



Agenda Item  
4.6.1

<b>Meeting</b>	<b>Policing Performance Committee</b>
<b>Date</b>	<b>6 December 2023</b>
<b>Location</b>	<b>Video Conference</b>
<b>Title of Paper</b>	<b>Operational Use of Stop and Search Update: Stop and Search Related Complaints about the Police</b>
<b>Presented By</b>	<b>ACC David Duncan</b>
<b>Recommendation to Members</b>	<b>For Discussion</b>
<b>Appendix Attached</b>	<b>Yes</b>  <b>Appendix A: Guidance re Stop and Search complaints.</b>

## PURPOSE

The purpose of this paper is to provide an update on revised Stop and Search Guidance introduced in 2022 outlining the criteria for identifying Stop and Search complaints from the Police Scotland Centurion database utilised by the Professional Standards Department (PSD) and the governance procedures around this.

Members are invited to discuss this paper.

## 1. INTRODUCTION

- 1.1 Stop and Search Data is reported monthly to the Violence, Disorder & Anti-Social Behaviour Strategic meeting and quarterly to the Stop Search Mainstreaming and Assurance Group, both of which are chaired by ACC Johnson. External partners including Scottish Government, SPA and Scottish Institute of Policing Research (SIPR) are key members of the mainstreaming group who provide external scrutiny on the use of the stop search tactics by Police Scotland.
- 1.2 One element of data reported on is the number of Complaints about the Police (CAPs) that are related to the use of the stop and search powers. A CAP can be made by a member of the public or any person acting on their behalf where they:
  - Claim to be the person in relation to the who the act of omission took place.
  - Claim to have been adversely affected by the act or omission.
  - Claim to have witnessed the act or omission; or
  - A person acting on behalf of a person falling within any of the above.
- 1.3 The number of CAPs related to Stop and Search are also reported in the quarterly Management Information Reports which are provided to the SPA. This data is retrieved and provided by PSD to National Stop Search Unit (NSSU) on a monthly basis.
- 1.4 In 2021, an anomaly was identified in the Stop and Search data provided by PSD, and it transpired that guidance previously utilised to obtain this data was ambiguous and open to interpretation by the user, which led to an inaccuracy in the monthly figures. This was immediately reported to ACC Johnson and the SPA to ensure full transparency taking cognisance of a potential risk to the reputation of Police Scotland.
- 1.5 Consequently the data gathering process in respect of CAPs was reviewed. A new policy was thereafter introduced and monitored by both PSD and NSSU for 6 months. This revised policy is deemed to be the most accurate method of capturing the required data. Throughout this period regular updates were provided to ACC Johnson and the SPA via the established reporting mechanisms. In March 2022 a briefing paper was prepared and circulated detailing the anomaly and the intended course of action.

## 2. UPDATE

### Revised PSD Procedures

- 2.1 In terms of the recording of Stop and Search complaints by PSD on Centurion, complaints can be categorised as Stop and Search at various points throughout the complaint handling process. A complaint can be assessed as such on initial receipt of the complaint by the National Complaints Assessment and Resolution Unit (NCARU) or thereafter as any subsequent investigation progresses or concludes, by an Investigations officer or by Business Support administration staff.
- 2.2 Guidance, as noted at Appendix A, as to what should be categorised as a Stop and Search complaint is available to all PSD officers and staff within the PSD SharePoint site. Furthermore, it has most recently been reiterated to all complaint handling officers and staff throughout PSD in June 2023 by email. There are also plans in place to include it in the PSD Induction course for new starts in the department with the next course scheduled for October 2023.
- 2.3 Manual checks are carried out by PSD on a monthly basis prior to Stop and Search figures being provided to NSSU. The data is initially retrieved from the Centurion system by the PSD Analyst through two searches, namely, complaints with a Stop Search circumstance, and also through a keyword search on the Summary section for both stop and search.
- 2.4 The relevant complaint references are thereafter passed to PSD Support & Service Delivery (S&SD), who manually check each complaint to ensure it meets the criteria of a Stop and Search complaint. Furthermore, NSSU have recently requested the figures are broken down into categories relating to Code of Practice/Grounds for search and Officer Behaviour which have been reported to NSSU since July 2023.

