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### Under-regulated and unaccountable?

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## Introduction

In the last decade, a gulf opened up between England and Wales and Scotland as regards the use of stop and search. From a position of near parity in 2005/6, by 2012/13 recorded search rates in Scotland exceeded those in England and Wales seven times over. This divergence is intriguing on several counts, not least the fact that until the advent of the single police service in April 2013, the use of stop and search in Scotland remained low profile (Scott 2015, p. 21). The divergence is also fascinating given the similarities between the two jurisdictions, both in terms of recorded crime trends (Bradford 2015) and statutory stop and search powers. There are, of course, differences in police governance and the political narratives around policing in the two jurisdictions; nonetheless, it is arguable that the demands placed on the police and the legal powers to deal with these are broadly similar.

Against this background, this paper investigates the variation in stop and search practice between England and Wales, and Scotland. The aim is to show how ‘top-down’ factors, such as substantive powers of search, regulations and scrutiny, can influence police practice. Such ‘constraining’ factors can be taken for granted. For example, Kinsey observes a tendency ‘to ignore the efficacy of rules almost entirely’ (1992, p. 478, cited in Dixon, 1997, p. 21). Similarly Dixon observes that the law is ‘often regarded as being, at best, marginally relevant and, at worst, a serious impediment to the business of policing’ (ibid. p. 9, McConville *et al.* 1991). Rather, the way in which officers deviate from, or modify rules and regulations tends to be viewed as the principal difficulty (McBarnet 1983, pp. 3-5). To be clear, the analysis in this article is not intended to downplay the discretionary nature of policing; the fact that reform and regulation around stop and search has been patchy, and at times, ineffective demonstrates the inherent difficulties in controlling police discretion. Nonetheless, we would suggest that by comparing policy and practice in England and Wales with that of Scotland, the value of legal and quasi-legal rules, as well as robust scrutiny, becomes clearer.

The paper takes a comparative case-study approach in order to explore differences in stop and search practices and regulation in the two jurisdictions. The paper argues, first, that a permissive regulatory environment facilitated the development of volume stop and search in Scotland. Second, that the divergence between the two jurisdictions can also be attributed to varying levels of political and public scrutiny; to the fact that the stop and search agenda in England and Wales is established, whereas scrutiny in Scotland is in its infancy. Whilst it is clear that stop and search operates in a discretionary environment in both jurisdictions, the salient point is that a weak regulatory framework, coupled with a lack of scrutiny or political engagement enabled police practice in Scotland (Sanders and Young 2008, p. 284). The significance of these arguments is brought to the fore by the Scottish policy direction circa 2007 onward: by the target-driven ‘proactive’ volume approach initially adopted by Strathclyde police force, and latterly rolled out nationally following the move to a single force in 2013.

The paper draws on published statistics and data accessed via the Freedom of Information (Scotland) Act 2002 (FOISA). Note that there is a contrast between access to data in England and Wales and Scotland, which reflects our observations apropos standards of accountability and transparency in the two jurisdictions. England and Wales have been required to publish

annual data under the Criminal Justice Act 1991, s.95 on the criminal justice system and race since 1992, albeit in varying forms, as well as Home Office statistics on police powers (*Police Powers and Procedures* data series). The statistics detail, by police force area, the number of stops and searches, the reason for the search, the legislation used (broadly grouped), the number of resulting arrests, the self-defined ethnicity of the person searched and rates of stop and search per 1,000 of the population, including by ethnicity. Twenty-two forces also provide data sets on their websites (HMIC 2013). In Scotland, prior to 2014, the main vehicle for data has been the FOISA. In May 2014 the Scottish Police Authority (SPA) took responsibility for the publication of stop and search statistics (SPA 2014), although the only statistics presented thus far lack detail and are not tabulated (see SPA 17/12/2014). Since June 2014, Police Scotland have published statistics online (tabulated and disaggregated) which detail search location, reason for the search, whether statutory or non-statutory, outcome (positive or negative) ethnicity, age and gender. Additional data fields were introduced in June 2015, including grounds for suspicion, legislation used and disposal (excluding arrest). Data quality is poor in both jurisdictions, arguably more so in Scotland: in March 2015 HMICS stated that they had no confidence in data collected by Police Scotland. Nonetheless, a comparison can be drawn which provides insight into the different thresholds of suspicion in each jurisdiction. As Scott explains:

‘The disparity with England serves to illustrate the scale of the practice in Scotland, which was principally driven by the use of non-statutory stop and search. Stripping out potentially distorting features and inaccuracies, the statistics still demonstrate that the practice has been used proportionately more per head of population in Scotland than elsewhere.’ (2015, p. 19).

The paper focuses on stop and search powers that can be exercised against people (and, where relevant, vehicles and vessels) when they are in public. It does not concern powers under the various Road Traffic Acts. As noted by the Canadian Supreme Court, which, in this context, operates within a broadly analogous human rights structure as the UK, the former involve interference with the ‘ordinary right of movement of the individual’, whereas the latter is ‘a licensed activity that is subject to regulation and control for the protection of life and property’ (*Dedman v R* (1983) 46 CR (3d) 193 para 72). Similarly, people are subject to more stringent and onerous conditions of passage at borders and so such stop and search powers (including those exercisable at airports) are not discussed.

