

NORTHERN IRELAND POLICING BOARD

PSNI USE OF STOP AND SEARCH POWERS

The Northern Ireland Policing Board is responsible for the independent oversight of the work of the Police Service of Northern Ireland. Its job is to make sure that the police comply with relevant legislation in delivering the service to the community.

In addition to regular Board accountability meetings with the Chief Constable, the Board has four Committees to take forward detailed scrutiny of the work of the PSNI and fulfil its range of legislative duties. The Board's Performance Committee is responsible for issues related to PSNI operational performance to include performance against the Policing Plan measures specific to the committee, Human Rights compliance, the Professional Standards of Police Officers and oversight of the functions of the National Crime Agency (NCA) in Northern Ireland.

The Committee agreed on 14 February 2019, that the issue of the use of police powers through stop and search would be a priority area of focus in its work programme. This paper sets out some of the key issues that the Committee considered and discussed through their engagements and briefings with individuals in meetings held on 14 March, 11 April and 9 May 2019.

The paper is being published to assist public understanding of the issues considered by the Committee in its oversight of this area of work in these meetings.

You can find out more about the Committee's work by reviewing the meeting minutes in the Publications section of the Board's website at www.nipolicingboard.org.uk

1. Background Information on Stop and Search Powers

There are a range of statutory powers permitting the PSNI to stop individuals temporarily in certain circumstances. Some of the powers are confined to the ability to stop and question members of the public, while others extend to the power to stop and search. The reasons for using the powers are varied, with some concerned with road traffic and others centred around the disruption of terrorist activity, the maintenance of public order and the investigation of crime.

The main powers which the majority of stop and search encounters are governed by are contained within the Misuse of Drugs Act 1971, the Firearms (Northern Ireland) Order 2004, the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE), the Justice and Security (Northern Ireland) Act 2007 (JSA) and the Terrorism Act 2000 (TACT).¹ The Justice and Security (Northern Ireland) Act 2007 provides the PSNI and the armed forces with additional powers of entry, search and seizure that are not available to other police services in the United Kingdom under the common law or existing statutory provisions such as the Terrorism Act 2000 (TACT). These powers extend to Northern Ireland only.

Any use of a stop and search power, be it for road traffic purposes or counter-terrorism reasons, potentially engages a range of human rights² and therefore PSNI must ensure that all use is proportionate, justified and is strictly in accordance with the legal framework. The experience of an individual who has been stopped and searched – whether positive or negative - may impact upon not only their perception of the police service, but it may also have a ripple effect throughout their social circles and even the wider community. Stop and search has been the subject of

¹ The Misuse of Drugs Act, Firearms Order and PACE provides police officers with a range of powers to stop and search persons, vehicles and premises for drugs, firearms, and, in respect of PACE, stolen articles, articles with a blade or point, prohibited articles and fireworks. The powers in TACT provide police across the United Kingdom with search powers specifically relating to the investigation of terrorist activity. The JSA applies only to Northern Ireland and provides PSNI officers with additional powers to search for unlawful munitions or wireless apparatus.

² For example, the Article 5 European Convention of Human Rights (ECHR) right to liberty and security of the person; the Article 8 ECHR right to privacy; and, on a broader basis, the Article 14 ECHR right to freedom from discrimination in the enjoyment of ECHR rights.

considerable public debate and research (for example, see below in relation to Dr John Topping's research); with some voicing concerns that PSNI's use has a detrimental impact upon community confidence in policing.

Stop and search is therefore an area of policing that has been closely considered by the Performance Committee, with particular focus given to the counter-terrorism and security powers that may be exercised without an officer having a reasonable suspicion that the person being searched has been involved in criminality (commonly referred to as the "without suspicion" powers, and detailed later in this paper). Over the years the Committee has considered quarterly statistics showing PSNI's use of stop and search across the range of powers available. The Committee's oversight of this area has been reported upon annually in the Human Rights Annual Reports and, in relation to stop and search using the TACT and JSA powers, a human rights thematic review was carried out by the Board's Human Rights Advisor and published in 2013.³

Members agreed at the Performance Committee meeting on 14 February 2019 that stop and search would be a priority area of focus. Members met and discussed the issue with Ms Joanne Hannigan BL, Dr John Topping and PSNI's Assistant Chief Constable Alan Todd. The remainder of this paper sets out some of the key issues that the Committee considered and discussed through their engagements and briefings.

