

Stop and search in Scotland: An evaluation of police practice

Kath Murray

**University of Edinburgh
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Foreword

At the time of writing, little is known about the use of stop and search in Scotland. Neither Police Scotland, the Scottish Government nor the Scottish Police Authority routinely publish stop and search statistics, as such, it is difficult to assess what stop and search looks like, either comparatively across Scotland, or at the national level. It is equally difficult to determine whether search practices are proportionate in relation to offending levels. Nor do we know if the tactic is effective, either as a means of detection, or as a deterrent.

Against this background, the aims of this report are to set out a body of evidence on the use of stop and search in Scotland: to provide relevant data which may be used to inform public and policy debate, to identify issues and concerns which policing stakeholders may wish to engage with, and to set out a series of recommendations for police practice.

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“Stop and search was never in my years at HMIC Scotland raised as an issue. And that in itself is curious. Given the fact that it is still continually raised south of the Border. The Scottish Human Rights Commission didn’t raise it, the Scottish Government didn’t raise it, there was no clarion call from the media for it. The police services themselves, perhaps understandably because nobody’s asking them, didn’t raise it. So it was a non-issue”.

(Senior Officer, 2011)

Introduction

This report sets out selected findings from a doctoral project on the use of stop and search in Scotland.

‘Stop and search’ refers to a range of police powers, both statutory (underpinned by legislation), and non-statutory (based on verbal consent). Police Scotland use the following working definition of stop and search: ‘Any encounter between a Police Officer and member of the public, which results in that individual being searched for the purpose of obtaining evidence’ (2013c; 3).

Perhaps one of the more striking aspects of stop and search in a Scottish context is the lack of research to date, particularly compared with the substantial research output in England and Wales over the last three decades. This observation is all the more striking if we take into account the national rate of stop and search in Scotland, which is significantly higher than the comparable rate in England and Wales. The absence of stop and search, both from the research agenda in Scotland, and until recently, public debate more broadly, can be attributed to a number of factors, from the comparatively non-politicized character of Scottish policing in the decades prior to reform, to the understanding that stop and search is largely an ‘English’ issue that centres on race and ethnicity¹. In particular, the absence of stop and search from the Scottish research agenda may be attributed to the lack of publically accessible data on police search activity.

A number of conclusions can be drawn from the research findings. It is clear that search practices vary sharply across Scotland. In some areas, officers make extensive use of stop and search without reasonable suspicion and searches tend to impact on younger age groups, arguably over and above the probability of offending. Conversely, in other parts of Scotland, the use of stop and search is more likely to be based on statutory powers and appears to be more in line with patterns of recorded offending.

¹ Note that there is no evidence of disproportionality towards individuals from black and minority ethnic backgrounds in Scotland (Police Scotland, 2013a).

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The effectiveness of stop and search remains unclear. Detection rates are unstable, and can range from around 2% for offensive weapons to over 30% for stolen property. The deterrent effect of stop and search is particularly difficult to untangle, and further research is required in order to establish whether there is a robust association between search activity and offending.

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

More fundamentally, the findings indicate that Scotland's politicians and policing stakeholders need to make clear where the limits of stop and search powers lie, to ensure that the appropriate legal and regulatory framework is in place to support police practice, and to ensure an equal standard of procedural protection throughout Scotland.

Note on the Police and Fire Reform (Scotland) Act 2012

In April 2013, the *Police and Fire Reform (Scotland) Act 2012* brought together Scotland's eight police services into a single police force. By this stage, the project fieldwork was complete. The report therefore refers to the eight legacy forces as follows:

Central	Northern
Dumfries and Galloway	Lothian and Borders
Fife	Strathclyde
Grampian	Tayside

Report structure and key findings

The report is structured in seven parts. **Part one** examines the **regulatory background** and describes the types of stop and search powers that are available to officers in Scotland.

Part two overviews the **distribution of and trends in stop and search** between 2005 and 2010.

- In 2010, the rate of stop and search per capita in Scotland was nearly four times higher than the comparable rate per capita in England and Wales.
- There was a marked increase in the use of stop and search between 2005 and 2010, despite a fall in recorded crimes and offences.
- Search rates varied sharply across the legacy forces. Search rates were highest in the Central Belt legacy forces, particularly within legacy Strathclyde.
- In 2010, legacy Lothian and Borders, Central and Strathclyde clustered as three of the four highest users of stop and search in mainland Britain.
- In 2010, the rate of stop and search in legacy Strathclyde was more than double than that of the Metropolitan police.
- Legacy Strathclyde accounted for an 84% share of recorded searches in 2010, compared with a 43% share of the population and a 53% share of recorded offensive weapon handling and drug offences.
- In 2010, the rate of stop and search in legacy Strathclyde was 168 searches per 1000 people. By 2012/13, the rate of stop and search in legacy Strathclyde had increased to 276 searches per 1000 people.
- Based on year to date statistics, it can be estimated that the national rate of stop and search under Police Scotland (2013/14) may be in the region of 140 searches per 1000 people, compared to 86 searches per 1000 people in 2010.

Part three identifies two distinctive approaches to stop and search in Scotland which are termed **reactive** and **proactive**. In brief, reactive stop and search *responds* to suspicious circumstances in order to detect incriminating evidence, whilst proactive stop and search aims to *deter* prospective offenders through high volume search activity.

- Legacy Strathclyde and Lothian and Borders tended to adopt a more proactive approach to stop and search.
- Proactive stop and search is more likely to be non-statutory, that is, premised on verbal consent, rather than reasonable suspicion.
- Proactive stop and search tends to impact unequally on younger age-groups.
- Proactive stop and search is less likely to result in detection than reactive stop and search.

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- Legacy forces outside the Central Belt tended to adopt a more reactive approach to stop and search.
- Reactive stop and search is more likely to be based on statutory powers and reasonable suspicion.
- Reactive stop and search tends to be more proportionate in terms of age, and in line with patterns of recorded offending.

Part four examines the use of **non-statutory stop and search** in more detail.

- Between 2005 and 2010 the majority of stop searches in Scotland were carried out on a non-statutory basis.
- The use of non-statutory stop and search varied sharply between the legacy forces, from 76% of recorded searches in legacy Strathclyde to 10% in legacy Northern (2010).
- Non-statutory stop and search was less likely to be used for detection purposes, given that searches carried out without reasonable suspicion could be challenged in court.
- Non-statutory stop and search was more likely to be used as a deterrent.
- Non-statutory stop and search lacks key procedural protections. Reasonable suspicion is not required, and searches do not have a specified purpose.
- Non-statutory stop and search is unlikely to meet basic standards of consent. There is no duty on officers to inform people of their right to refuse searches, and searches are more likely to fall upon younger age-groups, whose ability to provide consent may be tenuous. Refusing to be searched may be treated as suspicious and used as grounds for moving to a statutory search.
- The use of non-statutory stop and search may be incompatible with Articles 5, 8 and 14 of the Human Rights Act 1998 in relation to the right to liberty, privacy and non-discrimination respectively.
- Accountability for non-statutory stop and search is exceptionally limited. For example, published data tends to subsume non-statutory searches under statutory headings (drugs, offensive weapons etc.)

Part five examines the relationship between stop and search and **age**.

- Proactive stop and search tends to impact disproportionately on younger age-groups, over and above the probability of offending.
- Young people are significantly more likely to be searched on a non-statutory basis.
- In 2010, approximately 500 children aged 10 years and under were stopped and searched by the police.
- Detection rates tend to be lower among younger age-groups, due to the large number of searches carried out on young people.

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Part six considers whether proactive stop and search is likely to **deter** people from offending. The analysis suggests that:

- Deterrent effects are exceptionally difficult to establish.
- At present, there is no research evidence to substantiate a robust relationship between the use of stop and search and patterns of recorded offending in Scotland.
- Stop and search aimed at deterring people from offending may damage people's trust and confidence in the police, and undermine public support for policing.
- Stop and search premised on deterrence appears to be incompatible with the principle of equal citizenship, given the disproportionate weighting of searches towards certain sectors of the population.

Part seven concludes that the move to a single force should be used as an opportunity to modernize the use of stop and search in Scotland, and to deliver policing that is more likely to engage with communities and secure public confidence. With these aims in mind, the report sets out eight key recommendations, as summarized over.

