



STOP AND SEARCH CONSULTATION SCYJ RESPONSE – SEPTEMBER 2013

ABOUT SCYJ

The Standing Committee for Youth Justice (SCYJ) is a coalition of over 30 voluntary sector organisations, which advocates a child-focused youth justice system that promotes the integration of such children into society and thus serves the best interests of both the children and their communities. For further information please contact Jake Mcleod, at j.mcleod@scyj.org.uk

SUMMARY

The Standing Committee for Youth Justice (SCYJ) has a range of concerns and recommendations about the existing stop and search powers:

- Stop and search can be used to help prevent and deter crime but it cannot do so alone. It needs to be better used in tandem with work to address the underlying causes of offending;
 - Black and minority ethnic groups are disproportionately stopped and searched in comparison to their white counterparts. This urgently needs to be addressed;
 - Stop and searches are often conducted in an unfair and disrespectful manner;
 - Evidence indicates that a significant proportion of searches have been carried out without any reasonable grounds;
 - SCYJ strongly recommends the abolition of Section 60 of the Criminal Justice and Public Order Act 1964; and
 - We would like to see the inclusion of the community, and young people in particular, in the training and oversight of police and stop and search practice.
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1. Effectiveness and fairness

- **Is stop and search effective in preventing and detecting crime and ASB?**
- **To what extent do you agree or disagree that police use stop and search powers fairly to prevent and detect crime and ASB?**
- **What are the types of crime and ASB that can be tackled effectively through the application of stop and search powers?**

When used in conjunction with other work to address the underlying causes of offending, stop and search can help prevent crime by acting as a deterrent to knife and gun possession, by strengthening public confidence in the police, and by

improving police relations with the community. However, this can be achieved only when the powers are exercised lawfully under the authorising statutes, in compliance with the European Court of Human Rights (ECHR), and in a way that is perceived to be fair and is non-discriminatory.

SCYJ believes that while stop and search can help to prevent crime and anti-social behaviour (ASB), it cannot do so alone. To maximise its effectiveness, stop and search must operate in tandem with work to address the underlying causes of crime and ASB. In the short term, stop and search may deter gun and knife possession but, as has happened in parts of London, in the long-term it can lead to the diversification of 'household' weapons to avoid arrest, such as screwdrivers.¹ This is a prime example of why stop and search must be used in conjunction with other initiatives to tackle the causes of crime.

The aim of stop and search is to detect and reduce serious crime, yet statistics about its use raise doubts about whether stop and search is serving its intended purpose. Almost 50% of all searches were for the purposes of finding drugs – mostly low-level possession – whereas only 9% of searches nationally were for weapons.² SCYJ believes that there should be a greater focus on searching for weapons and firearms.

There is much evidence that stop and search is being used unfairly and disproportionately against certain groups.³ The most recent statistics show that one-quarter of stop and searches are performed on children; black people are stopped and searched at seven times the rate of white people; and Asians are stopped at more than twice the rate of white people.⁴ Further to this, figures regarding complaints about police use of stop and search suggest that there are significant differences in the way different ethnicities are treated during the process.⁵ Although only 3% of people reported an unsatisfactory stop and search experience in the past year, this rises to 5% amongst black Africans and Asian Muslims, 9% of black Caribbeans and 12% of those of mixed ethnicity.⁶ These figures are also likely to be underestimates, as figures show that only 16% of people unhappy with the handling of their stop and search made an official complaint.⁷

SCYJ shares the concerns of the Centre for Social Justice (CSJ) that the rate at which black and ethnic minorities are stopped and searched in comparison to white people

¹ Centre for Social Justice (2009), *Dying to Belong: An In-depth Review of Street Gangs in Britain*, London: Centre for Social Justice

² Her Majesty's Inspectorate of Constabulary (2013), *Stop and Search Powers: Are the police using them effectively and fairly?* London: Her Majesty's Inspectorate of Constabulary, p5

³ Stop-Watch (2013) *Viewed with Suspicion: The Human Cost of Stop and Search in England and Wales*, p26

⁴ *Ibid*, p27

⁵ 'Fair and Effective Policing Methods: Towards 'Good enough Policing' [2007] 8 *Journal of Scandinavian Studies in Criminology and Crime Prevention*: 17-32

⁶ Stop-Watch (2013) *Viewed with Suspicion: The Human Cost of Stop and Search in England and Wales*, p25

⁷ Her Majesty's Inspectorate of Constabulary (2013), *Stop and Search Powers: Are the police using them effectively and fairly?* London: Her Majesty's Inspectorate of Constabulary, p16

is worsening an already fragile relationship between young people and the police which is, in turn, perpetuating gang violence.⁸

As shown by the participation work completed by SCYJ member The Howard League for Penal Reform, the feedback from young people points to overt racism in the way stop and search is carried out:

"The police have called me bare names 'black cunt', 'darkie' when with friends they said to us 'you black cunts make me feel sick'"

"They are racist, look how many times we get stopped. If we were white in Richmond they wouldn't trouble us but they see us and think we must be up to something all the time, I've never robbed anyone or sold drugs but they act like I am some big gangster"

A second matter of concern that arose out of the Howard League's participation work is that stop and search is being carried out in an unfair and disrespectful way.

