

Institution: University of Strathclyde		
Unit of Assessment: C18 - Law		
Title of case study: Improving stop and search practice by Police in Scotland		
Period when the underpinning research was undertaken: 2015-2016		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s): Dr Genevieve Lennon	Role(s) (e.g. job title): Senior Lecturer	Period(s) employed by submitting HEI: 26/05/2014 – present
Period when the claimed impact occurred: 2015 – July 2020		
Is this case study continued from a case study submitted in 2014? No		
<p>1. Summary of the impact</p> <p>Dr Genevieve Lennon's research on stop and search led to a change in police law and practice in Scotland, notably a new Code of Practice. The Code, effective from 2017, regulates police practice during the execution of a stop and search, and provides the public with information about their rights. Stop and search incidences went down, with Glasgow seeing a 59% reduction in 2017/18 compared with the previous year. In 2019, the Advisory Group on Stop and Search noted that: the new recording system was more reliable and accurate; police officers were applying stop and search more judiciously; and there was increased public confidence in the tactic.</p>		
<p>2. Underpinning research</p> <p>Genevieve Lennon has conducted extensive research on police stop and search powers, initially within the context of counter-terrorist policing [R1, R2]. Her focus has been on ensuring accountable practices that adhere to legal norms, in particular human rights. One particular aspect of Lennon's research that later resulted in legislative impact was on stop and search in Scotland. When Police Scotland was created out of the eight legacy forces in 2013, one in three Glaswegians was stopped and searched by the police, enabled by virtually unfettered powers of stop and search. There were also concerns about 'consensual' searches, where police stopped and searched people – including children as young as six – without any reasonable suspicion of wrongdoing; consent was assumed, even though the people stopped were not informed that they could decline the search.</p> <p>In 2016 Lennon, collaborating with Kath Murray at the University of Edinburgh, examined stop and search practices in Scotland [R3], comparing them with England and Wales to determine why, from a position of near parity in 2005/06, Scottish rates of stop and search exceeded those in England and Wales seven times over by 2012/13. The work adopted a mixture of doctrinal and socio-legal methodologies, with Lennon taking a lead on the legal issues surrounding stop and search practices for both jurisdictions. Lennon found that Scotland, in contrast with England and Wales, was highly unregulated: there was no binding Code of Practice, and no public data to facilitate oversight. These conditions combined with a near complete absence of political or public scrutiny in Scotland to result in a high-discretion environment that enabled a high-volume approach to stop and search.</p> <p>In addition, Lennon examined Scottish stop and search law in more detail, providing an exposition of the legal basis for police action [R4] and demonstrating that 'consensual' stop and search breached European Convention on Human Rights Article 8, the right to a private life, and should not be used by the police. She found that Police Scotland's definition of 'reasonable suspicion' did not accord with the legal definition. This, combined with almost no regulation governing the conduct of a search, or collection and provision of data on the use of the powers, meant that there were insufficient safeguards to prevent the arbitrary deployment of the powers.</p> <p>Following these findings, the researchers made several recommendations, calling for:</p>		

1. Greater regulation over Scottish stop and search practices, including a statutory Code of Practice that would (a) regulate police actions during a search and (b) guarantee the collection and publication of data on the use of the powers;
2. The cessation of 'consensual' stop and search as unnecessary and unlawful;
3. Greater clarity and detail regarding the definition of 'reasonable suspicion', advocating the use of the two-part test from *O'Hara v CC of the RUC*, which requires that officers have a genuine suspicion that a person has committed, is committing, or is about to commit an offence, and that there be reasonable grounds for such.

3. References to the research (Strathclyde affiliated authors in **bold**)

- R1 Lennon, G.** (2016). Stop and search powers in UK terrorism investigations: a limited judicial oversight? *International Journal of Human Rights*, 20(5), 634–648.
<https://doi.org/10.1080/13642987.2016.1162410>
- R2 Lennon, G.** (2015). 'Security inspections in the US and UK: suspicionless counter-terrorist stop and search' in Lennon, G. & Walker, C. (eds), *Routledge Handbook of Law and Terrorism*. ISBN 9780415870375. [Available from HEI]
- R3 Lennon, G., & Murray, K.** (2018). Under-regulated and unaccountable? Explaining variation in stop and search rates in Scotland, England and Wales. *Policing and Society*, 28(2), 157–174. <https://doi.org/10.1080/10439463.2016.1163359> [Online first 2016; Submitted as REF2]
- R4 Lennon, G.** (2016). Searching for change: Scottish stop and search powers. *Edinburgh Law Review*, 20(2), 178–203. <https://doi.org/10.3366/elr.2016.0341>

Notes on the quality of research: All references were rigorously peer-reviewed ahead of publication; with **R1** and **R3** using double-blind peer review. **R2** was published in the Routledge Handbook of Law and Terrorism, of which Lennon was also a co-editor. This handbook provides an authoritative and critical analysis of domestic counter-terrorism laws and is used by researchers, students and practitioners.

