



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE SUB-COMMITTEE ON POLICING

Thursday 8 October 2015

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CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
STOP AND SEARCH	2

JUSTICE SUB-COMMITTEE ON POLICING

9th Meeting 2015, 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)

*Elaine Murray (Dumfriesshire) (Lab)

*Kevin Stewart (Aberdeen Central) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Roderick Campbell (North East Fife) (SNP)

John Scott (Advisory Group on Stop and Search)

CLERK TO THE COMMITTEE

Joanne Clinton

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Justice Sub-Committee on Policing

Thursday 8 October 2015

[The Convener opened the meeting at 13:15]

Decision on Taking Business in Private

The Convener (Christine Grahame): Good afternoon. I welcome everyone to the ninth meeting in 2015 of the Justice Sub-Committee on Policing. I ask everyone to switch off mobile phones and other electronic devices completely, as they interfere with broadcasting even when they are switched to silent.

No apologies have been received. I welcome Roderick Campbell to the meeting.

Item 1 is a decision on whether to take in private item 3, which is on our work programme. Do members agree to take the item in private?

Members *indicated agreement.*

Stop and Search

13:16

The Convener: Item 2—the main item on today's agenda—is an evidence session on stop and search. I welcome to the meeting John Scott QC, the chair of the advisory group on stop and search. As members are aware, in late August the advisory group made recommendations to the Cabinet Secretary for Justice on the policy and practice of stop and search. Many of those recommendations have already been taken forward through amendments to the Criminal Justice (Scotland) Bill, which we had the delight of dealing with earlier in the week in a very prolonged session. On behalf of the committee, I thank John Scott and the advisory group for their significant work in the area, which we have had an interest in for some months. It is right that we spend some time today exploring the report in more detail.

I will go straight to questions from members, if that is okay with you, Mr Scott.

John Scott (Advisory Group on Stop and Search): Yes, of course.

Margaret Mitchell (Central Scotland) (Con): You will be aware of the problems associated with the reliability and availability of data, which are reflected in recommendation 5 of your report. Can you give a little more detail on the regular reports that have to be made to the Scottish Police Authority? What is their nature, frequency, level and so on?

John Scott: The SPA already had in mind that it would be looking for that data, and Police Scotland already had in mind that it would be provided. The recommendation followed up something that was already part of a plan.

I cannot remember what the frequency of the reports was to be. I think that it was to be no less than about four times per year. The advisory group got data on a monthly basis during the short time of the review. Because there had been so many significant changes earlier in the year, the data was being monitored to make sure that the powers were being implemented as intended. We were able to see the shift from non-statutory to statutory stop and search and also to see the success rate of statutory stop and search improving.

Margaret Mitchell: It is good that there has been a report. Data is an important part of the process. It is not possible to monitor or evaluate how successfully or well a policy or initiative is working without it.

Previously, there was a divergence in the information coming forward—first, in the status of the data and whether it was accurate and,

secondly, in the views on whether there was any reason not to provide all the data, which hits at the very centre of the accountability and transparency that the public has a right to expect.

John Scott: Absolutely. I could not agree with you more. We hoped that the data would be available for consideration by, for example, academics such as Dr Kath Murray, who is in the public gallery today, to make sure that there were additional checks that what was being represented was contained in the data.

Margaret Mitchell: Do we have any idea of timings? Has a report gone out already? Is there a date for when the next report is due?

John Scott: I am not sure about that. When we finished our work, the plan was that we would retain an involvement but that it would kick in again after the various consultations that had been recommended and accepted. It was expected that the advisory group would become involved in looking at the code of practice once we had the detailed responses to the consultation as well as responses on alcohol and young people. I have had one meeting with Police Scotland so far and I will have another meeting next Friday, so the matter will stay firmly on the agenda. However, I am not sure when the next report is due. I had to get back to dealing with some other things at the end of August. I am sorry that I cannot answer that question at the moment.

Margaret Mitchell: I hope that the fact that the matter has been raised today will also help to put it firmly back on the agenda.

John Scott: Of course.

John Finnie (Highlands and Islands) (Ind): I thank the advisory group for all its work, and I thank you for the report, which I found refreshing. We know why we are here, and I am keen for us to look forward a bit. Right at the beginning of your report, there is a line that states:

"Talking and listening ... is an essential part of good policing".