Unless otherwise stated, all references to police forces in England and Wales are to the 43 Home Office forces. In April 2013, the Police and Fire Reform (Scotland) Act, 2012 amalgamated the eight Scottish police forces<sup>1</sup> into the Police Service of Scotland (‘Police Scotland’). The paper refers to policy and practices under the eight legacy forces and under Police Scotland

## **1. Police powers to stop and search in England and Wales and Scotland**

There are striking similarities in the underlying powers of stop and search in England and Wales and Scotland, with the statutory powers being virtually identical. The vast majority are

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<sup>1</sup> These were: Strathclyde, Lothian and Borders, Central, Fife, Tayside, Grampian, Northern, Dumfries and Galloway.

subject to reasonable suspicion and tend to follow a similar formula: the police may stop and search a person if they reasonably suspect an offence has, is, or is about to be committed, or that the person is in possession of a prohibited article. Some powers extend to vehicles, drivers and passengers. It is notable first, that just over half of these suspicion-based statutory powers apply across the UK, with a further eight specific to England and Wales and nine relating to Scotland. Among these powers, which range from ‘core’ criminal offences such as possession of drugs or stolen property, to environmental and wildlife offences, there are only five significant differences between the jurisdictions. Of these, two relate to the ‘core’ criminal offences that constitute the overwhelming majority of stops in both jurisdictions. In England and Wales, the police may stop and search persons suspected of having articles for use in criminal damage and fraud (Police and Criminal Evidence Act 1984 (PACE), s.1). In Scotland, the power to search for stolen goods includes searching for evidence of the commission of theft (Civic Government (Scotland) Act 1982, s.60).<sup>2</sup> There are a further two statutory suspicionless stop and search powers, so termed because they explicitly do not require that the officer suspect the person of a particular offence or of carrying prohibited items to stop and search them. These are the Terrorism Act 2000, s.47A and the Criminal Justice and Public Order Act 1994, s.60, which are UK wide. In 2015, Home Office forces accepted voluntary restrictions upon the use of s.60 under the Best Use of Stop and Search (BUSS) Scheme (see part two), thereby creating a cleavage between the jurisdictions. Specifically, a higher threshold is required for authorisation, the maximum duration of an authorisation has been reduced from 24 to 15 hours, and there is a requirement to inform the public after an authorisation has been issued and, where practicable, in advance (Home Office 2014, Lennon 2016).

Statutory differences between England and Wales and Scotland cannot explain the marked variation in search rates between the jurisdictions. Rather, the main point of divergence relates to non-statutory (or ‘consensual’) stop and search, used only in Scotland. Premised nominally on consent, officers can undertake a non-statutory search when a person ‘is not acting suspiciously, nor is there any intelligence to suggest that the person is in possession of anything illegal’ (Police Scotland 2014, p. 8). In England and Wales, non-statutory stop and search has been prohibited in relation to juveniles and persons incapable of giving consent since 1990 (the latter being unlawful in any event),<sup>3</sup> and across the board since 2003.<sup>4</sup> In England and Wales, the Macpherson Report’s recommendation to record all searches prompted the ultimate demise of non-statutory search (Macpherson 1999: Recommendation 61; see Sanders and Young 2007).

The legality of non-statutory stop and search as practiced in Scotland is questionable (Scott 2015, p. 45, Lennon 2016). It is trite law that consent must be freely given and fully informed. Thus, the person must be under no coercion, understand the potential consequences

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<sup>2</sup> In addition, Scotland has powers relating to offences involving areas subject to a special scientific interest notification (Nature Conservation (Scotland) Act 2004, s.43) and hunting wild animals with dogs (Protection of Wild Mammals (Scotland) Act 2002, s.7). England and Wales have powers relating to poaching offences (Poaching Prevention Act 1862, s.2). There are two further areas covered by each but in different ways. First, Scotland provides powers of stop and search to constables and water bailiffs in connection with offences relating to salmon and fishing, whereas only the latter have such powers in England and Wales (Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003, s.53 c.f. Salmon and Freshwater Fisheries Act 1975, s.31). Second, both grant constables’ power to stop and search persons or vehicles in relation to offences against deer, but in Scotland a warrant is the norm, with a requirement of urgency to search upon reasonable suspicion without a warrant (Deer (Scotland) Act 1996, s27(4)(b). C.f. Deer Act 1991, s.12(1)).

<sup>3</sup> PACE 1984 (Codes of Practice) (No. 2) Order 1990, SI 1990/2580.

<sup>4</sup> PACE (Codes of Practice) (Statutory Powers of Stop and Search) Order 2002, SI 2002/3075. See now Code A para.1.5.

of a search, that a search may be declined and that refusal will not of itself provide grounds for a statutory search nor trigger any other police action. In addition, the person must have the legal capacity to consent. In practice, these criteria are unlikely to be met in all cases. First, young children lack the capacity to consent. While the exact age at which a child has such capacity is ambiguous (see further Lennon 2016), it is clear that children under 8 years (the age of criminal responsibility) would not have the requisite capacity. It is questionable whether other young children would sufficiently understand the consequences of their action so as to be able to consent. As discussed in part two, non-statutory stop and search has fallen principally on young people, including children under the age of criminal responsibility. Persons under the influence of drugs or alcohol may also lack the capacity to consent.

