

<b>Meeting</b>	<b>SPA Policing Performance Committee</b>
<b>Date</b>	<b>28 May 2020</b>
<b>Location</b>	<b>Teleconference</b>
<b>Title of Paper</b>	<b>Stop &amp; Search Police Scotland Oversight – update paper</b>
<b>Presented By</b>	<b>ACC Steve Johnson, Local Policing West</b>
<b>Recommendation to Members</b>	<b>For Discussion</b>
<b>Appendix Attached</b>	<b>No</b>

**PURPOSE**

The purpose of this paper is to provide the SPA Policing Performance Committee members with an update on current Governance and Assurance of Stop and Search and the Independent Advisory Group for Stop and Search (IAGSS) Recommendations.

This Paper will also serve as a response to action PP-20200227-012

Members are invited to discuss the content of this paper.

## **1. BACKGROUND**

- 1.1 Stop and search remains a valuable policing tactic which helps prevent, investigate and detect crime. Scottish Ministers established an Independent Advisory Group on Stop and Search (IAGSS) to work with Police Scotland and other interested bodies to advise Ministers on the use of Stop and Search in Scotland and develop a Code of Practice (the Code) to underpin the use of the tactic.
- 1.2 The Code was implemented in Scotland on 11 May 2017 under the Criminal Justice (Scotland) Act 2016 (CJSA 2016). The Code, which puts individuals' rights at the centre of any decision to stop and search a person, introduced significant changes to the way Police Scotland's officers and staff use, record, monitor and analyse stop and search activity.
- 1.3 In April 2018 the Police Scotland Performance Framework included measures to ensure the application and delivery of stop and search was carried out in compliance with the Code.
- 1.4 The Code provides the statistical indicators to inform these measures. Police Scotland publicly publish Stop & Search Management Information on a quarterly basis, to Local Authority level, which aligns to the recognised indicators within the Code and Performance Framework.
- 1.5 The IAGSS review of the Code throughout its first year, was to identify areas of improvement and inform any future amendments to the Code or associated legislation. Their review and report was presented to the Scottish Government and published on 13<sup>th</sup> June 2019 and later presented to the SPA Board on 26 June 2019.
- 1.6 The report was accepted by the SPA and the Board acknowledged all that had been achieved. In agreement with the Scottish Government, the IAGSS were dissolved and the SPA reaffirmed their role in the governance and assurance of Stop and Search as outlined in the Performance Framework.

## **2. POLICE SCOTLAND AND CODE OF PRACTICE GOVERNANCE AND ASSURANCE**

- 2.1 The primary aims of Stop and Search in Scotland are to promote public safety and to help prevent and detect crime. We use accurate and up to date intelligence and information to ensure our officers are well informed about local crime patterns and risks. We recognise that stopping and searching members of the public is an intrusion into

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their personal liberty and therefore all Stop and Search activity must be appropriate as defined in the Code of Practice. All searches must be: -

- Lawful: in accordance with any legal duties imposed on officers, in particular under the Human Rights Act 1998 and the Equality Act 2010, as well as any requirements of the Statute(s) under which the search is being conducted;
- Necessary: the search is required to locate harmful items or confirm the possession of illegal items; and
- Proportionate: both in the decision to carry out a stop and search and in the way in which a stop and search is conducted. In every case, officers must balance the rights of the person against the perceived benefit of the search.

2.2 Officers will carry out Stop and Search in line with Police Scotland's values of fairness, integrity and respect and officers are fully accountable for their actions.

2.3 Stop and Search activity must be accurately recorded and will be open to scrutiny. Officers must not search a person, even if the person is prepared to submit to a search voluntarily, where no statutory power to search is applicable, and officers have no warrant to do so.

2.4 The National Stop Search Unit (NSSU) currently oversee both local and national levels of assurance of stop and search activity. Through continued scrutiny and analysis, the NSSU ensure meaningful management information is available to support local governance. This model has been endorsed by the Governance, Audit and Assurance Unit of Police Scotland and the SPA as appropriate and proportionate to the level of risk presented to the organisation.

2.5 There are four main elements;

- Local Supervision;
- Database Quality Checks,
- Dip Sampling of records
- Quality Assurance processes.

Local supervision of stop search activity has given Divisional supervisors ownership of their officers' submissions with the opportunity to monitor the quality and support officers with advice and guidance where required. With overall compliance rates as measured under the Code reaching over 88% for the year 2019-20,

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this indicates both officers and supervisors understand the application of recording criteria. The remaining 11-12% are reviewed and administrative errors are amended in consultation with supervisors and officers.

- 2.6 Database Quality Checks have replaced the 100% review of records by the NSSU. This process tests the local assurance model and provides confidence levels for the organisation on compliance with business rules and overall compliance with the Code of Practice.
- 2.7 Dip sampling of a calculated number of records, combined with the Database Quality Checks (QC) confirm the processes are proportionate and support the view supervisors understand the application of recording criteria and the QC helps identify records that require amendment.
- 2.8 Quality Assurance will only be undertaken at a local level as part of a wider self-assessment conducted by divisions or at a national level by NSSU if required. To date there has been no need to use this level of review.
- 2.9 Divisional Senior Management and Divisional Analysts have access to monthly management information reports. These reports provide statistical data and comparison on Sub Division / Divisional and Force activity. The monthly reports provide indicators of search categories, including protected characteristics, which Divisions may wish to monitor closely to understand the reasons for activity and take action to address any identified issues.
- 2.10 Divisional assurance updates have now been embedded in line with quarterly reporting to the SPA through the Performance Framework. This approach encourages continuous improvement in supervision and recording practice, which will continue to be monitored through local and national assurance processes.
- 2.11 The wider governance work also supports future transition through the Digitally Enabled Policing Project and Core Operating Systems. In March 2020, work with the mobility project saw officers able to access the National Stop Search Database from mobile devices. This potentially provides longer police visibility in communities, with officers being able to record a search without having to return to an office and in the longer term may lead to efficiency savings.
- 2.12 The Police Scotland Mainstreaming and Assurance Group meets bi-annually and is chaired by ACC Johnson. This Group provides strategic engagement with members including representation from academia, the SPA and Scottish Government.