2. Levels of use

PSNI provides the Board with quarterly and year end statistical reports which show PSNI's use of stop and search and stop and question powers contained within the Misuse of Drugs Act 1971, the Firearms (Northern Ireland) Order 2004, the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE), the Justice and

³ <https://www.nipolicingboard.org.uk/publication/use-police-powers-stop-and-search-and-stop-and-question-under-terrorism-act-2000>

Security (Northern Ireland) Act 2007 (JSA) and the Terrorism Act 2000 (TACT).⁴ The statistical reports show the use of the various powers according to geographic area, gender, ethnicity, age, power used and subsequent arrest. Levels and patterns of use across the range of powers has varied over the years, with the Performance Committee using the statistics as just one means by which to hold PSNI to account.

The latest quarterly report available on [PSNI's webpage](#) covers the period 1 October 2018 to 31 December 2018. During that three month period a total of 7,792 people were stopped and searched across the range of available powers, over a quarter of which (28%) were in the Belfast City policing district. 505 stops (6%) resulted in an arrest. This remains relatively consistent with the arrest rate for the previous four financial years, when it has ranged from 6% to 8%, however as discussed later in this paper, the arrest rate following the use of the 'without suspicion' stop and search power under section 24 JSA has typically remained at 2% or less.

The power used most commonly by the police to stop and search is contained within the Misuse of Drugs Act (59% of searches between 1 October 2018 and 31 December 2018). This is followed by the section 24 JSA "without suspicion" power to search for munitions or wireless apparatus (22%), and then by the PACE power to search for stolen articles, articles with a blade or point, prohibited articles and fireworks (16%).

Of the 7,792 persons stopped and searched or stopped and questioned between 1 October 2018 and 31 December 2018, 13% (1,025 persons) of all stops were on persons aged 17 and under. Of those 1,025 persons, 62% stopped and searched were under the Misuse of Drugs Act. The age group most commonly stopped and searched by the police is typically the 18–25 year age bracket (accounting for 41% of stops questioned between 1 October 2018 and 31 December 2018). The latest Home Office statistics show that the most common reason for carrying out a stop

⁴ Statistical reports are published on the PSNI website (albeit less detailed than the version provided to the Board): <https://www.psnipolice.uk/inside-psni/Statistics/stop-and-search-statistics/>

and search in England and Wales during 2017/18 is similarly suspicion of drug possession (60%).

3. TACT and JSA “without suspicion” stop and search powers

The Committee has given particular focus over the years to PSNI’s use of counter-terrorism and security powers contained within TACT and the JSA. The statutory Code of Practice issued by the Northern Ireland Office on the authorisation and exercise of TACT stop and search powers, under the heading of ‘Oversight and Community Engagement’, states that the *“appropriate use and application of these powers should be overseen and monitored by the Northern Ireland Policing Board.”* Similar wording is reflected in the statutory Code of Practice issued by the Northern Ireland Office on the authorisation and exercise of stop, search and question powers under the JSA.

The Committee has met regularly with the Independent Reviewer of Terrorism Legislation (Alex Carlile, David Anderson and Max Hill)⁵ and the Independent Reviewer of the JSA (previously Robert Whalley, now David Seymour) to discuss PSNI’s use and application of the TACT and JSA powers. This work was publically reported upon each year through the Human Rights Annual Report and a dedicated human rights thematic review was published in 2013.

David Seymour CB was first appointed as the Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007 (JSA) specifically reviewing the operation of sections 21 - 32 of the Act and those who use or are affected by them. He also reviews the procedures adopted by the military for receiving, investigating and responding to complaints. He reports annually to the Secretary of State. He was appointed for a period of three years from 1 February 2014, which was then renewed for a further period of three years from 1 February 2017. In his report Mr Seymour

⁵ Mr Jonathan Hall QC replaced Max Hill with effect from 23 May 2019
<https://www.gov.uk/government/news/independent-reviewer-of-terrorism-legislation-appointed>

considers the use of JSA powers generally and he also considers some specific issues such as arrest rates, repeat searches, use near schools or children, community background monitoring and authorisations.

