

EVIDENCE FOR THE INDEPENDENT ADVISORY GROUP ON STOP AND SEARCH

Introduction

CEL CIS is the Centre for excellence for looked after children in Scotland. We exist to improve the experiences and life chances of children and young people in Scotland who are 'looked after' by local authorities, and those who have left care. We do this by working alongside the professionals who touch their lives, and within the wider systems responsible for their care.

We welcome this opportunity to submit a written response to the Independent Advisory Group on Stop and Search. This is relevant to looked after children and care leavers, and we feel that the impact of 'stop and search' on this group could potentially be very different to its impact on their peers who do not have experience of being looked after.

Looked After Children, Young People and Care leavers

In July 2014¹, the total number of looked after children in Scotland was 15,580. This represented 1% of Scotland's under-22 year old population. 91% of the 'looked after' population lived in community settings [that is; with parents (4,144), friends and family (4,181), foster carers (5,533), prospective adopters (201) or other community placements (51)], with the remaining 9% (1,470) in residential settings [that is; in residential homes (697), in residential schools (393), in secure accommodation (82), in crisis care (16) or other residential placements (282)]. It is important to note that the vast majority of looked after children live in the community (91%), rather than in residential care settings. Further, children who are looked after at home with parents (27%) and those who live with family and friends (27%) make up over half of the looked after population.

Around 12% of looked after children (1893) were recorded as having a 'primary additional support need' as of July 2014. Of these, 510 children are recorded as having 'multiple disabilities' (3.3%), 274 children have a learning disability (with a further 46 having a specific learning disability), 146 children (<1%) have an autistic spectrum disorder and 94 children have a physical or motor impairment and relatively small numbers have a visual or hearing impairment (48 and 12, respectively). The largest category includes 513 children recorded as having 'social, emotional and behavioural difficulties' (equates to 3.3% of the looked after child population). Furthermore,

¹ Scottish Government. (2015). *Children's Social Work Statistics 2013-14*. Available online at <http://www.gov.scot/Topics/Statistics/Browse/Children/PubChildrenSocialWork> accessed on 7/5/15.

disability status is recorded as 'not known' or unrecorded for around 15% of all looked-after children in Scotland.

The statistics above begin to illustrate the heterogeneity of looked after children, young people and care leavers. This is an important point as it highlights the complexity of their lives. All children and young people have a right to have their dignity upheld and the practice of Stop and Search should not be exempt from this entitlement.

Looked After children, young people and care leavers' prior experiences and the relationship to Stop and Search

Safeguarding and welfare must be of paramount consideration when undertaking Stop and Search on a person under 18. Moreover, care leavers who are over 18 are also a very vulnerable group. This group has high levels of mental ill health, and are likely to have been exposed to multiple risk factors throughout their lives, and thus also require an appropriate safeguarding response. This should be borne in mind when thinking about looked after children and young people and care leavers alongside our knowledge that looked after child, young people and care leavers are very vulnerable to exploitation. If looked after children, young people or care leavers are searched and illegal items are found in their possession, it would be helpful if the Police considered, in the first instance, whether the person is a victim who may have been exploited and has limited capacity to make their own choices, rather than designating them an offender immediately.

The impact of early childhood abuse and neglect on emotional development and the issue of developmental delay can have a significant impact on behaviour and impulsivity. This can manifest itself in looked after children and care leavers and may cause what is essentially non-criminal, attention-drawing behaviour, leading to a greater risk of Police attention/interaction and thus greater risk of stop and search. Emotional immaturity and mistrust of Police may then escalate, what might otherwise be, a benign situation.

In England and Wales looked after children and care leavers are over-represented in the criminal justice system: they are nearly twice as likely as their peers to be cautioned or convicted of an offence, and a third of children in custody have been looked after.² This over-representation in England of this population strongly suggests a similar pattern in Scotland. Indeed, a report from 2013 suggests that more than one third of young offenders in Scotland had experience of living in care.³

Many looked after young people and care leavers are at risk of offending due to experience of past abuse, neglect or unstable living arrangements, both prior to and following their entry to the looked after system. These factors may impact on their coping skills, including the ability to act appropriately, to express themselves adequately and to conform to social norms. This means that

² Department for Education (2014) The Children Act 1989 Guidance and Regulations: Volume 2: Care Planning, Placement and Case Review [Supplement] <https://www.gov.uk/government/publications/children-act-1989-careplanning-placement-and-case-review>

³ Broderick, R, McCoard, S & Carnie, J. 2014. *Prisoners who have been in care as 'looked after children'*. 2013: 14th Survey Bulletin. Scottish Prison Service. P.5.

they may be more likely to exhibit behaviours which could be deemed grounds to carry out a Statutory Stop and Search. In some instances, behaviour that appears to be troublesome may arise more from past difficulties than from any criminal intent; it is often a form of communication, reflecting distress or a desire for engagement. It would be helpful if all police officers had an understanding of the vulnerabilities of all looked after children (children who may be looked after in the community as well as those in residential settings) and care leavers.