Where the Stop and Search circumstance has not been recorded and the allegation(s) has been established as meeting the Stop and Search criteria, or where it has been recorded as such in error, figures are amended accordingly and an update on the Centurion system is requested.

- 2.5 Further to the manual checks carried out by PSD S&SD, the Business Support Team Leaders carry out checks on a weekly basis on all Stop and Search allegations to ensure the relevant marker is appended.

## Common themes & Organisational learning

- 2.6 Common themes amongst learning identified following Stop and Search related complaints include:
- The requirement to record the stop and search on the Force database.
  - The need to issue Stop and Search receipts.
  - Individual learning identified as a result of complaints continue to be raised with the subject officers and local management as a matter of course.
- 2.7 Procedures have recently been improved to implement a process to ensure that learning identified as a result of a complaint is routinely shared by PSD with the National Stop and Search Unit (NSSU), with a view to identifying and cascading key themes from these complaints through NSSU training packages at an organisational level.
- 2.8 In late 2022, the NSSU were approached by PSD and asked to arrange Stop and Search refresher training for 2 officers after a CAP was upheld with regards to irregular procedure and discriminatory behaviour. As a result, arrangements were made with the division and a bespoke training input was carried out for the two officers. This corrective training was subsequently updated on the relevant Centurion Files by PSD.

## Quality Assessment

- 2.9 Following the review in 2021 - 2022 when the anomaly in the Complaints data was identified, PSD hosted a number of monthly Governance meetings with relevant stakeholders in order to ensure accuracy going forward. These ceased when stakeholders were confident in the data being produced and as such, no longer take place.

The undernoted figures produced from the Centurion database relate to closed allegations involving a Stop and Search circumstance which were upheld in each financial year.

Category	2021/22	2022/23	2023/24
Upheld	4	8	3
<i>% of allegations closed as upheld</i>	<i>7.3%</i>	<i>7.4%</i>	<i>13.6%</i>

2.10 Of note, 2023/24 relates inclusively to the period from 01/04/2023 - 31/08/2023, therefore more accurate data will be available post 31/03/2024. The volume of upheld Stop and Search allegations remains low as in previous years.

2.11 In conclusion, PSD and NSSU are satisfied that a robust process is now in place and that the improvements which have been made ensure the categorisation, investigation and review of Stop and Search related complaints in accordance with recording procedures.

### **3. FINANCIAL IMPLICATIONS**

3.1 There are no financial implications in this report.

### **4. PERSONNEL IMPLICATIONS**

4.1 There are no personnel implications in this report.

### **5. LEGAL IMPLICATIONS**

5.1 There are no legal implications in this report.

### **6. REPUTATIONAL IMPLICATIONS**

6.1 The use of the stop and search tactic undoubtedly requires robust governance and scrutiny, without which the reputation of Police Scotland could be questioned. The governance, scrutiny and the transparency with which data is published provides confidence that our processes are both necessary and effective.

### **7. SOCIAL IMPLICATIONS**

7.1 There are no social implications in this report.

### **8. COMMUNITY IMPACT**

8.1 There are no community implications in this report.

### **9. EQUALITIES IMPLICATIONS**

9.1 Police Scotland recognises the sensitivity around the use of the stop and search tactic and closely monitors proportionality amongst age, gender and ethnicity through robust governance measures.

## **10. ENVIRONMENT IMPLICATIONS**

10.1 There are no environmental implications in this report.

### **RECOMMENDATIONS**

Members are invited to discuss this paper.