Second, the police are not legally required to inform the person who has been stopped that they can refuse the search. In *Brown v Glen* Lord Sutherland stated that ‘there appears to us to be no logical reason why [the police] should be obliged to issue any caution to accompany a request for a search to be carried out when it must be perfectly obvious that the answer to that request may be either yes or no’ ((1998) SLT 115: 117). Research, however, shows that it is often not ‘perfectly obvious’. Dixon *et al.* observed that ‘consent’ ‘frequently consists of acquiescence based on ignorance’ or due to the person’s ‘appreciation of the contextual irrelevance of rights and legal provisions’ (1990, p. 348). One officer they interviewed stated that ‘[a] lot of people are not quite certain that they have the right to say no. And then we, sort of, bamboozle them into allowing us to search’ (ibid.). Leaving knowledge of one’s choice to refuse the request aside, the research raised the additional issue that agreement may be in be predicated on a conditioned response to police authority or a disbelief in one’s rights. It is doubtful whether such ‘acquiescence’, whatever its base, constitutes free, informed consent. ‘Bamboozling’ a person through misinformation or pressure, implied or explicit, clearly does not. Moreover, the inherent power imbalance between the police and the person stopped may prompt people to consent ‘not because they make a free choice... but because that is how people respond to the authority of the police (Delsol 2006, p. 116). Third, research shows that refusal can lead to a statutory stop and search, which undermines consent (Murray 2014a, p.21).

Routine stop and search engages the right to privacy under Article 8 of the European Convention of Human Rights (ECHR) (*Gillan v United Kingdom* (2010) 50 EHRR 45). In a non-statutory context, the questionable nature of the ‘consent’, at least in some cases, coupled with the virtually unfettered discretion of the officer regarding whom to search and the lack of information given to the person being stopped (or more generally available) makes it likely that the power is not prescribed by law. As this is a prerequisite for a justifiable infringement with the qualified rights under the ECHR, it is highly likely that non-statutory stop and search infringes Article 8 (Mead 2002, SHRC 2015, Lennon 2016. On stop and search and the ECHR generally, see: Lennon 2013a, 2015, 2016). The next part of the paper examines the significance of these observations, and shows how non-statutory stop and search provided a vehicle for policies that might, to some extent, be constrained by legal rules.

## 2. Policy and practice

The ascendancy of New Public Managerialism in the 1980s, the embedding of performance management in policing under the 1997 New Labour administration, and the related impact on policing is widely established. For example, research has highlighted an overemphasis on outputs at the expense of outcomes, and shown how targets can detract from less tangible police-work (Fielding and Innes 2006, McLaughlin 2007). Specifically in relation to stop and search, a performance-driven approach can be traced in both jurisdictions, albeit unevenly. In England and Wales, the Metropolitan Police Federation have documented the use of targets by the Metropolitan Police (2014). However it is unclear to what extent the remaining Home Office forces appropriated targets, either formal or informal.

Looking to the Scottish legacy forces, a distinction can be drawn between forces which used stop and search reactively, on a statutory basis and at an officer's discretion, and those which adopted a proactive approach. The latter was spearheaded by Strathclyde, Scotland's largest force (Murray 2015a). From circa 2007, Chief Constable Sir Stephen House promoted volume stop and search in Strathclyde using numerical targets. For instance, the force was tasked with conducting 459,438 searches in 2013/14 (ibid.). Whilst Strathclyde contained highly challenging areas in terms of crime and relative deprivation (Scottish Government, 2012), 2013) the number of searches seemed disproportionate: in 2010, Strathclyde accounted for 84% of recorded searches nationally, compared to a 43% share of the population and a 53% share of recorded offensive weapon handling and drug offences (ibid.). Most searches were undertaken on a non-statutory basis, which in effect, enabled a proactive policing approach, premised on deterrence rather than intelligence or suspicion. Put another way, officers used non-statutory tactics when the encounter seemed unlikely to result in detection (Murray 2015a).

The move to a single force heralded significant changes in terms of governance and the profile of Scottish policing (Anderson, Fyfe and Terpstra 2014). Reform sought to re-balance power between the Chief Constable, the Scottish Parliament and the Scottish Police Authority. In practice however, power coalesced around Sir Stephen House, the newly appointed Chief Constable, and Scottish Ministers (ibid.). Scottish policing was rapidly politicized' (Reiner 2010, p. 33), that is, subject to an unprecedented degree of critical media and political attention. From April 2013, Police Scotland rolled out proactive stop and search nationally, resulting in sharp increases in areas that hitherto took a more discretionary approach. Stop and search was set as a closely monitored Key Performance Indicator and a detection target set at 20%. More generally, officers and supervisors were pressured to increase search numbers and be more 'proactive' (HIMCS 2015, p. 55).

From 2014 the Westminster government introduced major reforms aimed at limiting the use of stop and search. In August 2014, the BUSS scheme launched in England and Wales. Although 'voluntary', the Home Secretary threatened to introduce legislation if the reform package, including the scheme, did not work (May 2014). Thirty-five of the forty-three Home Office forces implemented the BUSS scheme. The remainder partially implemented it, and, with the British Transport Police (BTP), committed to full implementation in 2015 (Home Office 2014). The BUSS scheme expanded the recording of outcomes and, as detailed in part 1, restricted the use of the Criminal Justice and Public Order Act 1994, s.60. The scheme also required that lay observers view the deployment of stop and search by officers, and provide

feedback, with a view to facilitating dialogue between the police and communities, and improving police-community relations. A ‘community complaints trigger’ aimed to clarify and expand on the complaints system, and could prompt forces to explain their use of the powers once a threshold (set by the force) is met.