Is that recognised by the Police Service of Scotland at the moment?

John Scott: I am not sure. This has been an extended period of transition. A good number of police officers have always known that and have never forgotten it. However, there is perhaps a newer generation of officers for whom that has not been made quite as clear, and things such as targets have, unfortunately, skewed things away from the Peelian principles and the approach that the police are the public and the public are the police. There is nothing to prevent police officers from talking to people, regardless of what we have said and regardless of what the practice was before. However, the process had become target

driven and therefore moved into stop and search much more quickly in situations where, in our view, the police could simply have spoken to people to resolve any suspicions and concerns that they had. That would have avoided some of the damage to public confidence that has resulted from the excessive and disproportionate use of the tactic of consensual or non-statutory stop and search.

John Finnie: Do you think that police officers who are fairly junior in service and have not known too much of a different regime will need to be empowered to exercise their power of discretion, which is arguably the most important power?

John Scott: Yes, that is the sense that I get from speaking to some officers. It struck me strongly that the officers whom we met—even those who firmly believed that they should be able to continue using non-statutory stop and search—seemed genuine in thinking that they needed stop and search in order to be able to do their job properly. We disagreed that they needed that facility or tactic in order to be able to do their job properly but, for those officers who have become convinced of that, there will be a transition, which is one of the reasons why we talked about ensuring that the implementation stage is detailed and thorough. It takes a bit of time to bring those officers round to a view, which some of their more senior colleagues may still remember, about the need for individual discretion and officers answering for their own actions.

Being told that there are targets is not the answer if an officer has to go to court and explain why they did a particular thing. Officers also have extensive powers and do not need to fall back on something that could not be properly explained, defined or trained on in order to do their jobs properly. There are perfectly acceptable ways of ensuring that that happens within a proper framework, so I think that there will be a cultural shift on that. There are training implications, and some officers will need support.

John Finnie: Your appointment was warmly welcomed for a number of reasons, not least your background in human rights. What role does Police Scotland play in human rights in Scotland?

John Scott: That subject has interested me for quite a while. Prior to the creation of Police Scotland, there was contact between various voluntary organisations that I have been involved in through human rights and some of the legacy forces. Lothian and Borders Police, in particular, had fairly regular contact with them, as did the inspectorate of constabulary, and I was asked to contribute to a thematic inspection of firearms. Strathclyde Police used to send a Christmas card to the Scottish Human Rights Centre, which was in Holland Street, just round the corner from Pitt

Street police headquarters, so human rights had always featured.

The Convener: There was a message in there. Was it on the Christmas card?

John Scott: When we had meetings with human rights organisations in other countries and they explained their experiences with police forces, it became slightly embarrassing when we had to say that we got a Christmas card from ours.

Human rights have always been part of policing, and that is very important now. I welcome the fact that human rights are specifically mentioned in the oath that officers take. I understand that you played a part in that.

There are very good officers in Police Scotland whom I see as being personally committed to an ethical approach and to human rights. Some of them will remain in the organisation and be able to ensure that human rights and an ethical approach remain an important part of how things are dealt with. Perhaps those things will be recognised even more than they have been on some occasions.

John Finnie: Indeed. The police are on the front line of defending human rights.

John Scott: That is right. In recent years, I have heard the now Lord Advocate—he was the Solicitor General at the time—say that the Crown Office is a front-line human rights organisation. The police service is a front-line human rights organisation as well, and tying human rights into the oath is a good way of helping officers to see that. It helps them to embrace the idea of human rights offering them and the public some protections, requiring frameworks to be put in place and demanding scrutiny, which officers should welcome if they are doing the job well. In my experience, officers say that they want scrutiny because they have considerable powers and want to have to answer to someone for them.

Alison McInnes (North East Scotland) (LD): Thank you for your rigorous report, which has been immensely helpful. I particularly welcome the fact that you put the issue in context. You say in your introduction:

“Operational matters must be for the police to decide, but defining the limits of police powers is not an operational matter. It is a matter of public policy for our Parliament”.

It is important that we remember that.

You must be in a unique position, because, within a month of your writing the report, its recommendations have been transposed into legislation. That is exceptional, as reports often sit on the shelf for a long time.