Independent Board Members last met with Mr Seymour on 21 June 2018 when the recommendations in his fourth annual report were discussed. Mr Seymour submitted his fifth report in March 2019, (which is the 11th published Annual Report), covering the period 1 August 2017 to 31 July 2018. A copy of his report is available on the Parliamentary website: <https://www.gov.uk/government/publications>.

Within the range of powers available to the police under TACT and JSA, the most frequently used power for stopping and searching individuals in recent years has been section 24 JSA. Section 24 provides police officers with the power to stop and search any person for any wireless apparatus or munitions. The police officer conducting the search need not have any reasonable suspicion that the person being searched is carrying such items *provided* that an authorisation made by an officer of at least the rank of Assistant Chief Constable is in place. A 'without suspicion' power to search for evidence of terrorist activity and accompanying authorisation regime exists within section 47A TACT, however an authorisation for use of this power has not been in place for a number of years, with PSNI instead relying upon the section 24 JSA power.

A range of concerns have been raised by stakeholders in relation to PSNI's use of the "without suspicion" power. One such issue is the low arrest rate following use of the "without suspicion" stop and search power under section 24 JSA which has typically remained at 2% or less. The reasons for the low arrest rate have been commented upon by David Seymour, in successive reports where he has provided some context. He has stated,

"the purpose of the power is not necessarily to trigger arrest and prosecution. It is primarily a preventative power. Many members of the public were stopped and searched or had their vehicles searched in December 2014 in the run up to Christmas because the PSNI were concerned that a car bomb

might be placed in the Belfast City centre as had happened the previous year. So the stop/search levels for that month will be very high and the arrest rate will be very low. So this type of operation skews the arrest rate figures... An operation may be intelligence led and the powers exercised legitimately even if there is no intelligence relating to the individuals who are stopped and searched all of whom (unless the plot is uncovered) will be innocent and therefore not arrested. It is important to look at the purpose of the power (in this case the prevention of death and injury through the use of munitions) rather than regarding any police intervention as unjustified if it does not lead to an arrest.’⁶

While this explanation provides some justification as to why arrest rates are low for section 24 JSA, David Seymour also recognises the impact of a low arrest rate on public perception and previously recommended that the PSNI should place in the public domain an explanation of why the arrest rates following a JSA or TACT search are so low. This ties in with other recommendations made by Mr Seymour in previous years regarding improving the transparency around use of stop and search. He has commented,

“The PSNI do an excellent job in the context of both public order policing and stop and search. However, they are reluctant to put information in the public domain even when it would be in their interests to do so. There are, of course, limitations on what can be said publicly particularly when there are ongoing inquiries, when the matter is before the criminal courts or when there are national security or other interests to protect. People understand that. However, the overwhelming and clear message that I have received from many people including politicians, NGOs, community workers and people in both PUL and CNR communities, is that the PSNI could do a lot more to explain to the public what it is doing and why... In the absence of a persuasive, detailed and ongoing narrative the vacuum will be filled with

⁶ Report of the Independent Reviewer Justice and Security (Northern Ireland) Act 2007, Eighth Report: 1 August 2014 – 31 July 2015, David Seymour CB, February 2016.

suspicion by those who do not support the police and with genuine concern by those who do.”⁷

In response to a recommendation made by Mr Seymour, PSNI has created a webpage within the PSNI website dedicated to stop and search.⁸ The webpage provides information in relation to the applicable law and answers frequently asked questions. While this webpage goes some way towards putting more information in to the public domain, repeated concerns continue to be raised by with Mr Seymour and he quotes one consultee in his most recent report (April 2018) as saying, *“communication is not a strategic priority for the PSNI.”*