### *Police practice*

Comparative analysis between England and Wales, and Scotland reveals a marked disparity in the use of stop and search which principally relates to non-statutory practice in Scotland. Looking first at the raw counts (Home Office 2015, SS.01), the number of recorded searches in England and Wales peaked at over 1.5 million in 2008/9. In 2012/13, recorded searches fell to just over a million, and by 2013/14, recorded searches had fallen to below one million for the first time since 2005/6. A small minority are suspicionless: around 5,000 in 2012/13 (0.5% of the total), down from a high of over 360,000 in 2008/09 (24% of the total). Significantly, since 2001, the primary driver of variation has been the use of suspicionless statutory powers. Between 2001/2 and 2010/11, officers recorded over 645,000 stop searches under the Terrorism Act 2000, s.44 (Home Office 2012). Its replacement, s.47A, has been authorised once in Northern Ireland, but not used in Great Britain to date (Anderson 2015). The use of the Criminal Justice and Public Order Act 1994, s.60 has remained more constant, usually around 36,000 to 46,000 per year. However, use of s.60 tripled between 2007/08 and 2008/09, rising to just over 150,000 before falling back to around 46,000 in 2011/12, and collapsing in 2012/13 to just under 5,000 and under 3,500 in 2013/14 (Home Office 2015, SS.01). This shift likely reflects changed policy from the Metropolitan Police Service (MPS) announced in 2012 (Nick Herbert MP, 17 July 2012, HC vol.594 col.220WH), the (to date unsuccessful) legal challenge of *R (Roberts) v Commission of Police of the Metropolis* [2014] EWCA Civ 69 and, latterly, the implementation of the BUSS scheme.

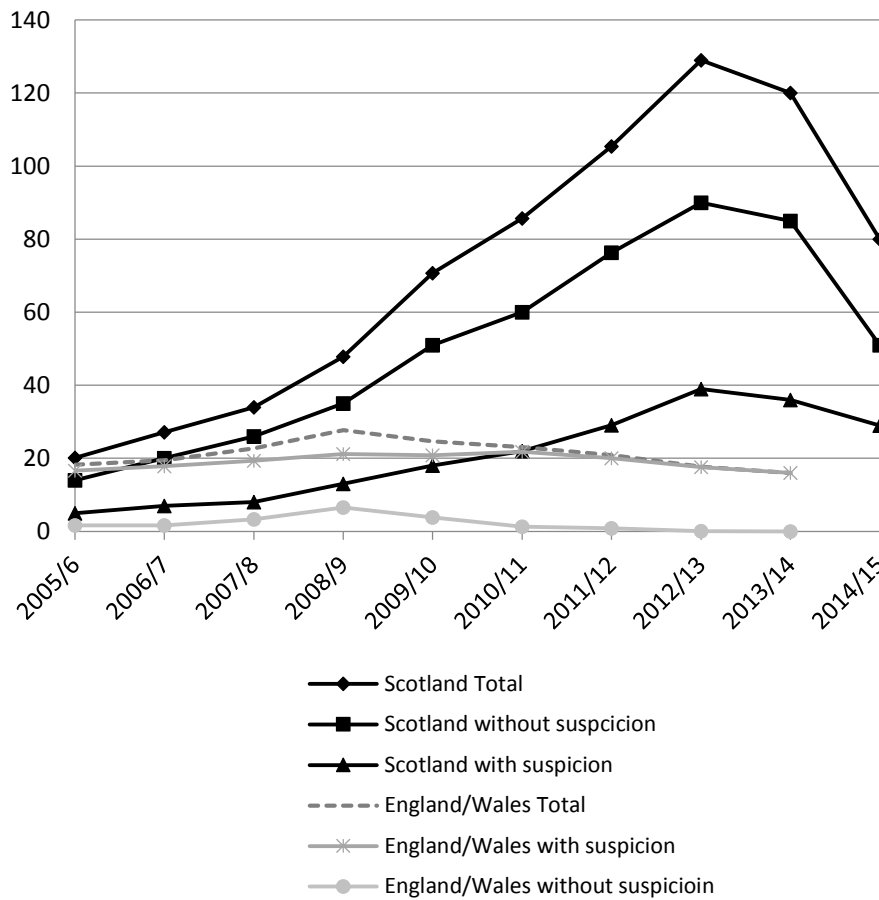
In Scotland, recorded searches increased by 550% between 2005 and 2012/13, from around 105,000 to 683,000. In 2013/4 (the first year of Police Scotland) recorded searches fell by 6% to around 643,000, and then by 34% in 2014/15, to around 426,000 (Murray 2015a, 2015b). Between 2005 and 2014, around 70% of recorded searches were undertaken on a non-statutory basis (Murray 2014a, HMICS 2015, p. 6). The absence of reliable data makes it impossible to assess the use of suspicionless statutory powers in Scotland. The Terrorism Act 2000, s.44 was used, albeit ‘barely’, in Scotland (Anderson 2011, para.8.19), but no data on the usage have been published and an FOISA request was refused.

In order to compare the two jurisdictions, Figure 1 shows per capita trends in England and Wales and Scotland between 2005/6 and 2014/15 (the population of England and Wales is nearly eleven times higher than Scotland).<sup>5</sup> The figure shows how from a position of near parity in 2005/6, a marked divergence opened between the two jurisdictions.