The Government has gone a step further than your recommendations in relation to stop and search for alcohol. Do you agree with Scotland's

Commissioner for Children and Young People, who believes that it was premature to take that step in legislation?

John Scott: I will deal with the uniqueness of the response first. A number of aspects of the review were unique. I was entertained by the fact that, at one stage, *The Scotsman* described our report as “the long-awaited report”. The process took five months from start to finish, so I wonder how it would have been possible to meet such expectations.

I have remained in contact with officials. I did not finish the report and just put it aside, although I had to take the family to Centre Parcs to make up for an absentee period in August. As I understand it, the provision on the power of search for alcohol is intended to be used only if the consultation responses that are considered lead to the view that such a power should be introduced.

It was a difficult area for us. At times, it seemed straightforward but, with about a month to go, some of the complications started to become apparent. In fairness to Police Scotland and those within the policing community I should say that people within that community highlighted some of the complications and asked whether the provision was necessary. The point was also made forcibly by those with an interest in children's rights, and I agree with the sentiments expressed by the children's commissioner. I could not reach a firm conclusion on the provision, because it seems to be a significant part of stop and search. There are issues about vulnerable young people, so we did not feel that we could say, “Don't bother with it at all.”

That is why we made the recommendation in the terms that we did. It is important to have a full and meaningful consultation in which all the issues can be canvassed. That will offer more people an opportunity to have a say on the matter, particularly people from children and young persons groups and those involved with them. The consultation can explore all the issues and a decision can ultimately be made, bearing in mind that there will probably be a price to pay for that decision.

13:30

If the decision is that such a power should be introduced, there might be implications for the confidence of young people in policing, depending on how it is handled. That is an area where the code of practice might help. If, however, the decision is that such a power should not be introduced, care will be needed to make sure that the police still feel that they are able to deal with youngsters who put themselves in vulnerable positions, although there are also child protection

powers that might come into play in such situations.

We did a lot in the five months that we had but, as far as that issue is concerned, we were able only to identify that it was more complicated than would allow for easy recommendations within that time period. Also, the call for evidence came over the summer. I entirely understand and agree with the reason why we had the short timescale for producing our report, but it was over a period when lots of groups were unable to get together to submit a response even to the call for evidence. I have been out to speak to some people in those groups and I know that they want to contribute to the forthcoming consultation. In that way, all the issues can be properly canvassed and the pros and cons examined before a decision is ultimately made, taking into account a wider range of evidence than we were able to assemble for our report.

Alison McInnes: Am I right in saying that the report states that the majority of the group felt that there was no gap?

John Scott: Yes. There was no significant gap.

Alison McInnes: There was no significant gap in police powers in relation to the proposals. We know that it was difficult to see the pattern at first because the figures were all amalgamated, but, since June, the figures have been disaggregated.

In June and July, alcohol detections from seizures, which is a power that the police already have, accounted for 91 per cent of the total number of detections. Alcohol detections from non-statutory stop and search came from 306 searches and accounted for only 6 per cent of the total number of detections—a very small amount—with the remaining 3 per cent of detections being made through statutory stop and search. We are talking about a very small area. Is there a danger that we are doing something disproportionate to address it?

John Scott: That risk will have to be taken into account when all the evidence is in. I suspect that the evidence from the children's commissioner and others will say that, given that that is just one measure of the problem, putting legislation in place to address it would be disproportionate.

As I say, that is part of what we were unable to answer. The question of proportionality is a key aspect and it is one of the ways in which human rights challenges can come into play. The absence of a framework was a clear problem with non-statutory stop and search, but whether it was used proportionately is another aspect. That is something on which a careful eye will have to be kept. Going back to the point about data, it will be important to monitor the data to make sure that

there is no unseen or unintended disproportionality in the use of statutory powers.

Alison McInnes: You mentioned the European convention on human rights. Given that voluntary stop and search foundered because of its lack of legitimacy and the challenges to its lawfulness and compatibility with the ECHR, would you like to comment on the legitimacy of the proposal to give the police stop-and-search powers over something that is not in itself criminal?