4. Authorisations for “without suspicion” stop and search

In March 2014 the Performance Committee agreed that in order to ensure that the Board is in a position to oversee and monitor the authorisation regime for use of these powers, the Board’s Human Rights Advisor would, on behalf of the Board, conduct quarterly reviews of all stop and search authorisations made under TACT and JSA. During these reviews the Human Rights Advisor questioned officers about the authorisations and the justification for them. The Advisor met regularly with relevant officers within PSNI as well as the Independent Reviewer of Terrorism Legislation and the Independent Reviewer of the JSA to discuss PSNI’s application of the powers and report on their use. Both the Independent Reviewer of JSA and the Human Rights Advisor annually studied the material and rationale for the authorisations and considered the criteria for the Ministerial confirmation of authorisations. The Human Rights Advisor indicated that in the course of her oversight of PSNI’s use of stop and search, particular attention was paid to the geographical and temporal extent of authorisations in light of the requirement that they extend over no greater area and for no longer than is necessary. While the authorisations had extended over the whole of Northern Ireland and have been

⁷ *Report of the Independent Reviewer Justice and Security (Northern Ireland) Act 2007, Ninth Report: 1 August 2015 – 31 July 2016*, David Seymour CB, March 2017.

⁸ https://www.psnipolice.uk/advice_information/stop-and-search/

renewed continuously ever since the powers were introduced, the Advisor reported that she was satisfied that the extent and duration of authorisations was justified, necessary and proportionate given the nature and extent of the security threat in Northern Ireland.

Scrutiny over the authorisations has been a priority for the Board both in terms of monitoring PSNI's human rights compliance and in respect of the value and reassurance that oversight in this area brings to policing and confidence in policing. The Board is currently in the process of appointing a new Human Rights Advisor so in the interim they instructed Joanne Hannigan BL, a Government Legal Services NI panel member, to seek assurance on the authorisations from 1 September 2017 onwards. Ms Hannigan has since conducted two reviews of authorisations covering the periods 1 September 2017 – 31 March 2018⁹ and an addendum report covering 1 April 2018 – 1 October 2018.

In her first report Ms Hannigan outlined how the current authorisation regimes operate and confirmed in both reports that when reviewing the authorisations, she had full access to relevant material and was provided with access to all material that she requested to view. During the course of her reviews she met with the Independent Reviewer of the JSA, attended a PSNI stop and search training course for new recruits and met with an academic who has written extensively on the subject. She was provided with statistics by PSNI on use of the powers during the relevant period, and she considered the applicable Codes of Practice and the PSNI Code of Ethics.

Authorisations

An authorisation is a document which provides a full intelligence picture and full justification for the use of the powers can only be approved by a PSNI senior officer of Assistant Chief Constable and above. They can only grant the authorisation if they are fully assured that the use of powers is necessary. Between 1 September 2017–31 March 2018 (7 months) there were 19 JSA authorisations and between 1

⁹ Ms Hannigan attended a meeting of Independent Board Members on 4 October 2018 and provided a briefing on her first report and attended the Performance Committee on 14 March 2019 to provide a briefing on her second report.

April 2018–1 October 2018 (6 months) there were 15 JSA authorisations. An authorisation was continually in place during each review period and they were renewed on average every 14 days.¹⁰ There were no TACT authorisations during either period.

Ms Hannigan reviewed all 34 authorisations and confirmed in her reports that, in her view, the authorisations were detailed, critical and well-reasoned. She found that they were necessary and proportionate in response to the current threat. She reiterates in each report that authorisations may extend over no greater an area and for no longer than is necessary, and while she was satisfied as to the temporal and geographical extent of the authorisations she reviewed, this is something that must be *“kept under review and should not be taken for granted.”*

Policy

A recommendation was made in the Board’s stop and search thematic review requiring PSNI to have a clear stand-alone policy on the use of TACT and JSA stop and search. A stand-alone policy was developed but never finalised as it was superseded by a high level policy covering all searches, not just those carried out under TACT or JSA, and it referenced appropriate legislation, Codes of Practice, College of Policing guidance and the PSNI search manual. In addition to this PSNI has a dedicated website page on stop and search providing detailed information in relation to the applicable law and frequently asked questions. Ms Hannigan examined the relevant policy documents and the range of information on the website and commented that while the information is appropriate and helpful, *“it does not articulate a specific PSNI policy in respect of searches under TACT or JSA on the website. It would be helpful if this could be rectified as a matter of urgency”*. PSNI’s Assistant Chief Constable Alan Todd advised the Committee that, in his view, the high level policy in conjunction with the guidance already set out in the JSA and TACT Codes of Practice provides sufficient safeguards.

