

Review of the use of Stop and Search in Scotland

27th May 2015



About Who Cares? Scotland

Who Cares? Scotland is a national voluntary organisation - established in 1978 - which supports young people who have care experience up to 26 years of age, by providing independent advocacy and opportunities to influence policy and practice. We strive to utilise the voice of the care experienced population of Scotland to inform everything we do as an organisation.

Most recently we have published research that sought care experienced young people's views of the new Children and Young People (Scotland) Act 2014. 87 care experienced young people contributed to the research. This research can be accessed [here](#).

Introduction

Who Cares? Scotland welcomes the invitation from Police Scotland to partake in the review of Police Stop and Search in Scotland. We have worked in partnership with care experienced young people for the last 37 years and are aware that large number of them do not have a positive perception of the police. They claim that they often feel misunderstood and stereotyped by the police officers they come into contact with. In the research mentioned above¹, we spoke to a group of looked after young people about the contact they have with police throughout their lives. They told us that police are often one of the first corporate parents they come into contact with and often it is not for positive reasons. One young person expressed this well:

"Police were only involved when there was trouble, not always with us but were called all the time to extended family."

Part 9 of the Children and Young People (Scotland) Act 2014 now identifies the police as corporate parents and outlines the responsibilities they have. At the core of the Act is the principle that all of Scotland's corporate parents must give consideration to a child's well-being and assess their needs. Each corporate parent must also promote the interests of young people and provide opportunities for them to participate in wider society. Strategic guidance will be paramount to ensuring these duties are met, and as such, all local authorities in Scotland are required to create a corporate parenting strategy and to share information on their practice. Beyond strategy, corporate parents now have a duty to jointly provide opportunities for care experienced children and young people, and publish their plans to help looked after young people engage with the corporate parenting community. Finally, in order to ensure these duties and responsibilities are being met, all corporate parents must report to Scottish Ministers on what they are doing for our care experienced population.

¹ Who Cares? Scotland. 2014. Interpreting the Children and Young People Act 2014: the views of young people. <http://www.whocarescotland.org/professionals/publications-briefings-research/>.

Who Cares? Scotland offers training to corporate parents to help them understand their duties and provide crucial insight into what life can be like for someone growing up in care. The training would be a great insight for Police Scotland into their role with this population out with situations in the community that may put pressure on such interactions. To deliver training, we work alongside care experienced young people who are able to reflect constructively on their care journey as well as speak on behalf of other looked after young people. You can access our training briefs [here](#)² for more information. We believe that if Police Scotland is to meet their corporate parenting obligations real efforts have to be made to change this negative perception of the service often held by the care experienced population. These efforts have to be made at every point a care experienced young person comes into contact with Police Scotland.

Is there any information or advice in the attached document which you feel may be insufficiently clear to police officers, or which you feel should be explained?

The document includes no guidance for police officers on how they should engage with looked after children and young people or care leavers. Considering the duties now placed on corporate parents, this document would benefit from acknowledging this and should provide guidance for officers to meet these obligations. We feel that inclusion of such information is essential.

Listed below are certain paragraphs where we feel it would be beneficial for Officers to be given guidance on how to engage with Scotland's care experienced population. These are provided in order to offer examples of where we feel the document could be enhanced.

5.1.3 Where an officer wishes to conduct a consensual search on a person where there is insufficient information / intelligence to suggest that the person is in possession of anything illegal, then the officer must ask the subject if they can search them. That person must give their verbal consent for the search to take place. A mere physical consensual gesture by a person such as turning out their pockets is not sufficient. Verbal consent or refusal must be obtained and recorded within the officer's notebook.

5.2.2 Where a person refuses a consensual search, this factor cannot be used to justify a legislative search.

Our advocacy experience informs us that a number of care experienced young people are not aware that they have the right to withhold permission to being searched. These young people state that they often feel that if they did withhold their permission they would be then simply subject to a statutory search. We believe that it would be beneficial for the police to continue to strengthen their efforts in building relationships with care experienced young people living within the community, at the earliest stage possible, in order for young people to fully understand their rights and not solely engage with police officers at times of crisis in their lives.

Enhancing pre-existing relationships with community police officers would enable care experienced young people to become better informed of their rights, and also increase their confidence in the processes and procedures officers have to adhere to.

² Corporate Parenting and You Training Briefs 1, 2 and 3
<http://www.corporateparenting.co.uk/training/materials/>

7.1 It is Police Scotland's policy that where there is a requirement to stop and search a child aged 11 or under, **this should only be done on a statutory basis** where reasonable grounds for suspicion exist. Consensual searching of children aged 11 and under without consent from a parent, guardian or responsible adult is **not permitted**, unless exceptional circumstances can be demonstrated and justified.

7.2 Where there is any risk or concern for a child, they must be returned home and dealt with in the presence of a parent or guardian. Officers should consider the submission of an IVPD where this is appropriate.

Non-looked after children and young people would be required to be searched with their parents' permission and in their presence. This paragraph uses the terminology "parent, guardian or responsible adult", however for looked after young people we feel that these definitions are too wide. For example, for someone living within a residential placement, the adult sought out to be in the presence of the police completing the search, could have little or no relationship with the young person. This may exasperate the situation and we feel that it would be most appropriate for a young person's primary carer to be called on. By this we mean the adult that assumes most of the parental role in that child or young person's life. This may be a key worker from a residential unit, a foster carer that is not a respite carer or even a social work practitioner. Initially this could appear to be problematic however, we would suggest that this would be no more difficult than finding a non-looked after young person's parent.