"Yeah they act immature, we are just kids and they want to act like that, proper foolish, you can't be taking them seriously. If they speak to you with manners and like they really care about their job you can deal with that but when they come at you with rudeness it just winds you up."

SCYJ is seriously concerned about the impact of the racist and discourteous stop and search practices, which are experienced by some young people. Such an approach can only have a negative effect on the willingness of young people, and Black and Minority Ethnic groups in particular, to cooperate with the police or report crime.

2. Measuring effectiveness

- **Is the arrest rate following stop and search a useful measure of the power's effectiveness?**
- **What other things should be considered when assessing how effective the powers of stop and search are?**

Measurement of the arrest rate alone is not helpful

The arrest rate following stop and search is not a useful measure when used alone, for a variety of reasons. Such a measure assumes that the only successful outcome of the power is arrest and fails to take account of alternative positive conclusions, such as community resolution. This is particularly relevant to children as there is evidence that contact with the formal criminal justice system can be counterproductive, serving to stigmatise children and increase their likelihood of offending.⁹ It follows, therefore, that

⁸ Centre for Social Justice (2012), *Rules of Engagement: Changing the heart of youth justice*, London: Centre for Social Justice

⁹ McAra L and McVie S (2007), 'Youth justice? The impact of system contact on patterns of desistance from offending', *European Journal of Criminology*, 4:3, pp315-45; Farrington D (1977), 'The effects of public labelling', *British Journal of Criminology*, 17:2

a successful outcome of a stop and search for a child may be diversion into a restorative justice scheme for example, rather than arrest. In a similar vein, as emphasised above, if stop and search is to be effective it must operate in tandem with preventative and rehabilitative work that seeks to address the underlying reasons for why people carry prohibited and stolen articles. This is all the more critical given that some weapon-carrying may be linked with gang activity. Recent research has highlighted that both young women and men with gang associations have much higher levels of multiple vulnerabilities and higher levels of mental health diagnosis, often with poor early intervention.¹⁰ For this small group, better multi-agency integration of knowledge and evidence-based activity might support improved individual and community outcomes. For that reason, it would seem logical for any measure of effectiveness to include data on repeat arrests.

The recent report from Her Majesty's Inspectorate of Constabulary (HMIC) points out that the 'arrest rate following stop and search' does not take into account a number of important factors. These include that stop and search powers were introduced to reduce the number of unnecessary arrests, meaning that the prevention of such an arrest would be a successful outcome; and that the arrests recorded following stop and search also includes those for which a prohibited or stolen item has not been found but, for example, it was found that the person was wanted for another offence.¹¹ Failing to distinguish between these arrests in the statistics and the arrests relating to the officers finding a prohibited item or the like on the person searched, means it is impossible to ascertain the true effectiveness of the power.

However, it is important to distinguish the points made above from the implication drawn from paragraph 2.3 of the consultation document. The existence of stop and search powers may have a general deterrent effect. Nonetheless, this does not mean that they can lawfully be used against individuals in order simply to deter nor as a means of increasing police visibility: they must be used (except under the Criminal Justice and Public Order Act 1994 and the Terrorism Act 2000) only if there is reasonable suspicion. This means that if they are used correctly (i.e. when there is a reasonable suspicion) then one would expect to see a correlation between the discovery of the item searched for, and/or arrest, and the use of restorative/community based responses (as outlined in the paragraph above). Effectiveness of the use of stop and search against individuals (as opposed to its existence on the statute books) cannot be measured by its deterrent effect.