¹⁰ An authorisation may never extend beyond 14 days but they may be renewed at the end of each 14 day period.

Training

Ms Hannigan attended and reviewed the TACT and JSA training delivered to new recruits as part of the Student Officer Training Programme. She found that the teaching material she viewed was appropriate in content and that there was appropriate emphasis on treating members of the public with courtesy, fairness and respect. Refresher training is delivered to probationer Constables. However, she noted a wider issue that the training is given at recruit stage before officers are actually dealing with members of the public on a day-to-day basis. She highlights that refresher training for operational officers to look at issues such as unconscious bias is in place in England and Wales and suggests that this is something PSNI could consider given the nature of the intrusive powers being exercised.

Record keeping

Ms Hannigan highlighted in her first report, that the Independent Reviewer of the JSA, David Seymour, had previously recommended that PSNI keep an internal written record of what triggered a decision to stop and search in specific cases, including cases where an individual has been repeatedly stopped and searched and in all cases where a child was present or the search took place near a school. PSNI rejected this recommendation on the grounds that it would not be feasible for an officer to articulate the reasons why an individual has been stopped and searched given the numbers involved. Mr Seymour therefore modified his recommendation accordingly but still requiring PSNI to keep a written record of what triggered a stop and search in certain circumstances. It is recommended by Ms Hannigan that this recommendation should be given serious consideration. At present, an individual who has been stopped and searched under JSA powers can collect a record of the search only if he or she visits a local police station to collect it in person. During the reporting period, only 0.5% of all records were collected. While PSNI has been trying to find a solution to this, progress has been slow; however the Ramsey case as previously mentioned, has made it clear that PSNI must record the basis for the search. PSNI has appealed Lord Chief Justice Treacy's decision in this matter the

hearing is listed for hearing on 7 June 2019. A further previous recommendation regarding record keeping relates to a record being moved to an automated NICHE system, this has been accepted and is expected to be service wide by March 2020.

PSNI's view is that these powers are "without reasonable suspicion" powers and, accordingly, police officers should not be required to articulate reasons why a particular person should be stopped and searched. In their view, it is sufficient under the legislation and Code of Practice, that an individual is told that due to the current threat in the area and to protect public safety a stop and search authorisation has been granted. Mr Seymour previously considered this is not an issue of strict legal compliance and sufficiency; *'The purpose of keeping such a record would be to (a) assist in the internal monitoring and supervision of the most appropriate use of these powers and (b) place the PSNI in a stronger position in the event of a subsequent challenge or complaint'*. He notes with caution that the roll out of Body Worn Video may demonstrate that the stop and search is conducted professionally and with courtesy, but it is not an explanation of what caused the person to be stopped in the first place.

It should be noted that statistics from the Office of the Police Ombudsman encouragingly show that during the 2018/19 reporting period his office received only 6 complaints following a police stop and search/question (down from 22 in the previous reporting period). This represents 0.25% of all complaints received and only 4% of all complaints following a police search.

In her second report Ms Hannigan considered the November 2018 judgment of Lord Justice Treacy in a judicial review brought by Steven Ramsey. The applicant contended that the decisions to stop and search him over 150 times in three years were unlawful and a breach of Article 8 of the ECHR. While LJ Treacy ultimately dismissed the challenge on account that evidence established a basis for each incident, he acknowledged that in failing to record the basis for the use of the power, PSNI are acting in breach of the requirements of the Code of Practice. Ms Hannigan concluded that this *'will have to be rectified by the PSNI as a matter of urgency'*. The Ramsey case has been appealed and PSNI has advised that it intends to 'cross-appeal' issues raised in the case and therefore will not be taking any action in

respect of the comments of LJ Treacy pending the outcome of the appeal in June 2019.