4. Details of the impact

The recommendations based on the underpinning research were taken up by the Independent Advisory Group on Stop and Search, ultimately:

- Informing legislative change on stop and search practices through the Criminal Justice Scotland (2016) Act;
- Shaping the Code of Practice on Stop and Search in Scotland (2017);
- Improving police professional practice.

Informing legislative change on stop and search practices

Thanks to her recognised expertise in the legislative aspects of stop and search, the Scottish Government's Independent Advisory Group (IAG) on Stop and Search, set up in 2015, asked Lennon to submit expert reports based on her research, and recommendations on the lawfulness of current police stop and search practice [S1]. At the time, police were required to record the person's name; the date, location and time of the stop and search; whether it was statutory or non-statutory; whether any items were detected; and, if so, what they were.

Lennon's advice to the IAG was that this provided insufficient detail for effective accountability [S1]. Her recommendations called for officers to inform the person stopped that they were being stopped and searched; the grounds for the reasonable suspicion; the legislative power being used; a recording of the outcome of the search (e.g. whether the person was detained or arrested); and for the person stopped to be given a record of the stop, including the constable's name or warrant number and station. She also called for a Code of Practice to be instituted [S1].

The IAG's subsequent Report and Draft Code of Practice [S2] reflected key elements of these and other of her recommendations [S1], and it was this report that ultimately led to a change in the law

on stop and search in Scotland. The Chair of the IAG confirmed the influence of Lennon's in this legislative change:

'In 2015, the IAG on Stop and Search was established following publicity and controversy surround Stop and Search practices in Scotland, informed in part by the research of Lennon and Murray... The expert advice provided by Dr Lennon was very helpful to our discussions and significantly informed the content of the IAG's subsequent report and Draft Code of Practice. This report directly informed the drafting and subsequent implementation of Part 2 of the Criminal Justice (Scotland) 2016 Act, which regulates stop and search practice, prohibits "consensual" stop and search, and introduced a statutory Code of Practice.' [S1]

Shaping the Code of Practice on Stop and Search in Scotland (2017)

Accepting the IAG's recommendations, the Scottish government in 2016 sought public views on the draft Code of Practice before laying the final version before Parliament. Lennon exercised further influence on its legislative aspects during the public consultation phase via contributions on the Draft Code of Practice for Stop and Search, as invited by the Head of Police Powers at the Scottish Government. Her detailed submission, 'Recommended changes to the draft Code of Practice', drew on the findings detailed in R4, which was also submitted to the IAG. The Chair of the IAG consulted with Lennon personally on the final draft of the Code, revised following the public consultation: *'The expertise Dr Lennon developed through her research also fed directly into the Code of Practice, through submitted consultation responses and direct discussion between her and me on a late draft.'* [S1]

A comparison of the Draft Code [S2] with Lennon's recommendations [S3], the Advisory Group's supplementary report [S4] and the final Code [S5], shows that the majority of her recommendations were adopted, leading to major changes in the Code. After Police Scotland and the Scottish Police Federation, Lennon made the greatest number of recommendations [S3]. Her proposed changes that became part of the final Code of Practice on the Exercise by Constables of Powers of Stop and Search of the Person in Scotland, which came into effect in May 2017, included:

- Clarifying that there is only one test of reasonable suspicion (as opposed to the variable test implied in the Draft Code) (Code 4.2)
- Removing the reference to an item in a person's possession from the opening principles (Code 2.2)
- Stating that the Code does not apply to searches under the Terrorism Act 2000 s.47A or sch. 7 (Code 3.2)
- Required that reasonable grounds of suspicion be linked to a particular offence and not a generalised suspicion (Code 4.7)
- Adding a requirement that the constable inform the person being stopped that they are not obliged to respond to questions asked (Code 4.11)
- Providing additional guidance regarding the use of the Criminal Justice and Public Order Act 1994 s 60 (partially actioned – Code 4.18-4.22)
- Requiring that the stop and search record includes: the statutory power used; the station of the constable; the outcome (e.g. arrest); the authorisation (re Criminal Justice and Public Order Act 1994, s 60) (Code 9.3)
- Requiring that the number of authorisations issued under the Criminal Justice and Public Order Act 1994, s 60 should be published annually (Code 10.5)

The revised Code of Practice came into effect in 2017 and became the professional standard by which stop and search must be conducted in Scotland, is binding upon all police officers in Scotland – although breach constitutes neither a civil nor criminal offence – and informs the public about their rights, responsibilities and avenues for redress [S5].

