme Pearson that there runs through all that you have said today, and through the new briefing paper from Police Scotland that we received this morning, justification of the tactics through reliance on reductions in violence and antisocial behaviour, despite the fact that the SPA has concluded that there is no robust evidence that there is a causal link. That means that the culture has not changed. Quite a lot has been done around the practices and transparency, which is to be welcomed, but I am concerned that there still seems to be a belief that stop and search is justifiable because it is reducing crime.

We can consider the Grampian Police example in the SPA paper, in which there was much less stop and search activity, but the same reduction in crime. In the Metropolitan Police, stop and search activity has fallen by 20 per cent since 2012. Use of the section 60 “no suspicion” power has dropped by 90 per cent, but at the same time, all its violent crime has dropped by a third or 40 per cent.

I would like you to spend a little longer talking about the culture behind that justification. It would be useful to hear from Mr Barbour.

The Convener: It is up to Mr Barbour whether he wants to say something. I see that he wants to do so.

Brian Barbour: Yes. When we looked at the proportionality of stop and search, we considered how big a contributor it was to the reduction in violent crime. Our conclusion was that there was no causal link, but we saw that weapons and alcohol had been taken off the streets, so it is a contributor. However, many other policing tactics contribute to reducing violence.

Our debate would be around proportionality—the amount of resource and the desired outcome, which is probably more important. There are situations in which known knife carriers are targeted, so detection is a good outcome, but there will be situations in which, if that has been successful, the same knife carriers will be targeted and the outcome will be no detections, because they have stopped carrying knives. We encourage Police Scotland to think about the different outcomes for different populations at different times.

Chief Superintendent McEwan: I certainly do not disagree with Mr Barbour. Part of the pilot, which I did not get to, involves our looking at the outcomes. We are trying to develop meaningful outcomes that will address a number of the recommendations in the SPA report.

I firmly believe that stop and search prevents and reduces crime. When Mr Barbour was speaking, I was thinking that, in Fife alone in the past month, there have been at least two stop and

searches that I am aware of relating to a 13-year-old girl and a 14-year-old girl in separate areas who were subject to serious sexual assaults by a 14-year-old boy and a 15-year-old boy. Both were really under the influence of alcohol and drunk. I genuinely believe that, if we had got there earlier and seized that alcohol, we would have prevented that serious sexual violence towards that 13-year-old child and that 14-year-old girl. Neither location was one of our hotspots; they were not in areas in which we would stop and search. I wish that they had been, because I firmly believe that we would have prevented serious sexual violence.

I know from the academic review that a causal link is perhaps not clear, but my practical experience and the experience of officers on the ground suggest, as Mr Barbour rightly said, that stop and search along with covert tools, high visibility, stopping vehicles and other policing techniques absolutely reduces violence and disorder in Fife and throughout Scotland. I am convinced of that.

Alison McInnes: Another interpretation of what you have just said is that, if police had not been focusing on your so-called hotspots and were out and about, they might well have come across what was happening.

That takes me quite neatly to your emphasis on intelligence-led stop and search. That sounds good and makes us think that you are doing something sensible, but it seems to me that, if the approach was truly intelligence led, you would search only individuals on whom you felt that you had intelligence. You seem to search areas. You talk about searching hotspots, which means that anyone within the hotspot can be searched, so individuals’ civil rights are not really protected; if they happen to be in what you consider to be a hotspot, they are fair game. Is that how it works?

Chief Superintendent McEwan: If stop and search is done properly, it supports civil liberties through creating a safer environment. Why does a member of the public not feel safe going to the local corner shop because a number of youths who are under the influence of alcohol are congregating there?

In an example that I know from Fife, a lady felt that she could not leave her home because there were people dealing drugs at the bottom of her block of flats. There are hotspots, and we are targeting individuals. We do not know everybody who is committing crime, but we know the areas where crime is being committed. We have to be intelligence led and go to those areas and speak to the communities. If stop and search is the right thing to do, my officers should be doing it, and doing it professionally, ethically and proportionately.