In Justice Treacy's judgment on Ramsey, mentioned above, David Seymour commented that the use of these powers are under ongoing review during when improvements are identified; but that the identification of these improvements does not necessarily mean that the previous system is flawed or in breach of the rights enshrined in Article 8¹¹ as long as there are safeguards in place; review being one of those safeguards. Seymour suggests that one area of potential improvement is supervision. While 10% of the stop and search/question was monitored by a supervising officer, it is not clear that they are supervised systematically, but rather down to local discretion. He notes that it is also unclear what the outcome is of such supervision. PSNI have advised the Committee that an internal policy on stop and search is being developed which will have a section dedicated to supervision and unconscious bias. It will be provided to the Committee and published in due course.

5. Community Monitoring

The Board's thematic review on the police use of powers to stop and search and stop and question made 11 recommendations the PSNI to consider; of which 10 were accepted and have since been implemented. The one outstanding recommendation is in relation to the recording of the community background of the individuals who PSNI have stopped and questioned/searched. Issues around the implementation of this recommendation have been considered at length by the Performance Committee and PSNI. Pilot schemes have been tested, receiving disappointing outcomes, and in March 2017 an academic was commissioned to advise on alternative methods.

During 2018 the Board's Independent Members suggested that community background could be monitored by using GPS to pinpoint each stop and search, followed by the production of maps which would indicate the spatial distribution of

¹¹ Article 8 of the European Convention on Human Rights provides a right to respect for one's "private and family life, his home and his correspondence", subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society".

the searches. PSNI has advised that GPS is not a reliable option as around 25% of the stop and searches are recorded at the computer terminal back at the station, as opposed to on the spot. Further issues arise in relation to loss of signal, equipment malfunction and the need to leave the area of the search quickly for officer security. Therefore there are frequently discrepancies between the geocode and the address recorded by the officers. Mr Seymour made the recommendation that senior management in the PSNI, having looked at other ways of delivering community monitoring, should now consider whether this could be done on the basis of officer perception.

The Performance Committee wrote to the PSNI on 28 March 2019 regarding the lack of progress on this issue. PSNI have advised that they do not have a statutory power to compel a person to provide detail of their community background. The collection and retention of this information must therefore be voluntary and compliant with data protection obligations. The PSNI ultimately advised it has '*reluctantly come to a conclusion that this matter cannot be further progressed at this time*'. Members have requested that PSNI provide the Committee with a map indicating where all types of stop and searches encounters were taking place during 2017/18 and 2018/19 for comparison.

6. Children & Young People

During the reporting period of David Seymour's report he noted 247 children were stopped and searched under sections 21 and 24 of JSA, representing 3.4% of the total stopped (no child was stopped under TACT). PSNI has confirmed that a record has been kept of all cases involving the use of JSA and TACT powers. Mr Seymour suggests that PSNI should ensure that body worn video is used in all cases of children under JSA and TACT. Mr Seymour recommends that stop and search under JSA should not be used to manipulate young people into giving information. The number of occasions involving children under other legislation was 3,583 (17% of 21,599).

The impact that stop and search can have upon young people's confidence in the police is a concern that is regularly cited by stakeholders. In response to the consultation on the Board's draft Policing Plan 2017/18, the Children's Law Centre and Include Youth both separately advised that young people consistently raise the issue of stop and search, as they feel targeted and victimised as a result of these powers. Include Youth stated, '*young people*] also report inconsistent experience of officers' communication when it comes to providing a rationale for the 'stop and search' and their rights within that process'. John Topping's recent findings, in partnership with the Young Life and Times Survey 2017, corroborated these views. The 2017 Young Life and Times (YLT) survey provided a comprehensive dataset related to 16-year olds and their attitudes and experiences of stop and search practice.¹² It suggests that young people are experiencing stop and search encounters at a higher rate than is formally recorded in PSNI official statistics and that no clear reason is given to the majority of young people being stopped. John Topping asserts this raises questions as to whether the legal threshold for 'reasonable suspicion' has been met in such searches. Topping and Schubotz reported that young males from urban, socio-economically deprived backgrounds are being disproportionately stopped and searched and have the least sense of actual and perceived fairness of treatment (below refers).