2.13 At the meeting in February 2020, ACC Johnson committed to setting up an overview group of police and partners to review current and potential future work of the NSSU. Due to the COVID Pandemic, this group is not yet established. This will be progressed and reported back through the Mainstreaming and Assurance Group.

### **3. INDEPENDENT ADVISORY GROUP FOR STOP AND SEARCH (IAGSS) RECOMMENDATIONS**

3.1 The IAGSS provided 2 recommendations for the Scottish Government. The first was to consider:

- **IAGSS recommend that there should be specific legislative provision to cover situations involving protection or preservation of life.**

A gap had been identified in relation to searches that are considered necessary in order to preserve life, but for which there is no specific legislative provision for a power of search.

This is in line with the overarching duty of officers to protect life and property and the principle that the main purpose of policing is to improve the safety and well-being of persons, localities and communities in Scotland (as set out respectively in sections 20 and 32 of the Police and Fire Reform (Scotland) Act 2012).

Police Scotland are supportive of this recommendation and the opportunity to remove any ambiguity in relation to officers' powers to search in circumstances where the protection of life is the paramount consideration.

The second recommendation was:

- **IAGSS further recommend that work to explore the possibility of specific legislative provision for a power of search related to large spontaneous gatherings are progressed. Limitations similar to the governance around Section 60 Criminal Justice & Public Order Act 1994, (i.e. spontaneous, time limited and to a specific geographical area) could be considered.**

Police Scotland are supportive of this recommendation and will provide the Scottish Government with any information or assistance

they require to review operational circumstances and develop potential new legislation.

- 3.2 At the Police Scotland Mainstreaming and Assurance Group, ACC Johnson requested the Government provide an update on the current IAGSS Recommendations and was provided with a positional statement.
- 3.3 The Scottish Government provided that there was no current legislative vehicles suitable within this parliamentary session to make the necessary amendments, as recommended by the IAGSS in their final report. However the Government assured ACC Johnson they would be looking for a potential Bill slot in the next parliamentary session to implement the Group's recommendations.
- 3.4 They further provided it would not be possible to use the emergency legislation route for these amendments as there are fairly tight controls on the scope of the emergency legislation at this time which require provisions to have a clear link to the current public health emergency. Moreover, the short lifespan of any emergency legislation would, in all likelihood, make it unsuitable for broader legislative purposes such as those recommended by the IAGSS.
- 3.5 ACC Johnson will continue to liaise with the Government for future opportunities through the Mainstreaming and Assurance Group to identify an appropriate legislative route for consideration of further powers as recommend by the IAGSS.

#### **4. FINANCIAL IMPLICATIONS**

- 4.1 There are no identified financial implications as a result of this report.

#### **5. PERSONNEL IMPLICATIONS**

- 5.1 There are no personnel implications.

#### **6. LEGAL IMPLICATIONS**

- 6.1 The IAGSS has recognised the gap in powers to effectively deal with incidents involving people in moments of crisis, where officers have to act, but have no specific power of search. Section 65 CJSA 2016 is clear in that no search should take place out with a statutory power. However currently officers taking action to protect life, which may involve having to search a person, are justified under section 20 & 32 of the Police Fire and Reform Act 2012, which is not technically a power to search.

- 6.2 Any decision to legislate will be for the Scottish Government to consider based on the IAGSS recommendation and evidence provided by Police Scotland of incidents and scenarios that see officers taking action to protect life that falls out with the requirements of Section 65 CJSA 2016.

## **7. REPUTATIONAL IMPLICATIONS**

- 7.1 There are reputational implications associated with this paper. The IAGSS recommendation not to seek a power to search children and young people for alcohol could negatively impact on communities that may experience challenging behaviour displayed by young people who have consumed alcohol.
- 7.2 However the recommendation to look into specific powers around large scale gatherings that may involve alcohol and children and young people could provide additional powers for officers that may assist in the proportionate and effective policing of such incidents.

## **8. SOCIAL IMPLICATIONS**

- 8.1 There are currently no social implications, however, a requirement of the Code is the public reporting of stop search data which is key to providing the opportunity for public scrutiny and to allow communities to see activity that can impact on local policing priorities. This information is made available on a quarterly basis and is provided in formats accessible to the public and academics.

## **9. COMMUNITY IMPACT**

- 9.1 This report has highlighted the positive impact brought about by the introduction of the Code through improved governance, transparency and reporting of stop search data ensuring the use of the tactic is lawful, necessary, justified and proportionate.

## **10. EQUALITIES IMPLICATIONS**

- 10.1 The NSSU completed an EQHRIA for the introduction of the Code, which continues to be reviewed and updated in line with changes in policy and procedures. This ongoing review will continue in line with future relevant changes.

## **11. ENVIRONMENT IMPLICATIONS**

- 11.1 There are no environmental implications associated with this paper.

**RECOMMENDATIONS**

Members are invited to discuss the content of this paper.