13:45

Alison McInnes: If you were doing it ethically, you would respect the principle that people have the right to free association, to go about their business and to privacy, and that those rights cannot be traded off. Everyone has those rights, whether they come from a socially deprived area, an area that is full of crime or a well-to-do area. You cannot trade that in the utilitarian way that you are talking about.

Chief Superintendent McEwan: I do not think that we are trading it; I think that we are supporting the civil liberties of all. We should be targeting individuals who are responsible for antisocial behaviour, violence or serious sexual abuse, and we should be targeting the areas where those things happen. Part of it is about preventing escalation. If we can address low-level antisocial behaviour in those areas, we can prevent serious sexual and other violence; we do that. It is not about the civil liberties of everybody. It is about balance—we need to protect the honest law-abiding citizens while targeting those who are responsible for such behaviour.

Alison McInnes: I need to press the whole panel on the issue. Article 14 of the European convention on human rights states that

“enjoyment of the rights and freedoms”

is “secured without discrimination”, with a specific reference to “social origin”. There is a temptation to say that stop and search is not a problem because you do not have complaints and you are not targeting a racial profile, but it is fairly clear that you are targeting a particular social group— young males from disadvantaged areas—and we are not hearing their voice about that. I ask you again about the enjoyment of rights and freedoms for everyone in society.

Brian Barbour: On the impact on young people and other groups, one of the recommendations is that the SPA needs to commission research to understand the positive and negative impacts on different groups and communities. That should inform how the tactic is used, moving forward.

Assistant Chief Constable Mawson: We are really keen not to alienate young people by making them a distinct group in relation to stop and search. We genuinely do not want that to happen. I have chatted to Alison McInnes and taken advice from her. She told me that we should get involved with the right groups, get the right people round the table and start taking advice, and that we should not think that we can do it all on our own. We have done that; I have set up a children and young persons reference group, which has already met, and through which we will take the views of young people, which will be taken into consideration in policy, practice and thinking.

Also, we are in the process of setting up an expert reference group, which involves the Council of Ethnic Minority Voluntary Organisations, the Scottish Community Safety Network, the Mental Welfare Commission for Scotland, both Scottish human rights commissioners, Scotland’s Commissioner for Children and Young People, the Scottish Children’s Reporter Administration, Victim Support Scotland, Children in Scotland and so on. We are really keen to get the right people round the table and to say, “Listen, this is what we’re thinking of doing next; this is what is happening in Fife and we are only a month in. You are our sounding board—where do we go next with this?”

We need to get away from the aura that we have created that we know everything, because, to be frank, we do not. We are a learning organisation and a young organisation, but members should look at the steps forward that we have made in the past few months.

Alison McInnes: My final questions are on consent and the ability of young people, particularly people under the age of criminal responsibility, to give consent. You have set out a clearer statement of the right to refuse, but how do you define whether a child, or someone with learning difficulties or whatever, has the ability to give you that consent? Does that appear on your forms?

Assistant Chief Constable Mawson: You are absolutely right. I am going to make a strong statement: from here on in, we should not search young children who are under the age of consent. That must stop. That is the message that I will be putting out; it is certainly the message that will be sent out for the Fife pilot. However, we cannot delay. I am not going to wait six months for the Fife pilot to end—I am going to meet the expert reference group and the CYPRG people and ask how we can do that quick time right across Police Scotland, because the current position is fairly indefensible.

Alison McInnes: I absolutely welcome that commitment. We have been pressing for that for some time.

The Convener: I want to press you on the issue, Assistant Chief Constable Mawson. What if you think that a five-year-old in a pushchair has drugs, a weapon or something else concealed on them by their parents? A search in those circumstances would be a statutory search. However, what if alcohol was stashed on a child? That could not be a statutory search.

Assistant Chief Constable Mawson: You are absolutely right, that could not be carried out under statutory search powers.

The Convener: What would you do in that circumstance? There might be child protection

issues involved, too. I am absolutely with Alison McInnes on the point: I cannot see how a child could give consent. However, I can also see that there might be circumstances in which the officer knows perfectly well that the child sitting there is a victim. How would you differentiate between the two and defend stop and search in those circumstances?