Summary of key recommendations

1. The primary aim of stop and search should be clarified. Currently it is unclear as to whether the aim is to detect or deter. The appropriate legal and regulatory framework should be put in place to support the primary aim.
2. The use of non-statutory stop and search raises concerns in relation to procedural protection, consent, proportionality and human rights. It is recommended that this practice is phased out. The use of stop and search should be underpinned by legislation.
3. The use of stop and search on children should be reviewed with a view to establishing a set of clear guidelines for police practice.
4. Open access data are required in order to make policing transparent, accountable, and to secure a public mandate on the use of stop and search.
The use of non-statutory stop and search and all other types of search powers should be clearly distinguished within these data. Recording procedures should also be put in place to measure the prevalence of stop and search, that is, the extent to which the same individuals are subject to repeat stop searches.
Stop and search data should be accredited with the UK Statistics Authority.
5. Stop and search data should be routinely analysed to assess whether police practice is proportionate to local patterns of offending, for example, in terms of the types of crime that are most likely to be carried out, and the demographic profile of offending.
6. Research should be undertaken to explore the deterrent effect of stop and search. Given that large scale stop and search has been justified in terms of falling levels of recorded crime and offending, it is important to establish whether a robust relationship exists between the two factors.
7. It is also recommended that in-depth qualitative research is undertaken to assess the impact of stop and search on police-community relationships in Scotland.
8. It is recommended that research is undertaken to assess the effect of performance management on officer decision-making, and to ascertain whether the use of Key Performance Indicators and numerical targets is likely to influence the patterning of stop and search.

Research and method

The findings in the report are drawn from an ESRC/Scottish Government funded doctoral research project on stop and search in post-war Scotland. The project uses a mix of qualitative and quantitative methods, including statistical analyses of police stop and search records, semi-structured interviews with officers and analysis of policy literature.

Police stop and search data provide the main source of evidence. Detailed stop and search data from 2005 to 2010 were obtained from individual legacy forces and collated into a series of SPSS datasets which document over 1.5 million search encounters. Six legacy forces provided detailed data specifying the age and gender of subjects, the reason for searching people, search powers (statutory and non-statutory), and search outcomes (detection and non-detection). Two legacy forces (Central, Dumfries and Galloway) provided summary data only. The following data limitations should also be noted.

Data limitations

Trend data

Data were not available for all forces across the six year period, which limits trend analyses to certain legacy forces. There is an overall improvement in data quality between 2005 and 2010, which suggests that trend data should be treated cautiously. All cross-sectional analyses in the report are based on 2010 data.

Dumfries and Galloway, Fife

Legacy Dumfries and Galloway could only provide data for drug searches between 2009 and 2010. Data provided by legacy Fife were also limited to 2009 and 2010, and included a large number of unclassified searches. Given these limitations, both forces are excluded from some of the more detailed statistical analyses. This is unlikely to distort the overall representation of stop and search activity, given that taken together, the two forces accounted for less than 1% of recorded searches in 2010.

Prevalence and incidence

Repeat searches on the same person cannot be identified within stop and search data. The key measure is therefore incidence, rather than prevalence. The report does however, recommend that recording measures are put in place to measure prevalence. This would allow repeat searches to be monitored, and enable Police Scotland to address any concerns that may arise in relation to disproportionality.

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Under-recording

The data should be read with the inevitable caveat of under-recording. Interview data suggest that under-recording varied from around 50% of searches in some areas, to “very few” in others. Research in England and Wales has also highlighted geographic and individual variation in recording, and suggested that only a minority of stop searches may be recorded (Bland *et al.* 2000).

It is however, important to recognize the distinctive pressures placed on officers to record searches in some parts of Scotland. Interview data suggest that levels of under-recording were lower in legacy Strathclyde, which was attributed to a strong performance management culture, in particular, to the use of numerical targets to drive the number of searches, and a pressure to ensure that searches were properly recorded.

Despite the methodological problems raised by under-recording, Bowling and Phillips argue that ‘police records of stop and search powers can be taken as a reasonably valid and reliable *indicator* of the extent of their use’ (2007; 943). In other words, police data can provide important insights into the character or nature of stop and search.

It should also be noted that at the time of writing, police data provide the only viable guide to the use of stop and search in Scotland. People’s experiences of stop and search are currently surveyed as part of the Scottish Crime and Justice Survey², however these data significantly underestimate the scale of search activity³. This discrepancy is likely to reflect both the ways in which large-scale crime surveys can exclude certain demographic profiles in terms of age and socio-economic background, and the prevalence of stop and search, which is likely to be concentrated amongst comparatively small populations. The prevalence of stop and search is also likely to coincide with sectors of the population that may be least likely to respond to surveys. This suggests that a more targeted survey approach would be required in order to tap into the true level of stop and search in Scotland.

² The Scottish Crime and Justice Survey is a survey of public experiences and perceptions of crime in Scotland. The survey involves interviews with adults aged 16 years and over, living in private residential addresses in Scotland. In the 2010/11 sweep, the sample size was around 13,000 people.

³ Data from the 2010/11 sweep of the Scottish Crime and Justice Survey estimate that around 9,300 people were stopped and searched by the police during the survey period. By contrast, police data indicate that over 445,000 searches were recorded in 2010.

Part 1. The regulatory background

The power to stop and search is legislated across a range of statutes. Officers can also stop and search people on a non-statutory basis, premised on verbal consent. This report classifies stop and search into three main groups, as described next.

1.1 Statutory stop and search *with* reasonable suspicion

The statutory power to stop and search is intended as an investigative tool to allay or confirm an officer's suspicions, short of arrest. The key statutes conferring the right to stop and search are as follows:

Drugs	Section 23 (2), Misuse of Drugs Act, 1971
Offensive Weapons	Sections 48 (1), Criminal Law (Consolidation) (Scotland) Act 1995
Bladed/pointed items	Sections 50, Criminal Law (Consolidation) (Scotland) Act 1995
Firearms	Section 47, Firearms Act 1968
Sporting events (alcohol, sealed containers, bottles, fireworks, flares etc.)	Section 21, Criminal Law (Consolidation) (Scotland) Act 1995 sporting events
Stolen Property	Section 60 (1) Civic Government (Scotland) Act 1982 (stolen property)

Officers are required to have robust grounds for suspicion in order to search people, for example, having seen, heard or observed suspicious behaviour. The following extract sets out Police Scotland guidelines on reasonable suspicion:

'Reasonable suspicion is suspicion that is backed by a reason capable of articulation and is something more than a hunch or a whim. This can't be supported on the basis of personal factors such as age, gender, race, stereotyping etc. The officer has to have intelligence or information supporting the reason for the search such as the person slurring their words or that the person is showing behaviour that is leading to the officer's suspicion. Experience may allow an officer to comment on a subject's appearance for example, a drug user's unkempt appearance, unsteady gait or subject's body language.' (Police Scotland, 2013c; 6)

In practice, reasonable suspicion is open to interpretation and is difficult to enforce. As such, a robust standard of suspicion may not always be present in the searches in which it is required (Bowling and Phillips, 2007: 938). Note however, that officers in Scotland also have the option to stop and search *without* reasonable suspicion, which may lessen the likelihood of statutory searches being carried out improperly.

In 2010, approximately 42% of statutory searches were carried out in relation to the possession of drugs, 29% in relation to offensive weapons/bladed items, 25% in relation to alcohol, 4% in relation to stolen property and less than 1% in relation to firearms.

1.2 Statutory stop and search *without* reasonable suspicion

Search powers that do not require reasonable suspicion include anti-terrorist legislation and Section 60 of the Criminal Justice and Public Order Act 1994. The use of anti-terrorist stop and search powers in territorial policing is exceptionally rare in Scotland and is not examined as part of this research project.

Section 60 of the Criminal Justice and Public Order Act 1994 enables the police to search people and vehicles for weapons or dangerous instruments in anticipation of violence. Section 60 searches are not distinguished within police stop and search data, and as such, the extent to which this power is used appears to be unknown.

1.3 Non-statutory stop and search

Officers in Scotland can stop and search people on a non-statutory basis, more commonly known as a 'voluntary' or 'consensual' search. Non-statutory stop and search is based on verbal consent and does **not** require reasonable suspicion.