Improved police professional practice

The introduction of the Code of Practice represented a significant change in police professional practice, there having previously been no comparable standards. In 2017, Scottish Parliament's Cabinet Secretary for Justice said they were *'in no doubt that such searches will be carried out with fairness, integrity and respect. The views expressed during the consultation period were absolutely key'* [S6]. Fife Division's Chief Superintendent noted that the perceived *'military-style policing'* and *'industrial scale use of the stop and search ability'* had come to an end, as had *'the days of asking youths to turn out their pockets'* in favour of *'us[ing] the power ethically'* [S7].

Stop and search incidences have reduced. In 2018, the *Herald* reported that the 17,446 searches between June and November 2017 were *'down from 24,210 in the corresponding period in 2016'* [S8]. The Twelve Month Review of the Code of Practice by Scottish Government [S9], confirmed that, as a result of the Code and the process by which it was informed and developed, the numbers of stop and search incidences were in decline:

'There was a significant reduction in the number of searches and seizures conducted within Scotland following the introduction of the Stop and Search Code of Practice (CoP) in May 2017... the impact of the CoP on policing practice began long before its actual implementation and also continued afterwards. It is almost certain that the criticism targeted at Police Scotland about the over-use of stop and search ... followed by an intense period of political and public scrutiny and the decision to abolish consensual searching and introduce a CoP, influenced the large scale reduction in encounters well before the CoP finally came into force ... During the twelve-month period following the [CoP's] introduction . . . there were 32,307 encounters involving either a search or a seizure in Scotland. This compares to 44,249 during the equivalent twelve-month period of the previous year and represents a 27% reduction in the use of these police tactics.' [S9]

A change in the positive detection rate for stop and search – *'a statistically significant increase of 7%'* – suggested that *'officers were applying a higher threshold of reasonable suspicion when using stop and search'* [S]. The greatest change occurred in Greater Glasgow Division, where *'there was a 59% reduction in searches . . . in the twelve months following the introduction of the CoP compared with the previous year.'* [S9]

The IAG's final report (2019) concluded: *'we now have a much more reliable and accurate system of recording stop and search which allows for greater confidence in the data and more robust independent scrutiny'*, and *'supported and encouraged by specific training and the change in culture ... police officers are more discerning in their use of stop and search'* [S10]. This helped to *'promote public confidence in the legitimacy of the current use of the tactic, allowing it to be seen as more proportionate and effective as well as carrying less risk of causing tension or even friction with individuals and within communities.'*

According to the Chair of the IAG: *'Dr Lennon's research was highly influential throughout the process of developing the Code of Practice, and I have no doubt that, without her input, the Code is unlikely to have resulted in the significant improvements to police practice that we have seen in the past 3 years.'* [S5]

5. Sources to corroborate the impact

S1 Corroborating statement from Chair of the Scottish Government's Scottish Independent Advisory Group on Stop and Search, dated 24 February 2021.

- S2** 'The Report of the Advisory Group on Stop and Search', SG/2015/128, 2015. <https://bit.ly/2MfnMdr>
- S3** **Lennon's recommendations:** 'Analysis of Responses. Collated Comments on Detailed Aspects of the Draft Code of Practice'. 2016. Her contributions are included under the reference 'ID 1 (indiv respondent)'.
- S4** 'Stop and Search: supplementary report by Advisory Group', 2017. <https://bit.ly/39rbozU>
- S5** **Final Code:** 'Stop and Search of the Person in Scotland: code of practice for constables', 2017. <https://bit.ly/3iWfRqY>
- S6** BBC News. *New Police Scotland stop and search code in force*. 11 May 2017. <https://www.bbc.co.uk/news/uk-scotland-39882395>
- S7** The Courier. *Fife police boss offers assurance over stop and search*. 12 June 2019. <https://www.thecourier.co.uk/fp/news/local/fife/911987/fife-police-boss-offers-assurance-over-stop-and-search/>
- S8** The Herald. *Police stop and search still higher in Scotland*. 4 March 2018. <https://www.heraldscotland.com/news/16063606.police-stop-search-still-higher-scotland/>
- S9** Professor McVie, Scottish Government. 'Twelve Month Review of the Code of Practice for Stop and Search in Scotland: Quantitative Report', 2019. <https://bit.ly/3t3ln6j>
- S10** 'Stop and Search code of practice: Twelve month review by independent advisory group. Final report from the Independent Advisory Group on Stop and Search regarding the first twelve months of the code of practice since it was introduced in May 2017', 2019. <https://bit.ly/2Yj4B4W>