Assistant Chief Constable Mawson: We would look after the young child. Were I, as a policeman walking the streets of my area, which is the west of Scotland, to find a five-year-old with alcohol—I have never come across that—I would do what any reasonable person would do, which would be to take the child home and speak to their mum and dad. Then, if I had concerns that the mum, the dad or the carer was not looking after them, I would move straight on to making referrals and getting the right people around the table.

Chief Superintendent McEwan: To give an element of comfort in respect of such a scenario, I had a look at the stop and searches of 10-year-olds in Fife. We have not stopped anyone below the age of 10 in the past 12 months, but we have stopped five 10-year-olds. I wanted to look at the detail around that. One child was searched at school with the teacher present and was found to be in possession of a knife; one child who was suspected to have been in possession of a weapon was taken home and searched in the presence of their parents; two were searched in the presence of a security guard; and, with the fifth child, who was suspected of breaking into a van, the officers took the decision to search the young lad because the van had a lot of sharp tools in it and, rather than take the child home, they searched him for his own good and safety.

Police Scotland is absolutely moving forward on what is consent and how kids of that age can give it. However, I want to reassure you that if police officers are searching children, they try to do it as if they were, to use the Latin phrase, *in loco parentis*, and they try to conduct that search in the presence of parents, school teachers or other very responsible adults.

Alison McInnes: That approach does not appear in the document that you gave us today. It does not say that guidance along those lines would be included as part of the pilot. That might well be good practice in Fife, but it is quite clearly not how searches are being conducted elsewhere, where they are being carried out on street corners.

Chief Superintendent McEwan: The ACC has made it clear that guidance, stating that no one under the age of 12 can give consent, will be put out across Scotland.

Alison McInnes: You have just referred to conducting searches in the presence of an adult or a teacher, but that is not written down.

Chief Superintendent McEwan: No, but that is how officers conduct themselves on the street. There have been only five cases in Fife in the past 12 months in the circumstances that I described.

Alison McInnes: Those are the only cases that you can tell me about.

Chief Superintendent McEwan: Those are the only ones that have happened in Fife.

Alison McInnes: We do not know whether that is happening elsewhere.

Chief Superintendent McEwan: I cannot comment on that.

John Finnie (Highlands and Islands) (Ind): First, I express some frustration at the process for today's meeting. I had a committee meeting this morning and, thereafter, I was in the chamber to ask a question. The normal meeting format is that we pose questions on the basis of information that we have been provided with in advance. In this instance, the information was the Police Authority's excellent report, but it was delivered only this morning and we have been given a lot of information. I must say that the situation looks remarkably choreographed.

Having got that out of my system, I will move on.

The Convener: I was not aware that the submission would be such a tome. I saw the document, which is lengthy, at the same time as you did. I accept your point.

John Finnie: Assistant chief constable, a 16 per cent reduction in disorder is absolutely commendable—I hope that you will shout it from the rooftops. Your officers are to be applauded for delivering it.

There is no doubt that stop and searches played a part in that, but I sometimes have to suppress a smile when people talk about the policy being intelligence led. I align myself with the questions that Alison McInnes asked. I acknowledge what Mr Barbour said about repeat searches, but if the policy was intelligence led, you would have not a 5 per cent detection rate for weapons but a considerably higher rate. It is not good intelligence, let us put it that way.

Assistant Chief Constable Mawson: We are constantly refining our intelligence products. Literally since Christmas, we have devised a new ward tracker, a new data zone tracker and a new temporal alignment tool—

John Finnie: If I can interrupt you, I do not think that the answer to everything is to set up a new unit or to come up with an entirely new vocabulary.

It is very simple: guard, watch and patrol; and protect life and property. All of the processes that we are discussing have become very technical. On the basis of what I have heard this afternoon, it seems that we are creating a huge bureaucracy around testing. We should get it right in the first instance. Yes, there is a role for testing, but that is surely something that Her Majesty's inspectorate of constabulary in Scotland would do, as it does with other issues, or there would be oversight from the Police Authority end. Creating a new unit and a whole new spectrum of figures is not the answer to everything.

Assistant Chief Constable Mawson: I take issue with you on one point. Time and time again, we have been told that we are not accountable, that we are not dip sampling and that we cannot give all the figures that are required. We have addressed those issues, and we are making ourselves really transparent and accountable. I think that that is the right thing to do. It will improve community trust and confidence, and that is what we are about.