John Scott: That was another of the issues. John Carnochan, one of the founding co-directors of the violence reduction unit, made that point as well. The whole question of alcohol and how we teach children and young people about it becomes extremely complicated, and there is always a risk of giving mixed messages. If the focus is on keeping young people safe and making sure that they are not criminalised, that will, I hope, result in a safer approach that identifies the right answer. That issue is one of the many complicating factors.

Alison McInnes: We need an approach that seeks to keep young people out of the justice system and recognises that preventing children from gaining access to alcohol in the first place is where the focus should be rather than an approach that draws them into the justice system and damages the relationship between the police and communities. We are not even sure what we would do with those search powers.

John Scott: In 1997, when the Westminster Parliament considered the question of seizure and search, that was one of the things that troubled it, which is why no specific power to search young people for alcohol was given at that point. However, I am not convinced that Westminster had the most detailed debate about it. The consultation that is going to be undertaken will allow for far greater consideration of the various issues that are involved. Nevertheless, there is no easy answer that covers every aspect.

Alison McInnes: Thank you very much.

The Convener: I hear what you say about the possibility of child protection issues in relation to stop and search for alcohol, but in those circumstances might there be a referral to a children's panel, rather than the young person being sent into the criminal justice system?

John Scott: It is possible, yes. There are separate procedures for child protection. Some things may go to the children's panel, but the children's groups are anxious that there should be no unintended drift into the youth or criminal justice system.

The Convener: Absolutely. I thought that it was important to include that measure. If a nine or 10-year old was carrying alcohol because it had been

placed on them, there would be a huge issue about child protection, relating to the family situation and so on.

John Scott: Yes.

Elaine Murray (Dumfriesshire) (Lab): You are probably aware that the Scottish Police Federation has produced a little publication in favour of stop and search powers. What conversations has your group had with the SPF and the Association of Scottish Police Superintendents on their approach and how they will support their members through a change of culture within the police?

John Scott: I think that we mentioned the SPF document in our report, although it did not give separate specific evidence to us—the SPF document was prepared for the Parliament. I had a meeting with an official from the Scottish Police Federation—Calum Steele—and with Niven Rennie from ASPS. They both made the position of their organisations and their members clear. ASPS in particular recognises that there is a range of views and that it is not as simple as having, for example, a single superintendent view on the matter. It is perhaps safer to say that the SPF was in a stronger position to say that there is a federation view.

In the new landscape, without non-statutory stop and search, the Scottish Police Federation and ASPS will be able to do the same good job for their members, part of which will be helping to ensure that their members understand that the change in the landscape does not prevent them from carrying out any necessary police duties. In fact, the police will not have fewer powers than before, because non-statutory stop and search was not a power.

Many police officers who spoke to me informally said that they did not like non-statutory stop and search. We had a submission from someone who said that he was a serving police officer and he referred back to the targets, which changed earlier this year. He said that he felt very uncomfortable but was under pressure to carry out such searches. That feeling was echoed by other officers. Some officers said that they had never used the power and had never missed it—they never noticed a point at which they felt that they were unable to do something. We do not think that there should be any situations in which officers are frozen in an action because they do not know what they can do, now that they no longer have non-statutory stop and search.

Having reasonable grounds to suspect that a person is in possession of something is not an enormous or insuperable burden for the officer to satisfy himself or herself of before searching that person. Statutory searches are more likely to produce an item—something is more likely to be

found—because the officer has identified a basis for the search, whereas it is arguable that non-statutory searches are a poor use of police time, given the low success rate in finding anything. That, coupled with the damage that non-statutory stop and search did to public confidence, along with a number of other issues—we were more troubled by its legitimacy than by lawfulness, but there were clearly issues over all that—meant that it had to go.

I have offered to continue to meet the SPF, ASPS and Police Scotland—in small, private, large or public meetings—and to go to their annual conferences to explain our thinking; I have already been lined up for the ASPS conference in May. Part of that is about explaining to officers at all levels that the proposals are not about hobbling them in any way. We do not think that that is a necessary consequence of the recommendations.

The recommendations are about regaining confidence in the statutory powers. A lot of officers and prosecutors to whom I have spoken were surprised that there had been such a shift of emphasis away from those powers, when they had been the basis of the more successful and traditional approach to the whole question of stop and search. I am sure that the SPF and ASPS will be able to do as good a job in trying to persuade their members of the case for the new landscape as they did in trying to persuade others of the case against it.