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<sup>5</sup> Mid-2014 population estimates: England and Wales, 57,408,700; Scotland, 5,347,600 (ONS, 2015).

Figure 1. Stop and search per 1,000 people 2005/6 to 2013/14 (England/ Wales) and 2014/15 (Scotland)



Source: Scottish Police Forces (FOISA); Police Scotland (2015b); Home Office (2014a) (Table SS.01 Stops and searches in England and Wales (excluding British Transport Police) by legislation).

Notes:

- a) Population calculations based on ONS Mid-year estimates, 2005/6 to 2012/13
- b) 2013/14 and 2014/15 Scotland calculations based on 2012/13 estimates.
- c) There is a 3 month time lag in the England/Wales and Scotland data between 2005 and 2010. In this period, Scotland data were presented by calendar rather than financial year.
- d) Missing data: Dumfries and Galloway and Fife were unable to provide data between 2005/6 and 2009/10. Tayside was unable to provide data between 2005/6 and 2008/9. However, in the years for which these three forces provided data, they accounted for 2 to 3 per cent of all searches in Scotland. As such, their commission is unlikely to affect the overall calculations.

Figure 1 shows that by 2012/13 the per capita search rate in Scotland was seven times higher than England and Wales, at 129 and 18 searches per 1,000 people respectively. The main driver of variation was the increase in non-statutory stop and search in Scotland, coupled with the fall in suspicionless statutory stop and search in England and Wales. Despite falling rates of recorded searches from 2013/14 onwards, search rates in Scotland remained over four times higher than England and Wales in the nearest comparable period, at 80 and 16 stop searches per 1,000 people respectively. A comparison of search rates expressed in terms of recorded crime reveals even greater variation. By 2013/14, the search rate per 1,000 recorded



crimes was ten times greater in Scotland than England and Wales, at 2,377 and 238 respectively. Put another way, Police Scotland recorded over twice as many stop searches as crimes.

Per capita search rates varied within each jurisdiction. In England and Wales, these ranged from 5 per 1,000 in several forces, to 45 per 1,000 in Cleveland in 2013/14 (Home Office 2015, SS.08). In the same period, search rates in Scotland ranged from 10 searches per 1,000 in Aberdeenshire and Moray, to 310 per 1,000 in Greater Glasgow. In 2013/14, officers recorded 371 searches per 1,000 in Glasgow (Police Scotland 2014, p. 79), compared to 35 per 1000 by the MPS (Home Office 2015, SS.08). In Scotland, the five Divisions with the highest search rates in 2013/14 (from 152 searches per 1,000 upwards) also had high rates of non-statutory stop and search, ranging from 63% in Argyll and West Dumbartonshire, to 76% in Ayrshire (Murray 2015b).

There was some variation in the reasons for searching people (non-statutory searches in Scotland are assigned 'reasons', which are included in this comparison). The most common reason in both jurisdictions was drugs. Viewed as a straightforward win by officers (Bear 2013), drugs accounted for 53% of recorded searches in England and Wales in 2013/14 (Home Office 2015, SS.02), and 44% in Scotland (HMICS 2015, p. 13). Thereafter divergence occurred. For England and Wales, the second most common reason was stolen property (21%), followed by going equipped for criminal damage (14%), offensive weapons (7%), 'other' (covering the various other categories described in section one above, including suspicion of being a terrorist) (4%), criminal damage and firearms (both 1%) (Home Office 2015, SS.02).

In Scotland, alcohol was the second most cited reason (31%), although this statistic also included confiscations under Section 61 of the Crime and Punishment (Scotland) Act 1997.<sup>6</sup> Offensive weapons were the reason for 18% of recorded searches (2.5 times higher than England and Wales) and stolen property for 7% of searches. Others reasons, including firearms, accounted for less than 1% of searches. Overall, the distribution reflected a wider policy concern with serious disorder and binge-drinking (Audit Scotland/HMICS 2011, p. 38) or 'blades and booze' (Scottish Executive 2003). However not all forces translated the policy into stop and search, particularly those with lower rates of non-statutory search. For example, in Tayside and Northern, alcohol accounted for 1% and 3% of recorded searches respectively (REF\*).

It is not possible to compare the effectiveness of stop and search in terms of 'hit-rates'. In England and Wales, this refers to the proportion of searches that result in an arrest. In 2013/14, the arrest rate was 12% (Home Office 2015, SS.08). Given the absence of a requirement of suspicion, it is unsurprising to find the rate for suspicionless searches was lower, at 5%. In Scotland, detection constitutes the 'hit-rate'. In 2013/14, the detection rate was 19%, although this was inflated by the (unquantified) inclusion of alcohol confiscations under s.61 (HMICS 2015, p. 43). There was also a significant difference in detection rates for statutory and non-statutory searches, at 28% and 16% respectively (ibid., p.3). There have

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<sup>6</sup> Alcohol searches and seizures were recorded separately from June 2015 onwards. The respective number of alcohol searches and seizures prior to this point is unknown.

been some attempts to portray low hit-rates as a ‘success’, as evidence that stop and search is functioning as intended by permitting the police to confirm or allay suspicion without recourse to arrest, or as evident of a deterrent effect (Murray 2015a). In a non-statutory context, the fact that there is no robust evidence to support a deterrent effect (Delsol and Shiner 2015) undermines the argument that low detection rates represent a successful outcome. Leaving the suspicionless powers to one side, Bowling’s argument that suspicion can hardly be ‘reasonable’ (and the stop therefore not lawful), when the suspicion is unfounded in the vast majority of cases is compelling (Bowling 2007).