John Finnie: How many people are in your unit?

Assistant Chief Constable Mawson: I have two inspectors, who are overseen by a chief inspector. However, they have a wider job, as they are part of the licensing and violence reduction department. The work that they do in the unit is another responsibility for them.

John Finnie: If someone declines a consensual search and they do not fall to be considered for the other statutory issues—misuse of drugs, firearms or whatever—where does that go?

Assistant Chief Constable Mawson: That is quite straightforward to answer. If, in the absence of all other factors, there is a refusal of a straightforward, consensual search in relation to which there is no suspicion of criminality, the officer walks away and makes a note of the attempt to undertake a consensual search.

On extremely rare occasions—I spoke to Brian Barbour about an example of this the other night—the officer is about to walk away following a consensual approach that the person has refused, but, as the person shifts position and starts to walk away, the officer can see the handle of a knife in the person's rear jeans pocket. In such a situation, the police officer is not going to let them go just because they have refused a consensual search. However, as I said, that will happen once in a blue moon. For the most part, I can assure you that the officers will be told—as part of the training that Garry McEwan will be doing in the pilot—that, if someone refuses a consensual search, they can walk away.

John Finnie: Okay. What would be recorded in such an instance? Would you seek the individual's name and address?

Assistant Chief Constable Mawson: Yes, but, as with any search, unless something is found that is criminal, we have no power to ask for that.

John Finnie: I have heard reference made to a vulnerable adults database—one of your colleagues mentioned it this morning. Can you link in what we are discussing here with who is and is not on that database? I understand that some groups that many would class as vulnerable do not wish to be included on that database.

Assistant Chief Constable Mawson: The vulnerable persons database has been live in numerous legacy force areas for some time, and we have created one that goes across Scotland—it is called the interim vulnerable persons database. The idea is that, for the first time, we will have details of serious offenders—sometimes domestic offenders, sometimes sexual offenders—and will be able to see where they are, who is dealing with them and what their conditions are. If they cross a boundary, we can now track them and instantly deal with them.

Another part of the IVPD concerns adults of concern or children of concern in relation to whom it is appropriate to bring in other partners and get proper referral services wrapped around them. It will not be the case that every stop search of a young person will go into the IVPD. That is not what it is for. It is for cases in which there is genuine concern for the young person and we think, "You know what? I just get a sense that we need to do a bit more here." It is for situations in which we need to get social services, children's services or whatever involved in looking after a young person. That can be done instantly now, using the vulnerable persons database.

14:00

John Finnie: There are civil liberties issues connected with the database. I have been lobbied by groups who do not wish to be included in it. It comes back to Alison McInnes's point about informed consent. A number of people in our communities have challenging behaviours that are not criminal in nature; indeed, many of those people appear frequently at MSPs' constituency offices. How do we deal with that situation? In the past people have said, "All police officers should be given training in mental health issues." However, people spend years and years training in order to understand these issues. I am trying to understand the dilemmas that your officers sometimes face.

Assistant Chief Constable Mawson: It is a difficult call, is it not? It is about professional

judgment, police experience and, frankly—in plain English, because I do not like management speak—doing the right thing. In fact, police officers now get some training on mental health issues. It is about identifying whether a person is at risk. Could we and should we do something to try to look after them? It is as simplistic as that.

Chief Superintendent McEwan: One of the benefits of the IVPD for those who are at risk is that, as people move from one area of Scotland to another, officers have an overview and oversight of their previous circumstances, which was not previously the case. I am aware of people who have moved into my area from the north of Scotland who have been at real risk, as they have been subject to domestic violence et cetera. Historically, we would not have been aware of that but we can now put in protective measures to support them, if they want such measures to be in place when they are in my area.

John Finnie: On the group that you set up, Mr Mawson, did you select the people on it, or did you go to organisations to ask them to nominate people? Are any ex-offenders on the group? Who does the group comprise?

Assistant Chief Constable Mawson: In terms of the expert reference group—

John Finnie: No, you talked about another group in relation to younger people.