7.4 Remember, the health, wellbeing and safety of a child is paramount. Appropriate engagement with the child's parent or guardian must always be considered.

Care experienced young people may not have one sole person deemed as being their guardian. As the paragraph above states, guidance should ensure that the young person is supported by an appropriate adult; one that they have a pre-existing, positive relationship with.

9.4 To protect the dignity of the subject, searches should be conducted in private, and if the search has to be conducted within a public place then, where possible, the subject should be taken to a more discreet location.

Care experienced young people have told us that they often feel whilst engaging with the police they are not offered adequate protection of their dignity and privacy whilst being subject to a stop and search, or whilst engaging with the police generally. They speak of others within their placements being witness to this or other people from their communities. We know that often, when the feeling of shame or embarrassment is evoked, at times this can lead to the young person displaying more extreme behaviour. For example, one young person we spoke to stated that this feeling of embarrassment around being stopped and searched, led her to react in a defiant manner. This defiant manner for her, often then led to a struggle with the police and charges of Breach of the Peace and Resisting Arrest often held against her. We would suggest that the guidance reflects the concept of escalation in behaviour which could potentially be managed in a more appropriate way.

10.2 Protected Characteristic Groups

The document provides examples of how the legal use of stop and search can fall disproportionately on disadvantaged groups considered as protected characteristics under the Equality Act 2010. While currently, care experience is not considered to be a protected characteristic, many of the issues for those considered to be protected, are applicable to young people with care experience. We strongly believe this guidance should include a section aimed at helping police officers understand how to work with this marginalised group. Awareness and understanding of this group is also imperative in ensuring those employed by Police Scotland are able to adhere to the statutory corporate parenting obligations.

Is there anything in this guidance that you may feel is missing from the attached guidance to police officers?

Paragraph 4.2.6 provides officers with a list of behaviours and traits that may be exhibited by an individual who may require the stop and search tactic. We feel that it is important to recognise that the behaviour traits identified within the paragraph, could also be evoked due to a young person's previous engagement with the police.

Many care experienced young people will have memories of police being involved in their lives at the time of being taken into care by their local authority. These young people may also have witnessed their parents and families being subject to police force during their young lives and they may have been made to feel anxious of police by family members or other young people around them. We would suggest that police officers are supported to engage with care experienced young people in the most appropriate and positive manner possible in an effort to promote better relationships between looked after young people and the police service.

In the opinion of your organisation, is there any further advice or information that you feel is missing from the attached guidance to police officers?

From speaking to young people who have experience of being in care, we know that often they feel they are targeted by police officers due to simply being known through the care system. Children and young people living in care can be exposed to police due to common instances such as absconding from children's units.

One young person we spoke to explained how it felt to be so easily identified by the police. She noted that while living in care, she would regularly run away to meet friends or stay with family members. Each time she would be reported missing by her carers and the police would find her and return her home. Over time this meant that she became very well known to the local police officers, who would stop her anytime they met her in the street and search her. She spoke about how embarrassing she found this and how it made her feel like she was different from everyone else.

With young people in care already feeling different or excluded from their non-looked after peers and their communities, we must ensure that those who are there to protect them, do not further add to this feeling. As mentioned above, young people in care can often have a poor perception towards police due to their experiences early in life, or prior to being taken into care. We must ensure that young people leaving care feel they can ask for help from their corporate parents when

they need it and so police have a duty to make sure that they build positive relationships with young people with care experience.

Several local authorities throughout Scotland have already made attempts to improve the connection between young people and the local police officers. This method of relationship building can be extremely effective and can repair the mistrust and lack of understanding that can exist between police and those in care. Who Cares? Scotland would suggest that Police Scotland use this consultation to reflect on how police can deliver on their corporate parenting duties for looked after children. As mentioned above, the guidance should include a section which recognises how this power relates to the looked after population. It should outline the expectations for how police should seek to limit the targeting of those children and young people living in care. Who Cares? Scotland would invite any opportunity to support Police Scotland in drafting what this section should look like.

Are there any other comments or suggestions in relation to the Police's use of the Stop and Search tactic?

We must encourage a change in culture which promotes a better relationship between looked after young people and police officers. This change in culture must improve how young people view police, but equally the police must be encouraged to view young people in care differently. They must be encouraged to support them, to understand what care journeys can look like and to collaborate effectively with other corporate parents and carers in the lives of these young people.

With this in mind, the Stop and Search tactic must begin to promote this culture change. It is important that the care experienced population in Scotland are treated on the basis of need. Greater attempts have to be made to address the over representation of formerly looked after children in crime statistics and the prison population. The responsibility in redressing these negative outcomes is held by all of Scottish society, including Police Scotland. It is essential that all those employed by Police Scotland are provided with the skill and the knowledge required that will enable them to be the best corporate parents possible.

Who Cares? Scotland would welcome the opportunity to discuss how the Stop and Search tactic can work for both Police Scotland and looked after children and young people. Please contact us on the following details:

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