Between 2005 and 2010, between 72% and 74% of recorded searches were classed as non-statutory. The overall proportion of non-statutory searches was driven by legacy Strathclyde (which in 2010, accounted for an 84% share of recorded searches in Scotland). Outwith Strathclyde, rates of non-statutory search varied sharply. Table 1 shows that the use of non-statutory stop and search was highest in the two larger Central Belt legacy forces (Strathclyde, Lothian and Borders).

Table 1. Non-statutory and statutory stop and search per 1000 people, 2010

	Northern	Grampian	Tayside	Lothian & Borders	Strathclyde	Total
Non-statutory	2	2	5	26	128	60
Statutory	15	8	13	14	40	22
Total	17	10	18	40	168	82
Total (N)	4,781	5,612	7,389	37,720	372,926	428,428

Source: Legacy Scottish police force data

Non-statutory stop and search: Police accountability

Interview data suggest that non-statutory searches are less likely to be recorded than statutory searches⁴, which means that the true proportion of non-statutory searches may be higher. More broadly, accountability for non-statutory stop and search is exceptionally limited. Although stop and search data are not routinely published in Scotland, some statistics are occasionally made available. For example, legacy Strathclyde published some data as part of the Chief Constables Annual Report. Stop and search statistics are also periodically referenced in the media. However, published statistics typically group non-statutory and statutory searches together under statutory headings (drugs, weapons etc.), thereby obscuring the level of non-statutory searches.

⁴ Statutory and non-statutory searches are both recorded under the Race Relations (Amendment) Act 2000.

Part 2. Patterns of stop and search

This part of the report examines the distribution of, and trends in stop and search between 2005 and 2010. All cross-sectional analyses are based on 2010 data.

Note that the data presented in this part of the report include both statutory *and* non-statutory searches. This approach is taken for two reasons. First, non-statutory searches account for approximately three quarters of searches in Scotland, and are therefore crucial to understanding the patterning and nature of stop and search.

Second, interview data suggest that statutory and non-statutory searches are likely to fall on similar types of people, for similar sorts of reasons. Whilst statutory searches require a higher standard of suspicion, in practice, both types of searches appear to be informed by similar ideas about ‘suspiciousness’ (Smith, 1983, Reiner, 2010; 121). For example, a non-statutory search on someone with a drug-user appearance might be classified as a drug search, or searches on group of teenagers in a park might be classified under alcohol. In other words, a comparable logic is likely to underpin both types of searches.

2.1 Scotland, England and Wales

In 2010, the incidence of stop and search in Scotland was significantly higher than the comparable incidence in England and Wales. The overall rate of stop and search in Scotland was driven by legacy Strathclyde, which accounted for approximately 84% of recorded stop searches.

Table 2 shows the rate of recorded searches per 1000 people in both jurisdictions. The data are based on searches for drugs, offensive weapons, stolen property and firearms, which accounted for approximately 70% and 75% of recorded searches in England/Wales and Scotland respectively.

Table 2. Stop and search per 1000 people, England & Wales (2010/11), Scotland (2010)⁵

	Searches per 1000 population
England and Wales	17
Scotland	64

Sources: (Scotland) Legacy Scottish Police Force data. Statistics calculated using 2010 population estimates, General Register Office.

(England and Wales) Home Office ‘Police Powers and Procedures Data Tables 2010/11’. Statistics calculated using 2010 mid-population estimates for England and Wales, ONS.

⁵ Stop and search data in England and Wales are by financial year, whereas Scottish data are by calendar year.

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2.2 Stop and search in mainland Britain forces

Table 3 ranks territorial forces and legacy forces in mainland Britain by search rates per 1000 people, again based on searches for drugs, offensive weapons, stolen property and firearms.

Table 3. Stop and search per 1000 people by police force, England & Wales (2010/11), Scotland (2010)

Devon and Cornwall	1	Warwickshire	8	Thames Valley	15
Essex	3	South Wales	8	Lancashire	15
Nottinghamshire	3	Dorset	8	Northern	16
Cheshire	3	Derbyshire	8	Cumbria	18
Fife	4	Sussex	10	Tayside	18
Suffolk	4	Grampian	10	Northumbria	20
Durham	6	Avon and Somerset	10	Leicestershire	22
West Midlands	6	Gwent	10	Merseyside	25
Gloucestershire	6	Lincolnshire	10	Cleveland	30
Kent	6	Surrey	11	Lothian and Borders	30
Hertfordshire	6	Bedfordshire	11	Central	39
Wiltshire	6	Cambridgeshire	11	London Forces ⁶	59
Humberside	7	Hampshire	12	Strathclyde	123
North Yorkshire	7	Northamptonshire	12		
North Wales	7	South Yorkshire	14		
West Mercia	8	Norfolk	14		
Staffordshire	8	Dyfed-Powys	14		
West Yorkshire	8	Greater Manchester	14		

Sources: (Scotland) Legacy Scottish Police Force data (excludes legacy Dumfries and Galloway). Statistics calculated using 2010 population estimates, General Register Office. (England and Wales) Home Office 'Police Powers and Procedures Data Tables 2010/11'. Statistics calculated using 2010 mid-population estimates for England and Wales, ONS.

Table 3 shows that four of the eight forces were among the ten highest per capita users of stop and search in mainland Britain. The Central Belt forces (legacy Lothian and Borders, Central and Strathclyde) clustered as three of the four highest users of stop and search. Also note that the rate of stop and search in legacy Strathclyde was more than double the rate in the combined London forces.

⁶ Metropolitan Police and City of London Police.

2.3 The distribution of stop and search in Scotland

Table 4 shows the proportion of recorded stop searches carried out by each legacy force in 2010. The table also sets out data that can be used to contextualize search activity in terms of the population and policing demands placed on each force.

The second column shows the resident proportion of the population in each legacy force, which is intended as a loose guide as to how the distribution of searches might be expected to fall. For example, a force which takes in a small proportion of the population would be expected to account for a reasonably small share of recorded searches.

The final three columns contextualize the distribution of stop and search in relation to offensive weapon handling and drug related offences. Again, the data can be used as an approximate guide as to the expected distribution of searches across the legacy forces, taking into account the types of crimes and offences associated with stop and search activity. The fourth column shows the proportion of searches for drugs and weapons recorded in each legacy force, whilst the final column shows the respective proportion of drugs and offensive weapon handling offences recorded in each legacy force.

Table 4. Stop and search/drugs and weapon offences by legacy force (2010)

Legacy Force	Stop searches as % of total	Population as % of total	Drugs and offensive weapon handling		
			% stop searches for drugs/weapons	Stop searches as % of total	% drug & weapons offences
Dumfries & Galloway ¹	0.2%	3%	-	0.2%	3%
Fife	0.6%	7%	43% ²	0.4%	4%
Northern	1.1%	6%	93%	1.4%	5%
Grampian	1.3%	10%	86%	1.5%	8%
Tayside	1.7%	8%	90%	2.1%	7%
Central	2.9%	6%	84%	3.5%	5%
Lothian & Borders	8.5%	18%	64%	7.7%	15%
Strathclyde	83.8%	43%	70%	83.2%	53%
Total (%)	100.0%	100%	71%	100%	100%
Total (N)	445,063	5,194,000	314,873	314,873	40,630

Sources: Legacy Scottish Police Forces; Scottish Government 'Recorded Crime in Scotland, 2010/11'.

¹ Legacy Dumfries and Galloway provided data for drug searches only.

² 24% of stop searches in legacy Fife did not specify the reason for the search. This proportion is unusually high and suggests that the percentage of drugs and weapons searches should be treated cautiously.

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Table 4 shows that legacy Strathclyde accounted for 83.8% of recorded searches in 2010, although it accounted for only a 43% share of the population. This disparity persists when the type of offences associated with the use of stop and search are taken into account. For example, legacy Strathclyde accounted for 83.2% of recorded searches for drugs and offensive weapons, compared with a 53% share of recorded offensive weapon handling and drug offences.

As such, it can be argued that the use of stop and search in legacy Strathclyde seemed out of kilter with the policing demands placed on the force. To be clear, the data do not downplay the severity of violent crime within the region. Rather the data suggest a lack of fit between the overall number of searches and factors that can be reasonably associated with the use of stop and search.