Assistant Chief Constable Mawson: The expert reference group will certainly be used to assist us with our thinking, practices and policies around young people. That group has 17 different members. Those include the ones that I have already spoken about plus the Crown Office, anti-knife crime groups and the relevant members of the Scottish Government.

John Finnie: Is there just the one group? Sorry—I maybe misheard you, but I understood that there was perhaps a younger people's group.

Assistant Chief Constable Mawson: There is a second group: the children and young person's reference group. It is almost like a youth IAG—an independent advisory group for young people.

John Finnie: I am pleased that you do not use management speak.

Assistant Chief Constable Mawson: IAG is a common term in all police forces—apologies if you have not heard it before.

The group is like a youth IAG, so every time that a big issue is coming up—it might be something practical, like a big operation in a certain area—we would now, as a more mature organisation, get the youth IAG in the night before, take its members into our trust and confidence and say, "Listen, this

is the operation tomorrow morning. This is what we are thinking of doing."

John Finnie: But who are the members of that group? Did you select them? Were they nominated by other organisations? The vast majority of the public are untouched by many of the things that happen. We talk about involving the education authorities in relation to young people, but the people who are most likely to be affected are perhaps disengaged. Who is on the reference group? How did they become members?

Assistant Chief Constable Mawson: Children in Scotland and various other children's charities and third sector organisations are on the group. We went through our community safety unit, which runs the large independent advisory group for Police Scotland. The unit has had these networks in place for many years and its staff are experts in this field. In fact, the CYPRG is chaired by Police Scotland's community safety unit; it is not chaired by me. When I have an issue, we feed it into the group; it is also helping us with stop and search.

John Finnie: I have a couple of brief questions, if I may, convener.

The Convener: You will have to be brief, because another two members want to come in. I know that you waited to get in, but we have to go on to the next item.

John Finnie: As elected members, we have had a lot of engagement with regard to things such as traffic wardens and counter closures. Can you keep all members advised of developments in relation to this? That would be very helpful. I certainly want to be supportive of proactive policing in our communities to continue to drive down crime.

I have a final question, which you will probably decline to answer. A way round the issue would seem to be to have statutory powers of search and to do away with all the complications. Everyone would understand exactly where everyone else was. Would you support a change in the law?

Assistant Chief Constable Mawson: I will take your first point first. You asked whether we can keep the sub-committee updated on the Fife pilot. I would really like to do that; the clerk can perhaps guide me on the process after the meeting. I am happy to keep the sub-committee updated, if that would be appropriate.

The Convener: I was speaking to the clerk, so she missed that. If the question is about legislation, it is for the Government. Is that not the case?

Alison McInnes: That is not the issue.

Graeme Pearson: The point is about updates.

The Convener: I beg your pardon—I thought that it was about all searches being statutory.

Assistant Chief Constable Mawson: I was about to say exactly the same thing as the clerk said on the second point.

The Convener: It was me who made the point, but I do not mind.

Has John Finnie finished?

John Finnie: I have a quick question for Mr Barbour.

The Convener: I will let you, Alison McInnes and Graeme Pearson ask questions. I ask for the answers to be provided in writing, because I have to move on. That will be fair.

John Finnie: The SPA's recommendation 5 refers to "successful outcomes". Who will determine what a successful outcome is?

The Convener: Mr Barbour does not need to answer the question now. The questions will be in the *Official Report*.

Graeme Pearson: I did not get a full response to one of my initial questions. When a stop search is conducted in the street and one among a group of 15 youths is found in possession of alcohol, is that considered to be one successful search or 15 successful searches?

Alison McInnes: Is there any difference between a consensual stop and search and a statutory stop and search, other than in the legal underpinning? Are they as thorough as each other? Does a consensual search just involve asking someone to turn out their pockets?

The Convener: Now that members know that they can ask supplementaries, they have more questions. I ask Margaret Mitchell to be quick.

Margaret Mitchell: I am interested in whether the 250,000 hours that the police are estimated to spend on stop and search are still considered to be appropriate and proportionate.

The Convener: That is it. The witnesses could probably answer the questions now, but we do not have time. I thank them very much for attending.

As previously agreed, we will move into private session.

14:06

Meeting continued in private until 14:11.

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