Elaine Murray: Are you saying that, if it is handled properly, the appropriate information is given to officers, and the SPF and ASPS are on board, you do not think that there will be significant difficulties in implementing the change in policy?

John Scott: Yes. That was a very important part of it, and we tried to make sure that the report was set in that context. The report was not designed to be solely critical of Police Scotland or of particular practices. It tried to put everything in context.

Stop and search is a very small part of police activity, but significant attention was paid to it because it was being used disproportionately. I wanted to make sure that the policing community, Police Scotland and the members' organisations felt that they would be able to work in the new landscape.

Police officers will not be prevented from doing the things that they feel they need to do. In fact, the proposals will offer them some protection and safeguards that are missing in present situations. For example, when a police officer is told to do something, and there are targets to behave in a particular way, he or she can lose their sense of individual discretion and of answering to the courts

for what they have done, rather than simply answering to their sergeant at the end of the shift.

Elaine Murray: Thank you.

Kevin Stewart (Aberdeen Central) (SNP): Recommendation 10 in the report was that

“discussion should take place between Police Scotland and other partners”

on

“the most appropriate methods of dealing with children and vulnerable adults who come to notice for protection and welfare reasons during stop and search situations”.

Could you expand on your thinking on that?

John Scott: Of course. When we started our work, one of the questions that we identified as a useful way into the subject was whether there were any gaps that the use of non-statutory stop and search had masked.

Alcohol was mentioned first, second and last. However, child and adult protection issues were also mentioned as something that the police used non-statutory stop and search to deal with. That puzzled us. Anne Houston was a member of the advisory group. She had been heavily involved in child protection issues and also made contact with the adult protection committees for the group. None of the conveners of the child and adult protection groups recognised the use of non-statutory stop and search as a police tool in the area of adult and child protection.

There are a number of issues there. If non-statutory stop and search was taken away, what were the police to do when confronted with certain adult and child protection issues? That was put to us as a possible gap.

Looking at stop and search from a slightly different angle, issues of consent were then perhaps even more troubling. In the case of children, there was general recognition that the consent that was sought and apparently obtained was not fully informed consent, not least because of the power imbalance. That would also apply to some of the adult protection issues that we were talking about regarding vulnerable people in times of distress who are therefore not in the best position to understand and give informed consent to a search. It seemed the wrong way into a situation, as the use of what is, in effect, an enforcement power or tactic could exacerbate some of the factors that created the vulnerability of the individual concerned.

13:45

We spoke to Anne Houston, people from the child and adult protection committees and Colin MacKay at the Mental Welfare Commission for Scotland and everyone agreed that non-statutory

stop and search was the wrong way to go into a situation. However, some officers clearly thought that they had to do that.

There are some powers in that area; in particular, responsibilities are given to the local authority and some of its partners. However, there are a number of different bits of legislation that are perhaps not all clearly translated for officers when it comes to how they should approach questions of protection. We said that whatever is done, it should not be non-statutory stop and search. There are responsibilities and there are powers in place. What seemed to be missing was a translation of the high level of statutory powers to officers, who thought that they had to use non-statutory stop and search to lay into a situation, when that was neither appropriate nor justified.

The recommendation was intended to make sure that the dialogue that we thought might be necessary came out of the process and that non-statutory stop and search was removed as a means of engaging with children and young people in vulnerable positions.

Kevin Stewart: There are some despicable people out there who are involved in criminal activity and would not give a second thought to using children or vulnerable adults to carry out business for them. John Finnie talked about officers' discretion, and officers sometimes have to use their discretion a fair amount in dealing with some such situations. Could the removal of non-statutory stop and search make things difficult for an officer who is deciding how to deal with a safety issue for children or vulnerable adults?

John Scott: No, it should not. Part of the transition away from non-statutory stop and search may involve ensuring that officers understand that they have other means of dealing with such situations than the use of non-statutory stop and search.

Kevin Stewart: Could you give us examples of the other means at officers' disposal to deal with such situations?

John Scott: Statutory stop and search of children is still possible. If officers have reasonable grounds to suspect that children are in possession of drugs, knives or the like, they can stop and search them. That has not changed—we made no recommendation about that. If it is thought that a child is being used in that way and is in possession of something, the police can search them. The primary investigation would no doubt be in relation to the adult involved, but child protection referrals could then be made. The children's panel could become involved, too.