Some demographic differences are evident.<sup>7</sup> In England and Wales, stop and search has long been associated with the disproportionate policing of black, Asian and minority ethnic (BAME) communities (Scarman 1981, Holdaway 1996, Macpherson 1999, EHRC 2010). In 2011/12, in comparison with ‘White’ people, ‘Black’ people were six times more likely to be stopped and ‘Asian’ people and those of ‘mixed’ ethnicity were twice as likely to be stopped (Ministry of Justice 2013, p. 41). When the London forces are excluded the disproportionality remains, albeit at a lower level, with, respectively, ‘Black’, ‘Asian’ and ‘Mixed ethnicity’ persons being 2.8, 1.4 and 1.6 times more likely to be stopped than ‘White’ persons (ibid., p. 42).

In Scotland, searches have generally targeted white working-class boys (McAra and McVie 2005, p. 28, Murray 2015, p. 284). Unlike England and Wales, ethnicity has not surfaced as a high-profile concern (Reid Howie 2001) although poor recording has precluded more robust conclusions. The age distribution is concerning. For example, in 2014/15, officers recorded more searches on sixteen year olds in Glasgow than the resident population of sixteen year olds (Murray 2015b). Equally problematic is searching very young children. In Scotland, officers recorded over 1,300 searches on children under ten between 2006 and 2010 (FOISA). The closest equivalent data for the Home Office forces is from the All Party Parliamentary Group on Children’s (APPG) report ‘Children and the Police’ (2014) which found that 1,136 searches were recorded on children under ten between 2009 and 2013 across twenty-two forces (excluding the MPS).<sup>8</sup> In Scotland, officers recorded 262 on children under ten in 2013/14. Whilst these figures may include inputting errors,<sup>9</sup> the Scottish annual figure is substantially higher than the three year total from the MPS,<sup>10</sup> which recorded 101 searches on under ten year olds between November 2011 and October 2014 (FOI), despite the MPS having a force population 1.9 million greater than that of Police Scotland (SPA 2014, p. 10).

Taking an overview, of the jurisdictions, the main points of similarity and divergence are as follows. First, a low hit-rate and focus on drugs is evident in both jurisdictions. There are however, several points of divergence. First, a strong focus on alcohol and weapons is apparent in some (but not all) parts of Scotland. Second, stop and search in Scotland has not coalesced around ‘race’ in the way that it has in England and Wales (Delsol and Shiner 2006, p. 244). Rather, criminalisation has hinged on social class and exclusion (Croall and

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<sup>7</sup> Space precludes a detailed consideration of gender. Whilst there is some evidence of males are searched disproportionately, this does not appear to be sizeable, compared to recorded data on gender and offending (Murry, 2015; p.150).

<sup>8</sup> The forces were: Avon and Somerset; Bedfordshire; Cambridgeshire; Cheshire; Cumbria; Derbyshire; Dorset; Essex; Gloucestershire; Gwent; Lancashire; Norfolk; North Wales; North Yorkshire; Staffordshire; Suffolk; Sussex; Thames Valley; Warwickshire; West Mercia; West Midlands; West Yorkshire.

<sup>9</sup> See: APPG, 8; HMIC, 2015.

<sup>10</sup> The MPS force population is 1.9 million higher than the Police Scotland force population (SPA 2014, p.10).

FronDIGOUN 2010, p. 17). Whilst these criteria have been flagged in some English and Welsh research (Mooney and Young 1984, Jefferson and Walker 1992, Waddington *et al.*, 2004), the narrative around class is stronger in Scotland. In part, this divergence stems from raw demographic differences (Bond 2006, p.14), and the smaller proportion of BAME people in Scotland. By far the most significant divergences between the two jurisdictions are the scale of stop and search in Scotland and the related use of non-statutory searches.

### **3. Restraining factors: safeguards and regulation**

It is well documented that police cultures are resistant to legal rules and can, and do, subvert them. As Hawkins observes, rules are not ‘mechanically applied’ (1986, p.1164). Complicating the picture is the fact that stop and search is part of street policing where ‘norms and practices of the street level police officer take priority over outside regulation’ (Young 1994, p. 14). Relatedly, both HMIC (2013, pp. 28-29) and HMIC (2015) have reported inadequate supervision over the encounter and the subsequent search record. It is therefore unsurprising that stops and searches are perennially under-recorded (Bland 2000, Murray 2015a); that when records are made they are incomplete; that not all officers were explaining the procedure or rights to the person stopped; and there are not always sufficient grounds for reasonable suspicion (HMIC 2013, ch. 6). Yet these observations do not suggest that legal rules have no effect (Holdaway 1989, Ericson 1993). This part of the paper investigates the legal and quasi-legal regulatory mechanisms in the two jurisdictions, and shows how a lack of safeguards and regulations further enabled a permissive climate in Scotland. The analysis examines three factors aimed at limiting police discretion – reasonable suspicion, officer conduct requirements, and recording practices – and reveals how these differ in the two jurisdictions.