Stop and Search as a practice

We feel that the key recommendations by Kath Murray (2014) are applicable to looked after children, young people and care leavers and would encourage the adoption of these:

Stop and search in Scotland: Key Recommendations

- The primary aim of stop and search should be clarified. Currently, it is unclear as to whether the aim is to detect or deter. The appropriate legal and regulatory framework should be put in place to support the primary aim.
- The use of non-statutory stop and search raises concerns in relation to procedural protection, consent, proportionality and human rights. It is recommended that this practice is phased out. Going forward, the use of stop and search should be underpinned by legislation.
- The use of stop and search on children should be reviewed with a view to establishing a set of clear guidelines for practice. In 2010, approximately 500 children aged 10 years and under were stopped and searched by the police, suggesting that the current approach is out of kilter with the welfare oriented approach to juvenile justice in Scotland.
- Open access data are required in order to make policing transparent, accountable, and to secure a public mandate on the use of stop and search. The use of non-statutory stop and search and all other types of search powers should be clearly distinguished within these data.⁴
- Recording procedures should be put in place to measure the prevalence of stop and search, that is, the extent to which the same individuals are subject to multiple searches.
- Research shows that repeat adversarial contact can have a negative impact on future behaviour of young people (McAra and McVie, 2005), and tends to be associated with more hostile attitudes towards the police (Guardian/LSE, 2011). A measure of prevalence would therefore allow repeat searches to be monitored, and enable Police Scotland to address any concerns that may arise in relation to disproportionality. In order to ensure robust data standards and to bring Scotland in line with England and Wales, it is recommended that Police Scotland, in conjunction with the Scottish Government and the Scottish Police Authority, seek to secure accredited status for stop and search data with the UK Statistics Authority.⁵

⁴ For an example of best practice, see Metropolitan Police Service stop and search data: http://www.met.police.uk/foi/units/stop_and_search.htm

⁵ For best practice, see Police Powers and Procedures (Home Office): <https://www.gov.uk/government/publications/police-powers-and-procedures-in-england-and-wales-201112>

- Stop and search data should be routinely analysed to assess whether police practice seems proportionate to local patterns of offending, for example, in terms of the types of crime that are most likely to be carried out, and the demographic profile of offending. Particular consideration should be given to the age profile of stop and search.
- Research should be undertaken to explore the deterrent effect of stop and search. Given that high volume stop and search has been justified in terms of falling levels of recorded crime and offending, it is important to establish whether a robust relationship exists between the two factors.
- It is recommended that in-depth qualitative research is undertaken to assess the impact of stop and search on police-community relationships in Scotland.
- Finally, it is recommended that research is undertaken to assess the effect of performance management on officer decision-making, and to ascertain whether the use of Key Performance Indicators and numerical targets is likely to influence the patterning of stop and search.

Implementation of these recommendations would provide a clearer picture of the prevalence of looked after children, young people and care leavers in Stop and Search activity. It would also enable the looked after population to understand their rights in this area and know that they are in line with their human rights. This in turn would help support and promote a greater degree of trust and communication between the Police and one of Scotland's most vulnerable groups of children and young adults.

It would be good practice, as recommended by All Party Parliamentary Group for Children inquiry into 'Children and the Police' (July, 2014)⁶, to produce 'specific guidance on carrying out stop and search on children and young people, including advice on safeguarding and child protection and what action should be taken to protect vulnerable children, for example children in care or those at risk of abuse and exploitation'. We think, in general, that there is not enough consideration given to the potential impact of a Stop and Search on young people, relative to the perceived benefits of conducting a stop and search.