The use of non-statutory stop and search is not an essential part of such situations. A child protection referral is one way of dealing with them

and the involvement of the children's panel is another. Statutory stop and search is still possible if there are reasonable grounds to suspect possession of such items. I do not see the police being prevented from dealing with such things at all.

Kevin Stewart: What about vulnerable adults?

John Scott: In the case of vulnerable adults, adult protection referrals are possible.

We were given an example. A family might phone the police about a brother who has had mental health issues recently. He is not in the house, and a quantity of sleeping pills that he had are no longer in the house. The family thinks that he has gone to a local spot that is known for suicides. If the police went to that place and found the person, could they use non-statutory—consensual—stop and search in that situation?

The first thing that struck me was that it could not be said with any certainty that the vulnerable individual in that situation would be in a state of mind where they could give informed consent to a search. It would be meaningless for the police to ask for consent because they would not be able to satisfy themselves, or anyone else, that the individual was in a position to consent.

Secondly, with an individual in that situation, a number of things could happen that would exacerbate what occurs—the use of an enforcement tactic could be one of those things. I believe that a mental health triage approach has been piloted in Glasgow. A mental health nurse goes out with police officers to deal with situations that involve vulnerable adults, who may be vulnerable because of excessive consumption of drink or drugs, which they have done voluntarily. The police use the mental health nurse as the way into the situation, rather than having two uniformed officers say that they want to search the person.

I return to the possible suicide example. If such a person says that they do not agree to being searched, what could the police do? If the individual agrees to be searched and the police find the tablets, what could they do? They would have to consider the adult protection referral mechanisms.

In such situations, the police often take the person to the hospital. The hospital deals with the person, says that they are drunk and discharges them. The police, who are understandably anxious not to simply let the person go out and do the same thing again, may end up arresting them. The problem with that is that the hospital may not be dealing with the matter properly, and it simply becomes part of the skip of activities that the police end up having to deal with.

However, the answer is not non-statutory stop and search.

The Convener: That was an excellent example of the police having been forewarned. What if the police became aware that someone was about to self-harm? Would that not be grounds for them to intervene immediately? I appreciate the person's autonomy, but knowing when it would be right or wrong to intervene is difficult. Is there any room for the police to decide to do so?

John Scott: My understanding is that the police can act with the necessary degree of urgency using adult protection powers. If they were presented with a situation in which that was what they thought was happening, they could use adult protection powers—not non-statutory stop and search—to intervene. That would include searching the person. If the police are dealing with a person with mental health issues, there are various things that they can do. They can take them to the hospital or to another place of safety. The initial way into that situation would be through adult protection powers.

Kevin Stewart: If the police are using adult protection powers, would they require consent to do a search?

John Scott: No.

Kevin Stewart: Are you saying that instead of non-statutory stop and search, which we have at the moment, they could use other powers within the law to carry out a search where there was no consent?

John Scott: Yes.

Kevin Stewart: Okay.

The Convener: It is a difficult area.

John Scott: Yes, it is.

The Convener: Okay.

I do not see a straightforward solution to such situations. You have made me aware—perhaps I should already have been aware—that there are lots of other statutory routes for conducting searches. From what you are telling us, it seems that the police are not necessarily aware of all the routes.

Any code of practice or guidance would incorporate those issues and say, "You can do this in these circumstances." Is that the understanding? Particularly in difficult areas such as dealing with children and vulnerable adults, if the police stood back and then something dreadful happened, they would be on the front page of the papers.

John Scott: Yes.

The Convener: It is hard for the officers at the time. We do not want to inhibit common sense, as it were.

Kevin Stewart: And discretion.

The Convener: And discretion, yes.

John Scott: I think that that would be for a separate code of practice; we have suggested a code of practice for stop and search. However, as a result of recommendation 10 and some of the discussions around it, perhaps at the very least there should be a protocol on how to deal with emergency situations.

Primary responsibility for emergency situations is given by statute to local authorities, but no officer of a local authority is likely to be confronted with such a situation; it is more likely to be a police officer or someone in healthcare who deals with it first. If it is a police officer, they need to know that there is an adult protection path that takes them right away from the criminal justice side of it.