The Strathclyde effect

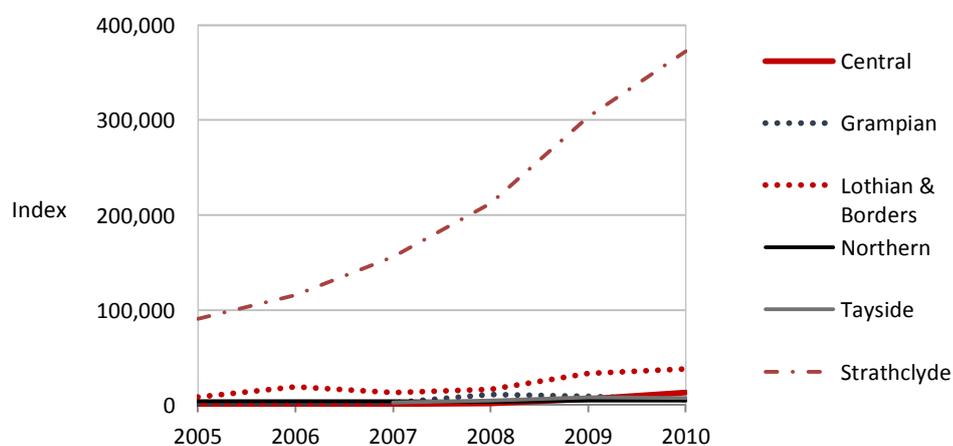
Given that legacy Strathclyde accounted for over 83% of recorded stop searches in 2010, it is clear that search activity in the region shaped the patterning of stop and search at the national level. Nonetheless, the use of stop and search in Scotland should not be viewed as an exclusively 'Strathclyde' issue. To recap, table 3 shows that legacy Central and Lothian and Borders were respectively the third and fourth highest users of stop and search in mainland Britain in 2010.

2.4 Search trends

Tables 3 and 4 showed that search rates per capita were higher in the three Central Belt legacy forces than in the non-Central Belt legacy forces. A sense of geographic divergence is also evident in terms of stop and search trends. Note however, that the data are not straightforward to interpret due to the sizeable differences in search levels between the legacy forces, both in absolute and relative terms.

Figure 1 shows stop and search trends from 2005 to 2010 in absolute terms, that is, the number of actual searches.

Figure 1. Stop and search trends by legacy force, 2005-2010 (N)



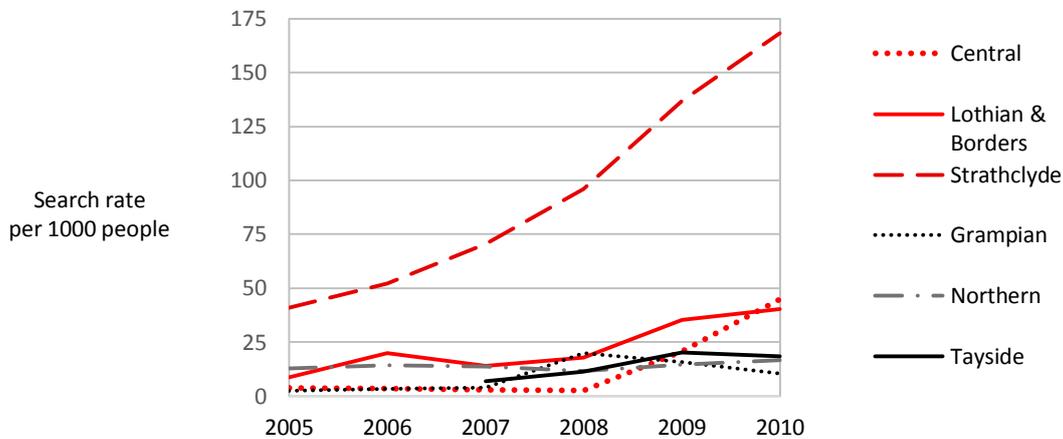
Source: Legacy Scottish Police Forces

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Figure 1 shows a significant increase in the absolute number of stop searches in legacy Strathclyde between 2005 and 2010. The scale of stop and search in Strathclyde effectively flattens the data in most of the legacy forces, with the exception of legacy Lothian and Borders, which recorded over 37,000 searches in 2010.

Figure 2 shows stop and search trends in terms of rate per capita and provides a more balanced comparison between the legacy forces, which takes into account population differences.

Figure 2. Stop and search trends by legacy force, per 1000 population, 2005-2010



Source: Scottish Police Forces

Figure 2 shows an overall upward trend in legacy Strathclyde, and to a lesser extent, in legacy Central and Lothian and Borders between 2005 and 2010.

Whilst the patterning of searches in the non-Central Belt legacy forces is more difficult to discern, it should be noted that overall search rates increased in all legacy forces between 2005 and 2010, as described next.

Relative (percentage) change

In legacy Strathclyde, Lothian and Borders, and Central, stop searches increased by 312%, 373% and 1131% respectively between 2005 and 2010. In legacy Grampian and Northern searches increased by 331% and 28% respectively between 2005 and 2010. In legacy Tayside, searches rose by 173% between 2007 and 2010.

However, in order to make better sense of these data, relative trends should be considered in conjunction with the actual number of searches in each legacy force. For example, the 331% increase in legacy Grampian represented approximately 4,000 searches, whilst the 312% increase in Strathclyde represented 282,000 searches.

2.5 Strathclyde, 2012/13

The upward direction in legacy Strathclyde continued from 2010, through to the dissolution of the force in April 2013. Legacy Strathclyde recorded 612,110 searches in 2012/13 (Police Scotland, 2013a; 5), which represented a search rate of 276 searches per 1000 people, compared to 168⁷ searches per 1000 people in 2010.

By way of insightful comparison, the rate of stop and search in legacy Strathclyde in 2012/13, was over four times higher than the rate of stop and frisk in New York City in 2012⁸.

2.6 Scottish stop and search trends, 2013/14

Data set out in a report by Police Scotland (2013b) provide an indication as to the ongoing upward direction of stop and search under the single force.

Based on year to date figures, it can be estimated that the national stop and search rate may be in the region of 131 searches per 1000 people⁹ in 2013/14, compared to 86 searches per 1000 people in 2010¹⁰.

⁷ This statistic includes searches for alcohol and is therefore higher than the statistic cited in table 3.

⁸ Source: 'Stop and Frisk' data 2012 (online) <http://www.nyclu.org/content/stop-and-frisk-data>. Calculation based on total searches in the five NYC boroughs (532,911) and NYC population (8,336,697). This equates to 64 searches per 1000 people. US census bureau, (online) <http://quickfacts.census.gov/qfd/states/36/3651000.html>. Comparison based on all stop and search powers available to officers in each jurisdiction.

⁹ Calculation: 537,434 stop searches were recorded in Scotland between April 1st 2013 and January 14th 2014. This represents 1,860 searches per day, projected to 678,766 stop searches over 12 months. Against a population of 5,194,000, this would equate to 131 searches per 1000 people.

¹⁰ This statistic includes searches for alcohol and is therefore higher than the statistic cited in table 2.

Part 3. Proactive and reactive stop and search

This part of the report examines patterns of stop and search in Scotland in terms of different policing styles or approaches.

One of the key arguments in the doctoral project on which this report is based, is that a distinction can be drawn between **reactive** and **proactive** stop and search. Put simply, reactive stop and search responds to suspicious circumstances, either reported or witnessed, whilst proactive stop and search actively seeks out potential suspects in situations in which an offence might take place.

The model of proactive and reactive stop and search is supported by a range of evidence, including police force data, interview data, policy literature and media reports. The model was developed through an inductive research process, which involved identifying distinctive or recurring patterns and themes within the data, making connections between different sources of data, and constructing a broader conceptual framework that could explain the nature of stop and search in Scotland.

Data analysis suggests that the two approaches to stop and search are underpinned by different policing aims. Reactive stop and search aims to **detect** incriminating evidence, and therefore makes greater use of statutory search powers which require reasonable suspicion. In contrast, proactive stop and search aims to **deter** people from offending and involves carrying out a large number of searches in order to communicate the likelihood of detection. Table 5 describes key indicators within police force data that can be used to identify the two policing approaches.