On a similar note SCYJ is concerned that such arrests (i.e. for obstruction) can be a route into the criminal justice system for those who might otherwise never be involved in it. Many who are stopped and searched are innocent of any crime when stopped; some of them are then arrested for a public order offence (or similar) that is committed during the search procedure due to frustrations at the procedure itself, which may then

¹⁰ Khan et al (2013) *A need to Belong: what leads girls to join gangs*, London: Centre for Mental Health; Coid et al (2013) *Gang Membership, Violence, and Psychiatric Morbidity*, American Journal Psychiatry 10.1176

¹¹ Her Majesty's Inspectorate of Constabulary (2013), *Stop and Search Powers: Are the police using them effectively and fairly?* London: Her Majesty's Inspectorate of Constabulary, p12

lead to a criminal record. When the procedure is carried out indiscriminately or by officers who have insufficient training; it can lead to frustration on the part of those being searched, and results in further criminalisation of young people who might otherwise have avoided any contact with the criminal justice system. As these alleged offences would never have been committed had it not been for the stop and search procedure being carried out, and therefore these arrests do not demonstrate the police reducing crime at all, possibly creating situations where an offence is more likely to take place.

Measurement of perceived fairness, appropriateness and lawfulness

A measure of effectiveness must also take account of the perceived fairness of the power's use. If a person who is stopped and searched perceives the police to have acted unfairly 'this can lead to a loss of trust, which could lead to a withdrawal of the public cooperation and a reluctance to take up their responsibility to report crime, provide intelligence about criminal activity...making it more difficult for the police to work with the public to reduce crime'.¹² Participation work undertaken in the West Midlands, focussing on the experiences of policing in the community, supports this assertion: one child said that they "wouldn't report anything that happened to me and if a crime was done to my mother I would get my cousin and seek out the ones that did it. The cops are useless anyway."¹³ Fairness is integral to effectiveness.

In this regard, it would be valuable to look at the number of complaints made by members of the public who have been stopped and searched. This would help to measure the fairness of stop and search practice, as well as relating to the stated aim of increasing public confidence in the police (which has been demonstrably undermined in those cases when an individual sees cause to complain about the use of stop and search powers).

SCYJ also believes that it would be useful to measure the proportion of searches in which a stolen or prohibited object is found. This would give some indication of whether or not the power is being used appropriately by providing an 'indicative measure of the strength of the grounds for suspicion'. It would also show whether or not the power is serving its purpose: to assist with the prevention and detection of crime.¹⁴ However, HMIC found that only seven of the 43 police forces currently record how often such items are discovered.¹⁵

Any assessment of the effectiveness of stop and search powers must also take account of whether they have been exercised lawfully. This means they must be exercised in accordance with the authorising power and also in a way that complies with other

¹² Ibid, p15

¹³ D. Sharp and S. Atherton (2007) 'To Serve and Protect? The Experiences of Policing in the Community of Young People from Black and Ethnic Minority Groups', 47 British Journal of Criminology 746-763

¹⁴ Her Majesty's Inspectorate of Constabulary (2013), *Stop and Search Powers: Are the police using them effectively and fairly?* London: Her Majesty's Inspectorate of Constabulary, p4

¹⁵ Ibid, p4

statutory duties of the police: namely, their duty under section 6 of the Human Rights Act to comply with the European Convention on Human Rights (including Article 8 which is engaged when stop and search is used and thus the powers must be exercised only if necessary and proportionate¹⁶) and the duty under section 11 of the Children Act 2004 for the chief officer of police to ensure that functions are exercised having regard to the need to safeguard and promote the welfare of children.¹⁷ Stop and search powers can only be regarded as effective to the extent that they are consistent with these duties; the former may be assessed against the measures of effectiveness set out above (thus allowing assessments of the necessity of the use of the powers) as well as any specific legal challenges, and the latter can often best be met – as noted above – by ensuring that there are alternatives to arrest and that children are dealt with in a way that is appropriate to their age and understanding.

3. 'Reasonable grounds' power

- **To what extent do you agree or disagree that the 'reasonable grounds' stop and search powers are used by the police in a way which effectively balances public protection with individual freedoms?**
- **To what extent do you agree or disagree that the 'without reasonable grounds' stop and search powers are used by the police in a way which effectively balances public protection with individual freedoms?**
- **To what extent do you agree or disagree that the current requirement to explain the reasons for stop and search make the use of the power more fair and transparent?**

We do not agree that 'reasonable grounds' are used in a way that balances public protection with individual freedoms, as evidenced by the recent HMIC finding that 27% of searches were found to be without sufficient grounds recorded to show that they were lawful searches.¹⁸ HMIC asserted that this is due to an absence of any training being provided to officers in the effective use of stop and search.¹⁹

Further to this, research by the Runnymede Trust has shown that dissatisfaction with stop and search is strongly linked to the failure of the police to give a reasonable explanation for a stop.²⁰ Requiring officers to explain the reasonable grounds for the search is essential for transparency, fairness and accountability. This would help to improve police relations with the community, especially amongst certain groups, such as ethnic minorities who currently have a much higher rate of dissatisfaction with stop and search.