In consideration of recommendation '7' above, the positive impact of Stop and Searches needs to be reviewed in line of any potential negative impacts. Research from 2000 in England⁷ suggested that searches played only a minor role in detecting offenders for the range of all crimes that they address, and a relatively small role in detecting offenders for such crimes that come to the attention of the police. Therefore, based on the British Crime Survey, the research concluded that there were 106 crimes which, in theory, might have been detectable by searches for every search arrest for such crimes. Similarly, for every 26 such offences recorded by the police, there was one search arrest. However, they made a more notable contribution to police arrests for these crimes, totalling an

⁶ All Party Parliamentary Group for Children inquiry into 'Children and the Police' (July, 2014). Initial analysis of information request to police forces. Available at http://www.ncb.org.uk/media/1150494/appgc_police_data_report_july_2014_final.pdf

⁷ Miller, Bland and Quinton (2000) The Impact of Stops and Searches on Crime and the Community, Police Research Series, Paper 127.

average of 13% across a range of forces. This research also suggested that Searches appear to have only a limited direct disruptive impact on crime by intercepting those going out to commit offences. Based on the British Crime Survey, it is estimated that searches reduced the number of 'disruptable' crimes by just 0.2% in 1997. Equivalent figures for recorded crime range from 0.6% to 2.3% for 1998/9. However, less is known about their localised effects in relation to areas specifically targeted by the police.

In addition, in terms of recommendation '8' above, research by McAra and McVie (2013)⁸ draws attention to the 'usual suspects' - young people who become sucked into a repeat cycle of contact with the system which has damaging consequences in terms of inhibiting desistance from offending and in terms of youth to adult criminal justice transitions. They would suggest that we need to attend to the needs of children and young people who offend which will then help to bring justice to victims and communities.

In contemporary political debate, attention is readily focused on what is perceived as an irreconcilable tension between tackling the broader needs of young people who offend and delivering justice for communities and for victims of crime. We would argue that these are not alternative strategies: indeed justice for communities and victims cannot be delivered unless the broader needs of young people are addressed. (p.9)

If this is the case we need to ask how Stop and Search supports our ability to address these needs, or does it begin and then reinforce a cycle of negative contact with the justice system in which the looked after population and care leavers are disproportionately represented. From practice, we suggest that looked after children and young people are more likely to be known to local Police via children's homes/residential school interactions and thus more likely identified and 'labelled'. Particular attention needs to be paid to negative labelling and stereotyping of looked after children and young people. This can be mitigated through education and awareness-raising amongst Police, as to the the primary causes of why children become looked after (i.e. abuse and neglect) and the possible impact of this throughout a person's life course.

Stop and Search and the Police's Corporate Parenting Duties

It would be helpful to know what proportion of those who are involved in a 'Stop and Search' are, or ever were, looked after. Collation of such data as described would help to assess the extent to which looked after children, young people and care leavers are subjected to Stop and Search. In addition to helping the police to fulfil their Corporate Parenting duties under section 58 of the Children and Young People (Scotland) Act 2014 (including the duty to be assess the needs of eligible young people and to be alert to issues which may affect their wellbeing), this would address the suggestion made by Kath Murray in her research on the use of Stop and Search in Scotland regarding the impact of

⁸ McAra, L. & McVie, S., (2013) *Justice for young people*. Available online at: https://d19ylpo4aovc7m.cloudfront.net/fileadmin/howard_league/user/online_publications/Justice_for_young_people_web.pdf

this type of policing on some of Scotland's most vulnerable children and young people and the subsequent effect on their attitudes towards the police:

The impact of stop and search on police-community relationships is beyond the scope of this research project. Nonetheless, based on the findings in the report, it seems reasonable to suggest that young people in some parts of Scotland might feel that the use of stop and search in their locality seems excessive and unfair. This observation suggests that further research is required in order to assess the effect of stop and search on people's attitudes towards the police.⁹

Furthermore, consideration needs to be given to how the practice of Stop and Search may interact with the Corporate Parenting role, particularly for children and young people who are looked after at home. Especially given that a Stop and Search may inhibit the formation of positive relationships between young people and the police. As Corporate Parents, the Police will be encouraged to adopt a 'care proofing and positive default bias' approach in line with Scottish Care Leavers Covenant and this would necessitate them becoming much more proactive in terms of a welfare and wellbeing approach towards looked after young people and care leavers.

Thank you for this opportunity to provide a response. We would welcome any further discussions with the Independent Advisory group.

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⁹ Murray, K. (2014) Stop and search in Scotland: An evaluation of police practice. University of Edinburgh
Available at http://www.sccjr.ac.uk/wp-content/uploads/2014/01/Stop_and_Search_in_Scotland1.pdf