Table 5. Reactive and proactive stop and search: Key indicators

Indicator	Reactive (Detection)	Proactive (Deterrence)
Search rates	Lower search rates, due to greater use of reasonable suspicion.	Higher search rates in order to communicate the likelihood of detection and strengthen the deterrent effect.
Search power	Greater use of statutory powers and reasonable suspicion, in order to detect.	Greater use of non-statutory stop and search. Allows officers to increase search rates without reasonable suspicion.
Reason for search	Higher proportion of drug searches, due to the prevalence of drugs and reasonably clear grounds for suspicion.	Searches target crimes associated with younger populations. High proportion of offensive weapons and alcohol searches.
Age-profile	Searches follow the standard age-distribution of offending.	Searches directed towards young people , over and above the standard age-distribution of offending.
Detection rate	Higher detection rates, due to use of reasonable suspicion.	Lower detection rates, due to limited use or lack of reasonable suspicion.

3.1 The geography of proactive and reactive stop and search

In practice, legacy forces were likely to draw from both approaches to stop and search, whilst placing emphasis on one particular style. Table 6 shows how the distribution of searches in Central Belt and non-Central Belt legacy forces fitted the model of proactive and reactive policing.

Table 6. Proactive and reactive stop and search in legacy forces, 2010

	Proactive legacy forces Strathclyde, Lothian & Borders (Central Belt)	Reactive legacy forces Tayside, Grampian, Northern (Non-Central Belt)
Search rate per 1000 people	130	14
Search powers: % non-statutory	75%	21%
Reason: % weapons & alcohol	56%	8%
Mode	16	19
Age		
Median	20	25
Mean	24	27
Detection rate %	9%	19%

Source: Legacy Scottish Police Forces

Table 6 suggests that legacy Strathclyde and Lothian and Borders adopted a more proactive approach to stop and search, as marked by higher search rates, greater use of non-statutory stop and search, a higher proportion of searches for weapons and alcohol, a lower suspect age profile, and lower detection rates.

Taken together, these factors point towards a more intensive style of stop and search that aims to deter young people from offending, rather than detect incriminating evidence. Data analysis (not shown) also suggests a more proactive approach in legacy Central, as indicated by high search rates per capita and an emphasis on knife crime, although this observation is less robust due to the lack of available data on search powers and age.

Conversely, a more reactive approach can be identified in the three larger non-Central Belt legacy forces (Tayside, Grampian and Northern), as suggested by lower search rates, greater use of statutory searches, an older suspect age profile and significantly higher detection rates.

The remainder of the report explores the proactive approach in more detail. Part four examines the use of non-statutory stop and search. Part five examines the relationship between the proactive approach and age. Part six examines the underlying principle of deterrence, and asks if stop and search is likely to deter people from offending, and whether it is fair to search people on a deterrent basis.

Part 4. Non-statutory stop and search

The use of non-statutory stop and search is arguably the most controversial aspect of police search practice in Scotland. It should be noted that non-statutory stop and search was prohibited in England and Wales in 2003¹¹, amidst concerns that informed consent was unlikely to be secured in this type of encounter.

This part of the report examines the use of non-statutory stop and search in more detail. To recap from part one, in 2010 the majority of recorded stop searches in Scotland were non-statutory, although this proportion varied sharply, from 76% in legacy Strathclyde, to 10% in legacy Northern. More broadly, the use of non-statutory stop and search was highest across the Central Belt.

The analysis in this part of the report suggests that although non-statutory stop and search carries operational benefits, the underlying premise of consent appears to be flawed. The analysis also highlights concerns around due process and compliance with human rights legislation.

4.1 Non-statutory stop and search and police practice

Non-statutory stop and search is premised on verbal consent and does not require reasonable suspicion. Police Scotland provide the following guidelines on the use of non-statutory stop and search, described here as a 'consensual search'.

'A consensual search is appropriate where there is insufficient suspicion for a legislative search. This is a tactic used by the police during routine engagement with members of the public and should be conducted in a positive, amiable and professional manner.

Where an officer wishes to conduct a consensual search ***on a person who is not acting suspiciously, nor is there any intelligence to suggest that the person is in possession of anything illegal***, then this search is consensual and the officer must ask the subject if they can search them.

Where a person refuses a consensual search, it is good practice to note the person's details and request them to sign the officer's notebook... Where a person refuses a consensual search, this factor cannot be used to justify a legislative search.'

(Police Scotland, 2013c; 8, my emphasis)

From a policing perspective, non-statutory stop and search can act as a flexible tool, given that reasonable suspicion is not required. The tactic may be used to facilitate stop and search campaigns or crackdowns on particular areas, and to meet organizational objectives – for example, to meet numerical targets, and/or to improve on local rankings if stop and search is used as a Key Performance Indicator.

¹¹ Non-statutory stop and search was prohibited under the Police and Criminal Evidence Act 1984 (Codes of Practice) (Statutory Powers of Stop and Search) Order 2002, SI 2002/3075).

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Interview data suggest that a non-statutory approach can facilitate a less confrontational style of policing. Whereas statutory searches require officers to formally state the purpose of the search, non-statutory searches allow officers to request a “quick look” in bags or pockets, as suggested in these interview extracts:

“If it’s a routine stop and it’s just a bit of banter with the locals, it would be voluntary, which is the vast majority of the time.”

“Because it’s less formal, you communicate well with people and you’re getting on fine, rather than getting really formal... Obviously if there’s a reason to detain them, I wouldn’t hesitate to explain to them. But if things are going okay and they’re consenting to a voluntary search as well, yeah, I think it probably is easier”

This informal approach may help explain why intensive stop and search seems to be broadly tolerated, although further research is required to explore this possibility.

4.2 The aim of non-statutory stop and search

Interview data suggest that non-statutory stop and search was **unlikely to be used for detection purposes**. Officers were aware that if they found contraband in the course of a non-statutory encounter, they could be accused of fishing for evidence in a court situation. As one constable remarked, “*Court is just so much simpler when it’s statutory*”. Similarly, another interviewee commented:

“Fiscals are less likely to run with drugs being found just after a voluntary search. It’s more likely to get challenged in court, you know? ... You always have that in the back of your mind, you know, that I could go to court with this. So I’d rather give them less chance to challenge me.”

As such, officers were more likely to carry out a non-statutory stop and search when the likelihood of detection was perceived to be low¹². This reasoning was reflected in detection rates for non-statutory searches: in 2010, 7% of non-statutory searches resulted in detection, compared to 18% of statutory searches.

Instead, non-statutory stop and search seemed more likely to be used as a deterrent, given that the ability to search without reasonable suspicion allowed officers to legitimately carry out a large numbers of searches.

‘Crime on Your Street: Safer city as knife crime plummets

[T]he police commander for the new Greater Glasgow division... and his colleagues firmly link the falling figures for knife assaults with the sixfold increase in stop and searches. Their theory: that those who might be tempted to carry a knife are not doing so because the chances of getting caught are too high.... Basically, the chances of being caught are significantly higher than they were three or four years ago” (Evening Times, 26th August 2013)

¹² The exception to this finding is stop and search for alcohol. Most alcohol searches are non-statutory (87% in 2010) and have a higher detection rate (18% in 2010). However, alcohol searches usually result in disposal or confiscation, rather than a court appearance. As such, the risk to an officer’s reputation is low.

4.3 Non-statutory stop and search: The consent principle

Whilst the principle of verbal consent is not codified within Scottish policing, it is commonly understood that consent is underpinned by three core requirements:

- A person must be **fully informed** with the relevant information to make a decision
- A person must have the **legal capacity and competency** to give consent
- Consent must be given **voluntarily**

(Beauchamp and Childress, 1979)

In practice, the use of non-statutory stop and search seems unlikely to meet the basic standards required to secure consent. First, there is **no duty on officers to inform** a person of their right to refuse a non-statutory search. This precedent is set in case law which states that when a person is asked to consent to a search and is not suspected of a specific crime, it is permissible to request consent without highlighting the option to refuse (Brown v. Glen, 1997 SCCR 636).

Second, age and the related **capacity for understanding** are not taken into account. Table 7 shows that over 26,000 children aged 14 years and under were searched on a non-statutory basis in 2010. Table 7 also shows that young people were *more* likely to be searched on a non-statutory basis than older age groups.