## Appendix 'A'

A complaint against the police, classified as a 'Stop and Search' Complaint must be defined as follows:

Where a person who is **not under arrest or in custody** and is **physically searched**, alleges that the search:

- Was not in accordance with the law
- Was not necessary, proportionate or fair
- Was carried out without integrity or respect

Or where

- There were no reasonable grounds
- They were forced to provide information out with requirements
- The procedure was not explained or they did not understand the procedure
- The officer did not provide the required details
- Excessive force was used
- The length of time was excessive
- The location was not appropriate
- They were not offered or provided with a receipt

Further definitions are provided below:

**Definition of a stop and search** - Stop and search of a person who is not in police custody carried out pursuant to a statutory power and searches of a person carried out in accordance with a search warrant issued by a court in Scotland

This Code does not apply to:

- Searches of persons in custody
- Searches of persons under arrest
- Searches of vehicles and vessels that do not also involve a search of a person
- Searches of premises that do not also involve a search of a person
- Searches under Schedule 7 of the Terrorism Act 2000 (which are governed by a separate code)
- Searches of persons and vehicles in specified locations authorised under section 47A of the Terrorism Act 2000 (which are governed by a separate Code)

**In accordance with law.** Including 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.** That means that the search is required to locate a harmful item or confirm the possession of an illegal item

**Proportionate,** both in the decision to carry out a stop and search and in the way in which a stop and search is conducted

**Fairness** - a stop and search must be carried out fairly and impartially, and without unlawful discrimination;



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**Integrity** - a stop and search will not be carried out in a manner which is abusive, discriminatory, or which amounts to harassment or intimidation

**Respect** - That the person understands why they are being stopped and searched. The procedure must be carried out with respect for individual needs - including religious and cultural values and beliefs.

**Accountability** - Constables carrying out stop and search are fully accountable for their actions, and that all stop and search activity is accurately recorded, and open to scrutiny.

**Reasonable Grounds** - Reasonable grounds for suspicion is the legal test that a constable must satisfy before they can stop and detain a person to carry out a search under almost all statutory provisions.

**Personal Information** - Constables must inform a person being detained that they do not have to provide any information about themselves, or to say anything, however they have the right to volunteer information with a view to avoiding a search, and constables must afford members of the public an opportunity to provide information if they wish to do so.

**Understanding** - A constable must ensure that, as far as is reasonably practicable, the person understands what has been explained to them.

### BEFORE A SEARCH

The constable must take reasonable steps, if not in uniform, to show their warrant card to the person to be searched and - whether or not in uniform - to give that person the following information:

- The constable's **name and number** (except where the constable reasonably believes that giving their name might put them, or another constable, in danger, in which case a warrant or other identification number shall be given)
- The name of the **police station** to which the constable is attached (except where the constable reasonably believes that giving the name of the police station might put them or another constable in danger);
- That they are being **detained** for the purposes of a search
- The fact that they do not have to provide any information about themselves, or to say anything;
- The **legal search power** which is being exercised;
- A clear explanation of the **object of the search** in terms of the article or articles for which there is a power to search
- The **grounds** for that suspicion or in the case of the power under section 60 of the Criminal Justice and Public Order Act 1994, the nature of the power, the authorisation, and the fact that it has been given.
- That the constable is required to make a **record** of the search and that they are entitled to a copy of the record of the search in accordance with the requirements set out in this Code.
- The constable must explain to the person to be searched what those **requirements** are.

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- That the person **understands** why they are to be searched and what the search will involve.

### DURING A SEARCH

The law allows constables to use reasonable force. This means the **minimum amount of force necessary** to accomplish the lawful objective of the search which the constable is seeking to achieve.

The **length of time** for which a person may be detained must be reasonable and kept to a minimum.

The search must be carried out **at or near the place** where the person was first detained

There is no power to require a person to remove any clothing in public other than an outer coat, jacket, gloves, headgear or footwear except under section 60(4A) of the Criminal Justice and Public Order Act 1994

### AFTER A SEARCH

Officers should ensure that the subject be given a **receipt** which should include the Police powers of stop and search

Where a constable who is conducting a search is called to an urgent incident, exceptionally, it may be wholly impracticable to provide a receipt. In that event, if the person has provided their details, the constable should verbally explain the circumstances and advise them that they can access a copy of the record of search by calling at any police station, unless either there are exceptional circumstances which make it wholly impracticable to make a record of the search or the person searched has not provided their name, address and date of birth.

A **record** must be made of the search on the Stop and Search Database.