#### *a) Reasonable suspicion*

Reasonable suspicion is one of the major safeguards against the arbitrary exercise of stop and search powers. In England and Wales, PACE Code A supplements the statutory requirements, providing additional detail on required conduct during stop and search encounters. A breach of the Code is a disciplinary offence and may be entered into evidence, but is of itself neither a criminal nor a civil wrong (PACE, ss.67(10)-(11)). Police Scotland is subject to the Code when stopping and searching under the Terrorism Act 2000 (Home Office 2012, 2015b).

Code A explains that the officer must have formed a genuine suspicion in their own mind and that reasonable suspicion must be based on objective grounds, whether facts, information/intelligence, or the behaviour of the person (Home Office 2015a, para.2.2). In Scotland, reasonable suspicion is set out in Standard Operating Procedures (SOP) as suspicion that is ‘backed by a reason capable of articulation and is something more than a hunch or a whim’ (2015c, p.10). This looser definition could encompass exclusively subjective grounds undermining the safeguarding role of reasonable suspicion.

Both Code A and Police Scotland’s SOP state that reasonable suspicion cannot be based on personal factors such as age, gender, race or stereotypes (Home Office 2015, para.2.2B,

Police Scotland 2014, p. 6), but differ on the issue of prior convictions. Code A rejects their use, either alone or in combination with other factors (Home Office 2015, para.2.2B), whilst they are listed as a relevant factor in the SOP (Police Scotland 2014, p. 11). The Police Scotland position is based on *Bett v Lees* (1998) SLT 1069, although that the prior convictions were only one of two factors that, taken in conjunction, gave grounds for reasonable suspicion and that the case pre-dates the Human Rights Act 1998. In England and Wales, Code A permits personal factors relating to persons wearing gang insignia and particular organised protest groups in limited circumstances (Home Office 2015, para.2.6). It is unclear from the Police Scotland SOP whether these exceptions are permitted, for instance they may come within ‘suspects (sic) clothing’, although this appears to be more widely drawn (Police Scotland 2014, p. 6). Overall, Police Scotland’s SOP explanation of reasonable suspicion lacks clarity and detail. Code A’s explanation is more expansive and understandable for both officers and members of the public. However, the crucial issue relates to objective factors as the basis for suspicion, which is a necessary requirement in law, but not clearly defined in the SOP.

Of course, reasonable suspicion remains an imperfect safeguard that is subject to different interpretations, primarily because of the layers of discretion involved. These include the officer’s discretion as to whether the circumstances amount to reasonable suspicion; their discretion as to whether to proceed against the person, given reasonable suspicion; and, the discretion afforded by the broad base offences (such as criminal damage) (Williams and Ryan 1986, Bland *et al.* 2000). Research has consistently found that extraneous factors are taken into account when determining who to stop and search and that a proportion of the stops and searches do not meet the requisite standard (Bottomley 1991, Quinton *et al.* 2000, Quinton 2011, HMIC 2013). Nonetheless, the value of reasonable suspicion is made clearer by the trends shown in figure 1. Across the jurisdictions, suspicionless searches fuelled the respective upward trends, more markedly so in Scotland, where authorization for non-statutory stop and search is not required (in contrast to the statutory suspicionless powers) and officers are not restricted as to the items they can search for.

#### *b) Regulating conduct*

Rules and regulations pertaining to officer conduct and standards can also put limits on police discretion. In England and Wales, Code A (para. 3.8) requires officers to identify themselves, showing documentary evidence if not in uniform, provide their name – or warrant number in counter-terrorist stops or where giving their name may put the officer in danger – and station, the grounds for carrying out the search and the object of the search. The stringency of these requirements when challenged (albeit that such legal challenges are comparatively rare (see further Fielding 2005), is underlined by *R v Christopher Bristol* [2007] EWCA Crim 3214, where a police officer saw what he believed was a wrap of drugs in the appellant’s mouth and, without identifying himself or station, applied mandibular pressure and stated ‘drugs search, spit it out’. No drugs were found and a struggle ensued. The appellant was convicted of intentionally obstructing an officer in the execution of his duty and sentenced to twelve months imprisonment. His conviction was quashed upon appeal. The court pointed to the clear wording in the statute and that, notwithstanding the ‘emergency’ nature of the situation, it was not impracticable for the officer to state his name and station. These provisions apply

even where the officer and suspect are known to each other (*R (Michaels) v Highbury Corner Magistrates' Court* [2009] EWHC 2928 (Admin)).

Officer conduct in Scotland is less proscribed. An officer must identify themselves only if not in uniform. A person must be informed of the reason for the search for some powers (e.g. Criminal Law Consolidation (Scotland) Act 1995, ss.48 and 50), but not others (e.g. Civic Government (Scotland) Act 1982, s.60) thereby resulting in different standards of legal protection across similar powers.

### *c) Recording practices*

Police accountability for stop and search depends on accurate recording. First, relevant and complete data are required in order to make stop and search transparent (through data publication) and to understand the impact on crime and the community, though scrutiny and analysis (HMIC 2013, p. 6, also Bichard 2004). Second, the provision of a 'receipt' enhances street level accountability by placing responsibility on individual officers. The onus to provide a receipt also means that officers may 'think twice' about using their powers (Bland *et al.* 2000). This focus on controlling discretion through post-hoc scrutiny (or 'bureaucracy'), especially through the recording of searches dominated the stop and search debate in England and Wales, particularly post-Macpherson (Flanagan 2008, Wilding 2008).