Table 7. Search powers by age-group (%) 2010

Age group	Non-statutory	Statutory	Total	
0-14	83%	17%	100%	32,522
15-20	78%	22%	100%	186,674
21-25	70%	30%	100%	68,750
26-30	65%	35%	100%	45,110
31-35	65%	35%	100%	33,164
36 and over	68%	32%	100%	64,867
Total	73%	27%	100%	431,087

Source: Legacy Scottish Police Forces (Strathclyde, Lothian and Borders, Fife, Tayside, Grampian, Northern)

Third, interview data suggest that despite guidance to the contrary, **refusing to be searched voluntarily may be treated as ‘suspicious’** and used as grounds for moving to a statutory search. The following interview extract nicely illustrates this transition.

Officer X: “I’ll say ‘Look, there’s been a problem with drugs within the town centre, is it ok if I search you, have you got anything in your possession?’ And at that point it’ll either be a yes or a no. And if it’s a ‘no’ then you’ll explain your powers to them and ‘You’re going to be searched under Section 23 of the Misuse of Drugs Act’.”

KM: What would your grounds for suspicion be?

Officer X: “Their demeanour. Because if someone refuses a search, then it raises my suspicions... And then I will just move straight to my statutory powers, and I will explain to them why I’ve moved to my statutory powers – because they’ve been defensive of not allowing me to search, and I would explain how it’s giving me suspicion that they are in possession of something”.

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This shift from non-statutory to statutory stop and search undermines the voluntary requirement and raises legal concerns in relation to the viability of evidence. Given the discretionary and low-visibility nature of policing, the observation also suggests that the Police Scotland rule in relation to refusing searches may be unenforceable.

Finally, research suggests that a request to search by a uniformed figure of authority, no matter how genuine, is likely to be interpreted as a command (Nadler and Trout, 2012). As Delsol observes, 'Almost everyone consents. People consent to police officers not because they make a free choice to grant consent but because that is how people respond to the authority of the police' (2006; 116).

4.4 Procedural protection and due process

To recap from the Police Scotland guidelines, a non-statutory or consensual stop and search is defined as a search that is carried out '*on a person who is not acting suspiciously, nor is there any intelligence to suggest that the person is in possession of anything illegal*' (2013c; 8). In other words, an officer may search a person without any form of suspicion.

This broad interpretation of the ability to search people derives from the ambiguous legal nature of non-statutory stop and search. As Dixon observes, when a person agrees to be searched, the relationship between the police and the person being searched is essentially 'private'.

'If 'consent' is obtained, the legal relationship between the actors is not that between a state official and a private citizen, but rather that between two private citizens.'
(Dixon 1990; 346. Also see Mead, 1992).

In practice, this means that the protective role of the state is minimal during a non-statutory encounter and that key safeguards are not in place. For example, reasonable suspicion is not required, officers are not restricted as to the items they can search for, nor are officers obliged to state the purpose of the search.

The lack of procedural protection inherent in non-statutory stop and search raises a number of concerns in relation to police fairness and proportionality. For example, without reasonable suspicion, officers may search people on the basis of more general beliefs about the behaviour of a particular group. Officers may also legitimately 'fish' for evidence, given that the object of the search is not specified. It is also difficult to reconcile stop and search without reasonable suspicion with an intelligence-led approach to policing, given that the purpose of the search is unclear.

4.5 The Human Rights Act 1998

The Equality and Human Rights Commission make the following argument in relation to the compatibility of stop and search with Human Rights legislation.

‘The power to stop and search constitutes a deprivation of liberty and as such should be compatible with Article 5 of the Human Rights Act: the right to liberty and security of person. The use of the power must also be compatible with Article 8, respect for privacy, and Article 14, non-discrimination. This means that use of the power must be legal, proportionate, and non-discriminatory.’ (2010; 16)

In the *Gillan* judgement¹³, the Court (ECtHR) implied that Article 5 would be engaged due to the coercive nature of stop and search, however they declined to rule on the point. As such, the law in relation to the Article 5 remains ambiguous and open to interpretation in relation to the threshold between restriction of movement and deprivation of liberty (Stone, 2012).

Stop and search was however, held to engage with Article 8 in *Gillan*, which requires that any restriction on privacy by state authorities must be ‘*in accordance with law*’. In other words, the ability to search people should have a clear and accessible legal basis. Mead (2002) argues that the lack of legal structure and clarity inherent in non-statutory encounters, together with the lack of duty to inform a person of their right to refuse a search, is unlikely to meet these standards. As such, it is plausible that a legal challenge could be raised on these grounds.

The use of non-statutory stop and search may also potentially breach Article 14, given that younger age groups are disproportionately more likely to be searched using this power than older age-groups.

4.6 Non-statutory stop and search: Summary

Non-statutory stop and search can act as a useful operational tool, for example, in order to target high crime areas or particular types of crimes. Non-statutory stop and search may also facilitate a more informal and less adversarial style of policing, although to be clear, further research is required to explore this suggestion.

Nonetheless, the findings in the reports suggest that the extensive use of non-statutory stop and search is problematic. Searches are unlikely to meet the basic standards required to secure consent and lack the procedural protections or safeguards that are made available in statutory encounters. Non-statutory stop and search also raises concerns in relation to Articles 5, 8 and 14 of the Human Rights Act, 1998, and the right to liberty, privacy and non-discrimination respectively.

Given the geographical variation in the use of non-statutory stop and search, these observations suggest that people’s entitlements to procedural protection are not equally felt across Scotland. More broadly, it can be argued that the extensive use of a search power that has not been conferred by a democratically elected parliament raises serious questions in relation to the legitimacy of stop and search in Scotland.

¹³ Gillan & Quinton v. the United Kingdom. Application No. 4158/05 (2010)

Part 5. Policing young people

This part of the report examines the relationship between stop and search activity and age. To recap from part four, younger age-groups were more likely to be searched on a non-statutory basis, which in turn, was associated with a more proactive approach to stop and search. It should also be noted that stop and search can impact on very young children. For example, approximately 500 children aged ten years and under were stopped and searched by the police in 2010.

Figures 3 and 4 compare the age distribution of stop and search in Central Belt legacy forces and non-Central Belt legacy forces. The broken black line in each figure shows the ages of people charged with crimes and offences in the same period, and is intended as an approximate guide as to where searches might be *expected* to fall in terms of age.

Figure 3. Stop and search/persons charged by age (%) non-Central Belt legacy forces, 2010

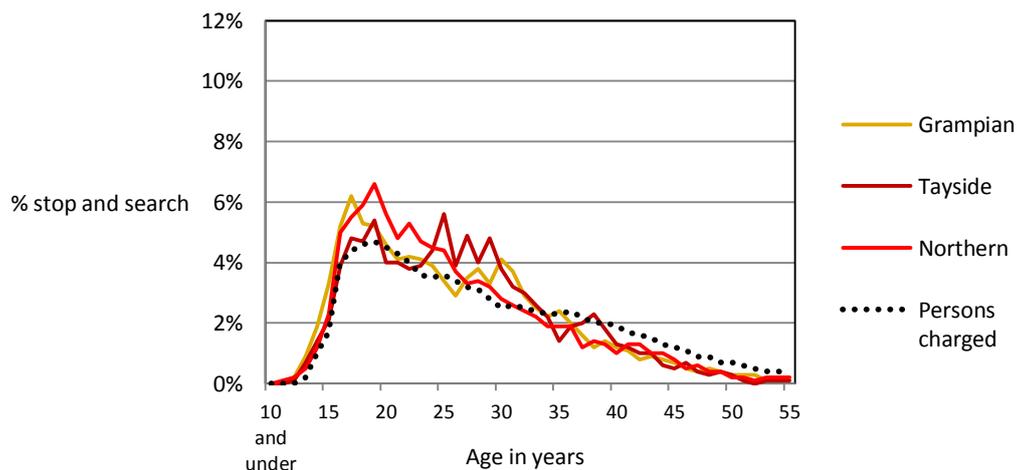
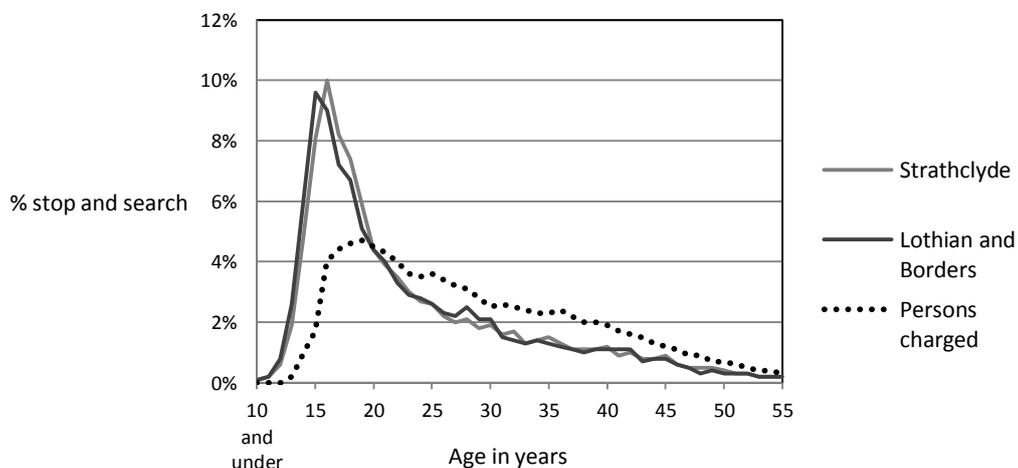


Figure 4. Stop and search/ persons charged by age (%) Central Belt legacy forces, 2010



Source: Legacy Scottish Police Forces, Scottish Government

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Figure 3 shows that the distribution of searches by age in the non-Central Belt legacy forces was closely aligned with recorded offending by age, which may be read as indicative of a more reactive or responsive policing approach.