The Convener: I think of that dreadful case of the lady down the mineshaft. People were so busy working out what everybody's responsibilities were that nobody took over and did something at the scene. Whether that would have resolved matters I do not know, but that is where we have to be careful.

John Finnie: In the course of your inquiry, did you come across anything that had changed substantially in the way that the world works in the last three years and that had caused the movement to non-statutory stop and search? Someone who has been a police officer for 30 years must have dealt with people in such circumstances as the instance that Mr Stewart has highlighted. They dealt with them because their obligation as a public servant is to protect life and property.

John Scott: Yes.

John Finnie: It was never an issue of search. Is there nothing substantive that has changed?

John Scott: There is nothing. There are now specific statutory powers and duties and they include the reference to the protection of life.

The Convener: Thank you for clarifying that.

Alison McInnes: Elaine Murray touched on the issue of training. I note that you did not recommend that non-statutory stop and search cease forthwith, but that it should cease after the code of practice has been developed because you felt the need for a change and for training. I was quite disturbed to read in your report about the

"worrying example—whether to tell the individual in a non-statutory stop and search that they could refuse to consent—where Police Scotland training was pitched at

what might be excused or tolerated by the Courts rather than what was known to be good practice."

John Scott: Absolutely. There is a need for a cultural change and possibly a need for better legal advice than they got in that situation. The advice was, strictly speaking, correct if it said that if an officer ended up in court having failed to give someone the warning that they do not require to consent to a consensual search, the court would nonetheless—subject to other circumstances—excuse that and admit the evidence. However, that is certainly not where the training should be pitched.

We had understood that the training was to the effect that everyone would be told that they could say no. That might seem obvious to all of us, but I have certainly had clients over the years to whom that would not necessarily be obvious. If a police officer asked any one of us something, depending on the circumstances that might sometimes seem less like an open question to which no is a possible answer. The power imbalance is definitely there and it is felt even by people who are able to handle themselves better.

The Convener: I would not say no. I will be honest—I would be reluctant to say no in case I was committing something else while I was busy doing that.

John Scott: That is always the fear.

A cultural change is the biggest change required. There are clearly officers who may to some extent have felt that they needed the power. I heard evidence from younger operational officers who seemed very genuine when they said that they did not think they would be able to do things properly if the power was taken away from them. I think that they were wrong, and I have agreed to back and meet some of those officers to help with the process of explaining the change.

Training will be a big part of the change, but also the culture. If the training involves officers going online and looking at it themselves, that will not necessarily take hold; nor will it necessarily take hold if they go to the Scottish Police College, although I have been up at Tulliallan and seen some very impressive, inspirational training there. However, a lot of that gets shaken out of them when the sergeant is speaking to them at the start of a shift.

The change needs to reach all those levels. One of the ways of doing that is for officers to see alternative ways of doing things happening in practice. They need to be confronted with real-life situations and to see colleagues who are more confident in the range of powers that they have dealing with those situations comfortably, well and effectively without using non-statutory stop and search.

14:00

On how long it might take for that transition to go all the way through, I have heard suggestions of anything from one to four years. Obviously it should be done as quickly as possible. In the other example that we gave of a policy that was announced and then implemented within five days, that did not work. There was real misunderstanding on that occasion about what the change was, with some officers thinking that they could not search young people at all, even on a statutory basis, which was never the case.

The change needs to go from top to bottom in the organisation, with every opportunity being taken to explain to officers that they can still do the job and do it effectively. We can get the federation and ASPS involved in that process and I have said that I will become involved in aspects of the training, including trainer training, if that will help.

I hope that future legal advice will say that it is not necessary to pitch training at what can be got away with in court; it can be pitched higher. If good practice is not possible on occasion, for whatever reasons of good faith, that can be explained and the courts will probably understand and accept that. If we aim for the bottom, unfortunately it is easier sometimes to go lower than that, whereas if we aim for good or best practice and it drops below those standards, it is to be hoped that it will not drop so far as to go through the floor.

Alison McInnes: That is helpful. Thank you.

The Convener: Thank you very much for your evidence. It was extremely interesting.

14:01

Meeting continued in private until 14:13.

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