¹⁶ *Gillan and Quinton v. UK*, 4158/05 [2010] ECHR 28 (12 January 2010)

¹⁷ *Castle v Commissioner of Police for the Metropolis* [2011] EWHC 2317 (Admin)

¹⁸ Her Majesty's Inspectorate of Constabulary (2013), *Stop and Search Powers: Are the police using them effectively and fairly?* London: Her Majesty's Inspectorate of Constabulary, p8

¹⁹ *Ibid*, p7

²⁰ Stop-Watch (2013), *Viewed with Suspicion: The Human Cost of Stop and Search in England and Wales*, London: Stop-Watch p26

Participation work conducted by SCYJ member The Howard League for Penal reform suggests that officers are not explaining reasonable grounds or providing receipt of the stop and search. This results in some young people being stopped and searched multiple times a day.

“The young police officers seem to be less arrogant and treat you with a little bit of respect but the older ones they have no respect at all and they don’t always explain why you are being stopped and you do feel like they just judge you on how you look”

“When they stop and search us now they don’t give us paper to prove it anymore so we get stopped and searched several times a day sometimes just after being stopped before.”

Furthermore even when the police do provide a receipt, young people are still being stopped and searched multiple times in a day:

“Even when you have a stop and search blue ticket receipt to show you’ve just been stopped and searched they still do it again.”

Statistics gathered by the Equality and Human Rights Commission showed that many police forces were stopping and searching people under Section 60 of the Criminal Justice and Public Order Act without any authorisations being made to allow s60 searches in that area.²¹ SCYJ is extremely concerned about the impact this is having on police relations with young people.

As stated earlier, a major problem with stop and search is its disproportionate use against black and minority ethnic groups. Statistics show that s60 stop and search practice is significantly more inequitable. Black people are 7 times more likely to be stopped than a white person when police are required to provide reasonable grounds; this increases to 37 times more likely when the reasonable grounds requirement is removed (i.e. s60).²² This is a stark contrast. The figures suggest that when officers are not required to use evidence-based reasoning for deciding who to stop and search it results in them basing their searches on arbitrary and discriminatory factors such as age and race. The SCYJ firmly believes that the best way to reduce the disproportional number of black and ethnic minority people being stopped and searched is to abolish Section 60.

SCYJ recommends that police officers should take part in youth-led training courses regarding the use of stop and search. This would give police the proper knowledge to work with and understand the needs of young people. Training should be provided on key issues, such as: child welfare; child development; mental health problems; neuro

²¹ Equality and Human Rights Commission (2012), *Race disproportionality in stops and searches under Section 60 of the Criminal Justice and Public Order Act 1994*, London: Equality and Human Rights Commission

²² Stop-Watch (2013) *Viewed with Suspicion: The Human Cost of Stop and Search in England and Wales*, p23

disabilities; speech, language and learning needs; and safeguarding.²³ This is particularly important given that the protections and support available to children and young people during other interactions with the police – namely, the mandatory requirement that an appropriate adult be available when a child is arrested, detained and questioned at the police station – are absent in interactions during stop and search. Examples of effective youth training have been provided by organisations such as Just for Kids Law and MAC-UK in youth-led youth court training and mental health training, respectively. The police also need training on how they refer young people for follow-up support if they have concerns about their safeguarding or health.

Further to this, SCYJ agree with the HMIC recommendation that ‘Chief Constables and the College of Policing should establish, in the Stop and Search Authorised Professional Practice document, a clear specification of what constitutes the effective and fair exercise of stop and search powers, and guidance in that respect.’²⁴ We believe this would help to reduce the number of stop and searches taking place without reasonable grounds.

4. Recording stop and search

- **To what extent do you agree that it is right that the police are under a national requirement to record information in respect of each stop and search (incl. ethnicity, object of search, grounds for search, date, time and place, identity of officer)?**
- **Should Govt require police forces to record stop and search events in a certain way (e.g. using a particular technology) or are individual forces better placed to make this decision?**

SCYJ entirely agree that it is right to record this information. It can, and should, be used by the police to understand how the power is being deployed and to reform practice accordingly. Such transparency – particularly if the data is subject to public scrutiny – can be a motivation to improve practice. Furthermore, by demonstrating whether the police are using the power fairly and effectively, it can develop public trust and confidence in the police.