In contrast, figure 4 shows a significant gap between the respective ages of person charged and persons searched in the Central Belt legacy forces. In short, the use of stop and search appears to be out of kilter with offending patterns. This suggests that proactive stop and search is more likely to impact disproportionately on younger age-groups, over and above the probability of offending. The patterning of searches also raises further concerns in relation to Article 14 of the Human Rights Act 1998 (prohibition on discrimination), in addition to the higher use of non-statutory stop and search on young people.

5.1 Searching young people and local demographics

The sharp variation in the age distribution of searches between the legacy forces shown in figures 3 and 4 cannot be explained in terms of different population structures. Table 8 sets out stop and search rates per 1000 16 year olds, and shows that the number of searches by age, as a proportion of the local population by age, remains significantly higher in the Central Belt legacy forces.

Table 8. Stop and search per 1000 16 year olds, 2010

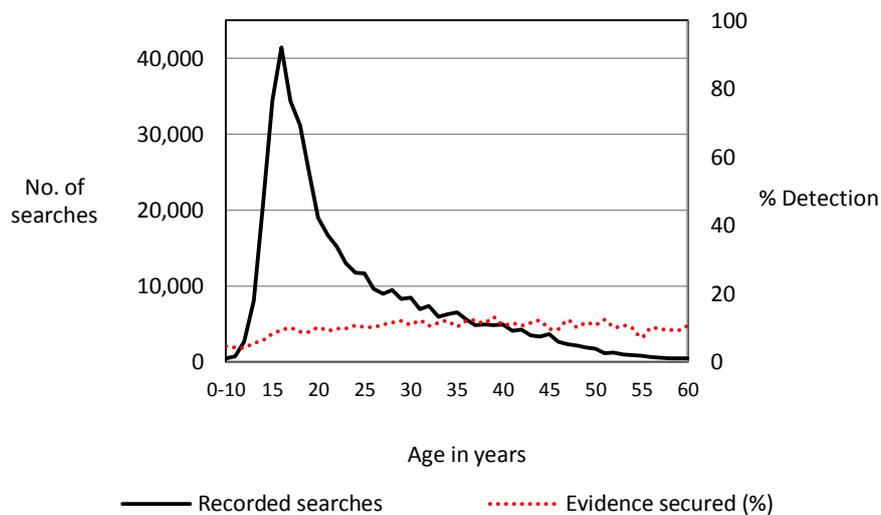
		No. of 16 year olds stop searched (2010)	Resident population of 16 year olds	Stop and search per 1000 population
Proactive forces	Strathclyde	37,233	26,476	1406
	Lothian and Borders	3,386	10,375	326
Reactive forces	Grampian	292	6,749	43
	Tayside	285	4,747	60
	Northern	237	3,789	63

Source: Legacy Scottish Police Forces; Scottish census data 2011 (online)
<http://www.scotlandscensus.gov.uk/en/censusresults/downloadablefiles.html>

5.2 Age and detection

Despite the sharp focus on searching young people in some parts of Scotland, age is a poor predictor of detection. Figure 5 shows that detection rates do not accurately reflect the search rate for teenagers and young adults. This highlights a huge discrepancy in the tendency of officers to target searches towards young people and the small likelihood of detection.

Figure 5. Searches by age (N), detection by age (%), 2010



Source: Legacy Scottish Police Forces (Strathclyde, Lothian and Borders, Fife, Tayside, Grampian, Northern)

5.3 Searching young people: comment

To be clear, the data in figure 5 do not imply that young people are less likely to offend. Rather, it is likely that that searches carried out on young people are based on a lower standard of suspicion than searches carried out on older age groups.

More broadly, the sharp discrepancy between the age distribution of searches and persons charged, together with low detection rates, suggests that young people may be over-policed in some parts of Scotland, that is, subject to excessive levels of stop and search, over and above the probability of offending.

Yet on the other hand, it could be argued that stop and search acts as an effective deterrent, as evidenced by low detection rates. The next part of the report examines the deterrence argument in more detail and discusses the implications for police legitimacy.

Part 6. Deterrence

The report has suggested that proactive stop and search places a stronger emphasis on deterrence, over and above detection. This observation is important because it allows low detection rates to be interpreted as evidence of a successful deterrent effect, rather than a failure to detect unlawful items. This way of thinking about stop and search is illustrated in the following media reports:

“My Officers have focused on targeting both known knife carriers, and hot spot areas knife crime is prevalent. *Never before have Police Officers in Inverclyde carried out so many searches for weapons, yet at the same time found so few.* We will continue with this robust and firm style of Policing and continue to tackle all aspects of violence in Inverclyde.”

(Chief Insp. MacDiarmid, Scottish Government news release, 7/11/10, my emphasis¹⁴)

“The single thing which deters people from criminal behaviour is the likelihood of being caught. The stop-and-searches carried out by Strathclyde Police have been very effective: fewer and fewer people searched at crime hotspots are found to be carrying weapons.” (Daily Record, 2/3/2010)

Given the intensity of searching in some parts of legacy Strathclyde, it seems plausible that proactive stop and search *may* have played a role in reducing violence. This part of the report reviews current evidence on the effectiveness of stop and search as a deterrent, and considers whether it is fair to search people on the basis of deterrence.

6.1 Does stop and search deter people from offending?

One of the key ideas in the existing literature on deterrence is that in order to deter people from offending, the perceived likelihood or certainty of being caught must be reasonably strong (Nagin, 1998; von Hirsch *et al.* 1999). In the context of stop and search, this suggests that an intensive proactive approach is more likely to deter people from offending than a reactive approach, given that the likelihood of being searched is higher.

The logic of deterrence and proactive policing can be identified in operational approaches to stop and search in some parts of legacy Strathclyde, which have seen a shift away from short-term stop and search campaigns, to the use of intensive stop and search as a part of more routine policing. In the following interview extract (over), an officer comments on the everyday use of intensive stop and search:

¹⁴ ‘Knife carrying down by 35%’ Scottish Government website
<http://www.scotland.gov.uk/News/Releases/2010/11/05144403> [accessed 30/9/2013]

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“The reason it’s been so successful is the continuity, that we have made it part and parcel of what a cop’s job is in this area, and indeed, in the Division... It’s no longer Operation XYZ, it’s just how we do our business. It’s policing. And we’ve had this continuity, we’ve been using the same tactics for four years, which is why the Neds, or indeed anybody, they now expect this course of action from the police. It’s now the norm. There is no friction, there is no dynamics involved. They just expect it as being the norm. And as a result, they don’t carry weapons.”

To be clear, at the time of writing, there is no robust evidence to suggest a *direct* association between the use of stop and search and offending levels, either in Strathclyde, or in Scotland more broadly.

It should also be noted that deterrent effects are exceptionally difficult to untangle. For example, it is difficult to isolate a deterrent effect from factors such as police presence, local policing initiatives and wider trends in offending, including the established drop in recorded crime from the mid-1990s onwards. It is also unclear if offending is displaced to other locations, or if other weapons are being used for violent offending.