In June 2018, the Northern Ireland Commissioner for Children and Young People (NICCY) published a 'Statement on Children's Rights in Northern Ireland', informed by the UN Committee's Concluding Observations following their fifth periodic examination. The report reiterated the YLT findings and queried the purpose of stop and search, and the assertion that it is an effective policing tool which meets a range of objectives. NICCY acknowledges that arrest and prosecution cannot be the only measure used for a successful outcome, and that not all objectives (such as deterrence and prevention) are measurable. However the Commissioner highlights that many other objectives are measurable, such as safeguarding, diverting, preventing and detecting non-security crime. Therefore NICCY recommends; '*PSNI*

¹² John Topping and Dirk Schubotz, *The 'usual suspects'? Young people's experiences of police stop and search powers in Northern Ireland*, ARK research update, May 2018

must demonstrate the purpose and outcomes of all Stop and Search operations involving children and young people, and must also improve the quality of engagement with young people.¹³ PSNI advised the Committee that an internal policy on stop and search is being developed which will contain a section on the use of the power in relation to children and young people. It will be provided to the Committee and published in due course.

Stop and search is regularly discussed at the PSNI Youth Champion Forum (attended by a range of stakeholders and including the Policing Board), with the concerns highlighted above by Children's Law Centre and Include Youth frequently being cited. Further to discussions within the Forum, in June 2017 the Office of the Police Ombudsman launched a [video](#) on social media to explain to young people their rights and responsibilities when stopped and searched/questioned by a police officer.

7. Research

***Stop and search*, John Topping, Agenda NI, February 2018 ([available here](#))**

Members benefitted from receiving a briefing from Dr John Topping at their meeting on 11 April 2019. In his research Dr Topping refers to stop and search powers as "the most prevalent form of adversarial contact between the public and the PSNI". He remarks that it is largely an 'ineffective' power in either detecting or preventing crime and illustrates by making a costed business case for its use, commenting "*the 246,000 PACE-type uses of the power between 2010/11 and 2016/16...works out at approximately 131,450 hours of officer time (or £5.7 million of commercially costed constable time), of which £5.1 million has been spent failing to detect any crime.*" Use of stop and search in 2016/17 in England and Wales runs at 5 per 1,000, while PSNI sits at an average of 17 per 1,000. Even stripping away the JSA powers from the equation, PSNI are still conducting stop and search at an average rate of 13 per 1,000. Dr Topping urges PSNI to consider reform and asks whether the same crime-fighting ends could be achieved by more pro-social and effective means. He refers to Scotland, England and Wales' scaling back of its use of stop and search, and

¹³ Northern Ireland Commissioner for Children and Young People, *Statement on Children's Rights in Northern Ireland* June 2018 <https://www.niccy.org/media/3051/socrni-main-report-final-june-18.pdf>

suggests that the disproportional use of stop and search in Northern Ireland is doing more to harm community relations than to curbing crime.

The ‘usual suspects’? Young people’s experiences of police stop and search powers in Northern Ireland, John Topping and Dirk Schubotz, ARK research update, May 2018 ([available here](#))

Concern regarding use of stop and search powers in relation to children is cited regularly by stakeholders and this research supports these concerns. The research suggests that young people are experiencing stop and search encounters at a higher rate than is formally recorded in PSNI official statistics; that no clear reason is given to the majority of young people being stopped raising questions as to whether the legal threshold for ‘reasonable suspicion’ has been met in such searches;¹⁴ and that young males from urban, socio-economically deprived backgrounds are being disproportionately stopped and searched and have the least sense of actual and perceived fairness of treatment.