However, as outlined by the HMIC, the information needs to be better recorded. Supervisors are obliged to monitor the use of stop and search to make sure it is being carried out appropriately and effectively. Startlingly, 27% of stop and searches are found to have no reasonable grounds. This indicates that officers are currently receiving insufficient supervision in relation to stop and search procedures.²⁵

Further to this, we are concerned that currently there is no requirement to record the age or gender of a person who is stopped and searched. Statistics around stop and search are consistently unreliable but it is believed that young people, particularly

²³ Centre for Social Justice (2012), *Rules of Engagement: Changing the heart of youth justice*, London: Centre for Social Justice p83

²⁴ Her Majesty’s Inspectorate of Constabulary (2013), *Stop and Search Powers: Are the police using them effectively and fairly?* London: Her Majesty’s Inspectorate of Constabulary, p9

²⁵ *Ibid*, p6

young men, are disproportionately targeted by stop and search.²⁶ We recommend that police officers should have to record the age and gender of every person they stop and search so that they can use this information to address the suspected high levels of age and gender disproportionality.

In terms of how the information is recorded using particular technology, SCYJ would advocate for the electronic recording of details if there is evidence that this would make it easier for the police to record stop and search data, thereby improving the quality of the information. All police forces should use the same method of collecting stop and search information as this would make it easier to analyse national stop and search data.

5. Involving the local community

- **To what extent do you think that police.uk should contain information on stop and search in your local area?**
- **To what extent do you agree or disagree that local communities should have direct involvement in deciding how the police use stop and search powers?**
- **How might local communities be directly involved in decisions concerning the use of stop and search powers?**

We believe that involving local communities directly in decisions about the use of stop and search powers is vital to the principle of policing by consent and to build confidence in the police. Local residents' involvement can also help the police to understand how the use of these powers is impacting on the local community. In particular, we would like to see the involvement of young people in such decisions, by youth reference groups. SCYJ Member User Voice recently engaged with a group of young people about their involvement with the police. Young people suggested that quarterly meetings between the police and young people should be arranged; the purpose of such get-togethers would be to monitor the progress made by the police, youth services and other service providers regarding the welfare of young people in the community, and any recent relevant incidents. Currently less than half of the 43 police forces are making arrangements for the public to scrutinise how stop and search is being handled in their area.²⁷ This is perhaps an area in which the Police and Crime Commissioners (PCC) could become involved because, as elected representatives, they have a vested interest in making sure local people are happy with the policing services PCCs are providing.

Poor relationships between young people and police – aggravated by negative experiences of stop and search – were reported to be a motivating factor for young people's involvement in the riots.²⁸ Another idea for improving the relationship

²⁶ Ibid, p6

²⁷ Her Majesty's Inspectorate of Constabulary (2013), *Stop and Search Powers: Are the police using them effectively and fairly?* London: Her Majesty's Inspectorate of Constabulary, p6

²⁸ The Guardian and London School of Economics (2011), *Reading the Riots: Investigating England's Summer of Disorder*, London: The Guardian

between young people and the police, which arose from the participation work carried out by User Voice is to involve young people in training frontline officers about how to communicate with young people positively. Partnership work between young people, youth workers and the police would also help to help foster more positive relations such as the collaborative approach being taken by the Islington Youth Engagement Team (YET). The Islington YET 'is an innovative partnership of police and youth workers who engage with young people and coordinate support from local agencies to reduce incidents of serious youth violence and gangs.'²⁹

Recommendations for reform

6. What would give you greater confidence in the police's use of stop and search powers?

- Make searches more intelligence-led;
- Training in the use of stop and search, led by young people and rooted in good knowledge of, and referral to, local multi sector early support services;
- Requirement to have a local stop and search oversight group, which includes young people;
- Clear policy from each chief officer of police about how stop and search powers are to be exercised in a way that meets their duty under section 11 of the Children Act 2004;
- The inclusion of age and gender in the information stop and search recording;
- Detailed breakdowns of the reason for arrest following stop and search to clarify how many people are being arrested for reasons related to the initial stop and search;
- Periodic publishing of statistics on the number of times the prohibited item searched for was actually found, to measure the effectiveness of stop and search;
- Regular publishing of local statistics on stop and search, including perceived fairness, appropriateness and lawfulness; and
- National statistics about experience of stop and search – as only 1% respondents to Crime Survey of England and Wales have been stopped and searched.³⁰

²⁹ Centre for Social Justice (2012), *Rules of Engagement: Changing the heart of youth justice*, London: Centre for Social Justice p69

³⁰ Her Majesty's Inspectorate of Constabulary (2013), *Stop and Search Powers: Are the police using them effectively and fairly?* London: Her Majesty's Inspectorate of Constabulary, p24

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