Existing criminological research on the deterrent effect of stop and search is limited and appears to be either inconclusive (Miller, 1999; Bland, 2000) or contradictory. For example, Sherman points to ‘highly consistent evidence’ to suggest that stop and search ‘causes reductions in weapons violence and homicide’ (2013; 406), whilst Manning argues that deterrent studies are beset by methodological difficulties and typically apply causal reasoning after the event (2011; 231).

Aside from the currently unresolved question of effectiveness, the equally taxing question is whether or not it is fair to search people as a deterrent, rather than on the basis of reasonable suspicion. The next section examines the question of police fairness in more detail, and asks whether the use of stop and search as a deterrent is likely to influence people’s trust and confidence in the police.

6.2 Is it fair to stop and search people as a deterrent?

Whilst it can be argued that it is preferable to prevent crime, the use of stop and search in order to deter people from offending is not entirely straightforward, and may carry unintended consequences. This section considers the ways in which deterrent based stop and search may impact on public support for the police, and on police effectiveness.

Procedural fairness and effective policing

It is widely understood that effective policing depends on public support. For example, the police depend on the public to report crime, to act as witnesses, and to cooperate with the law more broadly.

An extensive body of research suggests that people's attitudes towards the police tend to be underpinned by perceptions of police *fairness*, rather than results or outcomes. For example, research shows that people are more likely to support the police, that is, to cooperate with, assist, or ask the police for help, if they feel that the police act in an even-handed and neutral manner (Sunshine and Tyler, 2003; Tyler 2006a; Tyler 2006b; Tyler and Huo, 2002; Bradford *et al.* 2009, Bradford and Jackson, 2010; Hough *et al.*, 2010). In other words, a link may be drawn between the perceived fairness of policing, public support for the police, and in turn, the ability of officers to carry out their duties effectively.

Existing research on people's perceptions of police fairness has highlighted the importance of good conduct, for example, whether officers are polite, considerate and respectful – and importantly, whether the exercise of power in itself seems fair and neutral (Bowling and Phillips, 2007; Bradford, 2011; 10). These findings suggest that people's beliefs about the fairness of stop and search are likely to depend on both the quality *and* quantity of search encounters – that is, on officers conduct during search encounters, and whether the search encounter *in itself* can be justified.

Whilst the quality of stop and search encounters is beyond the scope of the project, the findings in this report suggest that stop and search tends to impact unequally or disproportionately on certain sectors of the population in some parts of Scotland, that is, over and above the probability of offending.

As such, it is plausible that young people may feel that they are unfairly singled out for excessive attention by officers, resulting in lower levels of support for, and compliance with the police. As Bradford observes, 'disproportionality, almost by definition, damages people's sense that the police are neutral and have their best interests at heart' (2011; 2-3).

6.3 Police ethics: What *should* stop and search look like?

Police fairness can also be judged in normative or ethical standards which describe what policing *should* look like. For example, the Scottish Constable's Oath is underpinned by a normative understanding of policing:

"I, do solemnly, sincerely and truly declare and affirm that I will faithfully discharge the duties of the office of constable with fairness, integrity, diligence and impartiality, and that I will uphold fundamental human rights and accord equal respect to all people, according to law." (Police and Fire Reform (Scotland) Act 2012: Section 10)

Despite the emphasis on fairness, impartiality and human rights in the new Constable's Oath, the findings in this report suggest that as a result of different policing approaches to stop and search, people's entitlements to freedom and privacy are not felt equally across Scotland.

In sum, reactive stop and search places greater emphasis on due process and keeping checks on police powers by the exercise of reasonable suspicion and restricting searches to certain items. Conversely, proactive stop and search places the emphasis on crime control, at the expense of individual freedom.

This fundamental conflict – between the protection of individual freedom and crime control – suggests that the key tasks for Scotland's politicians and policing stakeholders are to decide where the limits of policing should lie, to ensure that the appropriate legal and regulatory framework is in place to support police practice, and to ensure an equal standard of procedural protection throughout Scotland.

The task of clarifying and regulating stop and search will also require transparent and robust accountability mechanisms, including the publication of stop and search statistics. In relation to police accountability, stakeholders could perhaps revisit Lord Macpherson's (1999) recommendations on stop and search¹⁵ which are not fully implemented in Scotland. Stakeholders might also wish to engage with existing research in England and Wales which addresses some of the difficulties in overseeing this highly discretionary and largely unsupervised aspect of police practice (Delsol and Shiner, 2006).

¹⁵ **Stephen Lawrence Inquiry: Recommendations 60 to 63:**

61. All 'stops' and 'stops and searches' made under any legislative provision must be recorded. Non-statutory stops must also be recorded. Records should include the reason for the stop, the outcome, and the self-defined ethnic identity of the person stopped. *A copy of the record shall be given to the person stopped.*

62. Stop and search records should be monitored and analysed by Police Services and Police Authorities, and reviewed by HMIC on inspections. *The information and analysis should be published.*

63. *Police Authorities should be given the duty to undertake publicity campaigns to ensure that the public is aware of 'stop and search' provisions and the right to receive a record in all circumstances.*

Note: Clauses in italics are not implemented in Scotland.

Part 7. Conclusion and key recommendations

Used proportionately and appropriately, stop and search can be a useful policing tool and is likely to be met with public support. Nonetheless, it is important to bear in mind the limitations of police search powers. Policing by consent depends on public cooperation, which is in part determined by people's perceptions of police fairness. The troubled history of stop and search in England, from the Brixton riots through to the urban unrest in August 2011, has demonstrated the potential of search tactics to aggravate police-community relationships and to undermine police legitimacy.

A lack of comparable controversy in Scotland should not give rise to complacency. It is difficult to reconcile proactive stop and search with the commitment to impartial policing and human rights set out in the Constable's Oath. More pragmatically, proactive stop and search may have a negative effect on police-community relationships in Scotland and on the ability of officers to carry out their duties effectively. It is also plausible that public tolerance may reach a breaking point, leading to more open antagonism towards the police.

At the time of writing, the use of proactive stop and search appears to be extending beyond the Central Belt under the governance of a single police service. In short, it seems that *less* equitable forms of policing are being distributed more evenly across Scotland.

Yet on the other hand, the reform of Scottish policing offers a timely opportunity to review and modernize the use of stop and search. That is, to clarify the aims of stop and search and regulate police practice, to introduce rigorous and transparent accountability mechanisms, to bring search practices in line with human rights legislation and to deliver policing that is more likely to engage with communities and secure public confidence. The final part of the report sets out eight recommendations that are intended to help secure these aims.

Stop and search in Scotland: Key Recommendations

1. The primary aim of stop and search should be clarified. Currently, it is unclear as to whether the aim is to detect or deter. The appropriate legal and regulatory framework should be put in place to support the primary aim.
2. The use of non-statutory stop and search raises concerns in relation to procedural protection, consent, proportionality and human rights. It is recommended that this practice is phased out. Going forward, the use of stop and search should be underpinned by legislation.
3. The use of stop and search on children should be reviewed with a view to establishing a set of clear guidelines for practice. In 2010, approximately 500 children aged 10 years and under were stopped and searched by the police, suggesting that the current approach is out of kilter with the welfarist approach to juvenile justice in Scotland.
4. Open access data are required in order to make policing transparent, accountable, and to secure a public mandate on the use of stop and search. The use of non-statutory stop and search and all other types of search powers should be clearly distinguished within these data¹⁶.

Recording procedures should be put in place to measure the prevalence of stop and search, that is, the extent to which the same individuals are subject to multiple searches.

Research shows that repeat adversarial contact can have a negative impact on future behaviour of young people (McAra and McVie, 2005), and tends to be associated with more hostile attitudes towards the police (Guardian/LSE, 2011). A measure of prevalence would therefore allow repeat searches to be monitored, and enable Police Scotland to address any concerns that may arise in relation to disproportionality.

In order to ensure robust data standards and to bring Scotland in line with England and Wales, it is recommended that Police Scotland, in conjunction with the Scottish Government and the Scottish Police Authority, seek to secure accredited status for stop and search data with the UK Statistics Authority¹⁷.

¹⁶ For an example of best practice, see Metropolitan Police Service stop and search data: http://www.met.police.uk/foi/units/stop_and_search.htm

¹⁷ For best practice, see *Police Powers and Procedures* (Home Office): <https://www.gov.uk/government/publications/police-powers-and-procedures-in-england-and-wales-201112>

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

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