Police Stop and Search Powers: Understanding the Adversarial Nature of Contact between PSNI and the Public, John Topping, Northern Ireland Assembly Knowledge Exchange Seminar Series (KESS), May 2018

([available here](#))

This policy brief focuses deliberately upon ‘ordinary’ stop and search powers used by PSNI precisely because it is those powers which have (arguably) failed to come under the purview of the police (or public) oversight in the country. In stark contrast to the voluminous research dedicated to counter-terrorist powers utilised during the conflict and post-conflict periods of the jurisdiction, it is precisely the absence of policy or academic attention directed at PACE-type stop and search which merits further investigation. Upon considering the available data, Dr Topping suggests that, *“PACE-type stop and search has seemingly become an increasing, and unquestioned ‘policing fact’ in Northern Ireland for nearly 30 years... marked by an absence of meaningful regulation, oversight and indeed much debate or political*

¹⁴ Excepting TACT/JSA searches where reasonable suspicion is not a requirement – however most young people are searched under Misuse of Drugs Act and PACE, both of which require an officer to have reasonable suspicion that the young person is carrying one of the prohibited items prior to conducting the search.

attention, at all.” He draws attention to research highlighting, “repeated, arbitrary and potentially illegal use of the stop and search against young males in socio-economically deprived areas of Northern Ireland”. Dr Topping also considers the low arrest rate following stop and search powers compared to England and Wales and comments, “it is evident that a ‘gap’ exists between the object and outcome of stop and searches, raising additional questions related to the application of ‘reasonable suspicion’, as the legal test to initiate use of the power.” He states, “With the general evidence pointing to high levels of use, poor outcomes in terms of arrest rates, and the targeting of marginalised young males, stop and search thus represents a fundamentally embedded and ‘unchanged’ way of policing for PSNI over the past decade, where use of the power reflects the actuarial traits from which police in Scotland, England and Wales have, arguably, tried to extricate themselves in recent times. This picture is bolstered by the growing body of empirical evidence that suggests the disruptive and/or deterrent effect of stop and search is, at best, marginal. Stop and search can be a useful part of hotspots and other highly targeted interventions, but evidence for its general or widespread utility, and against entire crime types, remains markedly lacking.”

Now you see it, now you don’t: On the (in)visibility of police stop and search in Northern Ireland, John Topping and Ben Bradford, Criminology and Criminal Justice, September 2018 [\(available here\)](#)

Abstract:

Police stop and search practices have been subject to voluminous debate for over forty years in the United Kingdom. Yet critical debate related to the use of ‘everyday’ stop and search powers by the Police Service of Northern Ireland (PSNI) has, despite the hyper-accountable policing system of Northern Ireland, been marked by its absence. This paper presents the first ever analysis of PSNI’s use of PACE-type powers - currently used at a higher rate and with poorer outcomes compared to the rest of the U.K. While it can only be considered as an elusive power, about which detailed research evidence is markedly lacking, stop and search in Northern Ireland seems to serve as a classificatory tool for PSNI to control mainly young, socio-economically marginal male populations. The paper provides new theoretical insight

into stop and search as a simultaneous overt and covert practice, and speaks to wider issues of mundane police power – and practice – within highly contested and politically fractured contexts.

8. Conclusion

There are a number of issues that have been highlighted to the Board's Performance Committee, for example PSNI's communication regarding stop and search, especially with young people, their policy on the use of TACT and JSA stop and search powers and their approach to record keeping. Members will also continue to seek a conclusion to the outstanding recommendation from the Human Rights thematic review in respect of the recording of community background information of those stopped and searched. The Performance Committee will continue to engage with PSNI on these issues and any other that may arise and will also monitor PSNI's use of the stop and search powers by reviewing statistics, relevant research, engaging with key stakeholders and considering the reports by the Independent Reviewers of Justice and Security Act (2007) and Terrorism Act (2000).

PERFORMANCE COMMITTEE

MAY 2019

GLOSSARY OF TERMS

BWV	Body Worn Video
CNR	Catholic, Nationalist, Republican
ECHR	European Convention of Human Rights
GDPR	General Data Protection Regulation
GPS	Global Positioning System
JSA	Justice and Security (Northern Ireland) Act 2007
NCA	National Crime Agency
NGOs	Non-Governmental Organisations
NICCY	Northern Ireland Commissioner for Children and Young People
PACE	Police and Criminal Evidence (Northern Ireland) Order 1989
PSNI	Police Service of Northern Ireland
PUL	Protestant, Unionist, Loyalist
TACT	Terrorism Act 2000
YLT	Young Life and Times Survey

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DOCUMENT TITLE

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PSNI Use of Stop and Search Powers**

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