

The Highland Council

Community Safety, Public Engagement and Equalities Committee 11.6.15

Agenda Item	8
Report No	CPE 12/15

Independent Advisory Group on Stop and Search: opportunity to respond to the call for evidence

Report by the Head of Policy and Reform

Summary

A call for evidence by 3rd July 2015 has been made by the Advisory Group on Stop and Search. A council response can be submitted based on views expressed earlier and any information presented to the CPE Committee by Police Scotland on the use and impact of stop and search in Highland.

1. Background

- 1.1 A statutory (or legislative) search is defined by Police Scotland as 'one that is conducted by a police officer in the execution of their duty using legislative powers.' This requires officers to have reasonable grounds for suspicion i.e. observations, information or intelligence that an item in a person's possession would constitute an offence. Grounds for suspicion cannot be based on a person's characteristics such as gender, race or age.
- 1.2 A non-statutory (or consensual) search is defined by Police Scotland as 'one that is conducted by a police officer in the execution of their duty with the consent of the individual being searched. The search will be in line with their general police duties for the purpose of keeping people safe.' Reasonable suspicion is not required and the police officer can search the person as long as verbal consent is given. Refusal does not justify a legislative search.
- 1.3 The Scottish Government has established an Independent Advisory Group on Stop and Search policy. Its remit is to advise Ministers on the long term policy for stop and search, in particular whether the current presumption against consensual stop and search (where legislative power to search exists) goes far enough for those aged over 12 years or whether the practice should stop. It has stopped for those aged under 12 years and this is not under review. The Advisory Group is also asked to consider whether there should be a draft Code of Practice to underpin the use of stop and search.
- 1.4 The Advisory Group plans to make its recommendations to Ministers by the end of August 2015 so that any legislative change required can be included in the proposals for the Criminal Justice (Scotland) Bill. In developing its recommendations the Advisory Group is seeking views, opinions and experiences of stop and search policy and practice in Scotland by 3rd July 2015. The call for evidence can be viewed at

<http://www.gov.scot/Resource/0047/00477321.pdf>.

1.5 The Advisory Group has not specified questions in their Call for Evidence, but has provided a guide to the themes they are exploring. These are:

- The on-going validity of non-statutory stop and search;
- The ability or capacity of some people to consent to a non-statutory search;
- Whether the practice of non-statutory stop and search should be ended altogether;
- Whether there are certain situations where gaps in police powers exist and when non-statutory stop and search should continue, or whether any such gaps should be addressed in an alternative manner ;
- Whether the police should be able to search a person to safeguard that person's health and wellbeing;
- Whether there should be a Code of Practice for police officers undertaking stop and search, and what the basis of any Code of Practice should be, for instance, an internal police code or a statutory code backed by legislation; and
- the impact, if any, of stop and search on specific age cohorts, socio-economic groups, those with protected characteristics (as defined by the Equalities Act 2010), for example particular ethnic groups and/or people with disabilities etc.

2. Proposed Council response

2.1 At the CPE Committee meeting in March 2015, members were advised that data was not included on the use of stop and search in Highland because the available data was not reliable. However, data should be available for the June Committee, providing members with better information to scrutinise the scale, use and impact of stop in search in Highland. This should help inform a response to the call for evidence.

2.2 Police Scotland conducted a short review of Stop and Search in March, 2015. However the consultation ran for only two weeks so there was no opportunity for member engagement at Committee. Some members may have responded individually. Officer feedback from Children's Services is highlighted below and this can be fed back if agreed.

1. Stop and search should be used in a targeted and evidence-based way where there is reason to believe that an offence may be committed. There should be empirical evidence of the outcomes of the policy. Operation Roundup is an example of where similar interventions have been effectively used locally.
2. Stop and search should be focused on tackling issues of concern to the local community, with due respect taken for the rights of law abiding children and young people. No young person or population of young people should be disproportionately subject to stop and search.

3. If it is the case that the majority of stop and search exercises yield a nil-return, then the process risks damaging relationships between the police and young people.
4. Consideration should be given to the negative impact the use of stop and search could have on younger people who can feel intimidated by searches and how it this might affect their future relationships with police.

2.3 As well as ensuring young people's rights and community relations are not harmed, other issues that members may wish to feedback might include:

1. Regular information on the use of stop and search should be included in the quarterly performance reports from Police Scotland to enable scrutiny by elected members. It would be helpful to know how many stop and search actions are carried out in Highland each quarter, what their geographic spread is, how effective they are, who is targeted and how that compares to elsewhere in Scotland.
2. Consensual search should not be based on a person's characteristics such as gender, race or age and the reporting of it should enable scrutiny of any potential discrimination.
3. Variations in the use of stop and search needs to be considered, based on risk, with different approaches enabled in different areas. This would apply not only across the country but should also be considered within Highland, for example the potential need for it may vary between the city and rural areas and during festivals and events.
4. The importance of partnership working, so that the Council and other partners can work together to prevent offences being committed to reduce the need for stop and search.

3. Implications

3.1 Resource implications: there are no new resource implications from responding to the call for evidence.

Legal implications: the Council's feedback can influence the Advisory Group's response to Ministers and affect the development of the Criminal Justice (Scotland) Bill.

Equalities implications: Equality legislation provides protection of people's characteristics and the proposed response highlights the need to eliminate discrimination in its use.

Climate Change/Carbon Clever implications: none are identified.

Risk implications: the proposed response highlights the need for a risk-based approach to stop and search that also does not harm community relations particularly among law abiding young people.

Gaelic implications: none are identified.

Rural implications: the proposed response suggests that different approaches may be needed in rural and urban areas and around festivals and events.

4. Recommendation

4.1 Members are asked to agree a response to the call for evidence by the 3rd July 2015 based on:

- any information presented to Members at the meeting by Police Scotland on the use and impact of stop and search in Highland;
- the earlier comments submitted regarding children and young people in Highland; and
- the points made in paragraph 2.3 regarding the need for good reporting on stop and search, the need to be mindful of people's protected characteristics and different community safety contexts (rural, urban and events and festivals) and the importance of partnership working for community safety.

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Date 2.6.15