In England and Wales, under PACE, s.3, officers must record every search made, including: the date, time and place; the name(s) of the officer(s) involved; the self-defined ethnicity of the person searched and, if different, the ethnicity as perceived by the officer; the grounds for and object of the search and whether the search resulted in an arrest. The BUSS scheme extended the recording requirements to specify one of seven outcomes, including cautions, penalty notices and community resolution in addition to arrests (Home Office 2014). This more nuanced 'hit-rate' aims to facilitate analysis of the link between the object of the search and its outcome and the effectiveness of the powers more generally. Officers must complete the search record on the spot, or as soon as reasonably practicable, and make a receipt available to the person searched. Officers cannot demand the person's details short of arrest, and under the most recent iteration of Code A, should not ask for their details to complete the search form (Home Office 2015a, para.4.3A).

The introduction of new recording procedures in June 2015 brought Scotland broadly in line with the Home Office forces. Previously, recording standards were ill-defined, unsystematic, and did not allow links to be made between the grounds for the search, powers used and the outcome. In March 2015, HMICS reported that the recording process lacked clarity, to the extent that it was unclear what a stop and search is, or how it should be recorded (2015, p. 5). In a statutory context, recording is underpinned by the Criminal Procedure (Scotland) Act 1995, s.13 which states that if a constable has reasonable grounds for suspecting that a person has committed or is committing an offence she may require the person to give their name, home address, date of birth, place of birth and nationality. These details, with the exception of name and address, are stored on the national stop and search database. In a non-statutory context, officers may ask, not demand, a person's details. Whilst there is no duty on the person to provide these, officers are not required to inform the person of this fact. Consistent with Delsol's observation that people consent 'because that is how people respond to the

authority of the police' (2006, p. 116), Police Scotland data (2015) indicates that most people give their details when asked. For example, people gave age details in virtually all negative non-statutory searches, despite no requirement to do so. Officers record some details not provided for in law. For example, HMICS (2015, pp. 76-77) found that officers recorded details as diverse as occupation and telephone numbers in their notebooks. Officers do not make a receipt available to the person searched, which limits street-level accountability. Also, those who have been searched cannot document the encounter, nor substantiate repeat search encounters (c.f. Delsol and Shiner 2006, p.255).

Street powers of stop and search have inherently high levels of discretion (Young 1994). The challenge therefore is to provide multiple layers of accountability, through mechanisms such as those discussed here, together with robust supervision. In England and Wales, particularly since the introduction of the BUSS Scheme, accountability is factored in before the encounter, through requiring reasonable suspicion; during the encounter, by imposing duties on officers; and after the encounter, through post-hoc supervision and transparency. In the case of suspicionless statutory powers, the authorization process attempts to balance the greater 'front-end' discretion, exercised by the authorising officers, through heightened 'back-end' discretion, exercised by the officer conducting the search (Ip 2013). Prior to 2015, these layers of accountability were not replicated in Scotland. Reasonable suspicion was absent in the majority of stops, few limits were placed on officer conduct, nor was the use of stop and search balanced by heightened 'front-end' or indeed post-hoc accountability. Again, we would argue that the disparity between England and Wales, and Scotland reflects the extensive discretion afforded by dint of these conditions; that a lack of clear rules around reasonable suspicion, officer conduct and recording further exacerbated the volume approach shown in part two. Added to this is the fact that until the move to a single police force in April 2013, the use of stop and search in Scotland was untroubled by political and public scrutiny. It is to this final issue that we now turn.

#### **4. Political and public scrutiny**

There is a marked difference between the politics of stop and search in England and Wales and Scotland, principally in regard to the maturity of the debate. In England and Wales, stop and search politics have evolved over three decades. Forged against a backdrop of brittle relationships between the police and BAME communities, the politics are now well-established and marked by a demonstrable willingness to address issues – although the perennial nature of the complaints several decades on reflects, perhaps, an unwillingness to adopt radical change. In Scotland, it is only since the formation of the single service in April 2014 that any semblance of accountability has emerged. The analysis below suggests that the divergence in search rates in the two jurisdictions also relates to the respective histories of political and public scrutiny. There are, of course, other relevant factors relating to scrutiny, notably the impact of the media, however, a full discussion of such issues are beyond the scope of this article.

In England and Wales, the use of stop and search has been subject to scrutiny of varying intensity for over three decades. The 1981 Royal Commission on Criminal Procedure (RCCP), whose report provided the genesis of PACE, considered stop and search powers, alongside various other investigative police powers. It proposed that the existing powers be rationalised and subsumed within one power to stop and search for stolen goods or prohibited articles, arguing that ‘reasonable suspicion’ and requiring a record of each search provided sufficient safeguards against misuse (Philips 1981, paras.3.25-3.26). The recommendation took form as PACE, section 1 which, for many of the police forces, entailed an extension of their existing powers (Reiner 2010).

Three months after the RCCP reported, the Brixton Riots erupted. The subsequent Scarman Report discussed stop and search in two brief paragraphs, arguing the powers were necessary to combat street crime and that an objective test of reasonableness, subject to review by the courts, provided a sufficient safeguard (Scarman 1981, paras.7.2-7.3). Given the interaction between stop and search, other street powers (notably ‘sus’) and police-community tensions, it is surprising that the Report did not subject the powers to greater analysis or engage with the arguments that the powers were used in a discriminatory manner (Bowling and Phillips 2003 although c.f. Reiner 2010, pp. 163, 246 defending Scarman’s overall critique of discrimination by the police).

The next significant scrutiny came with the Stephen Lawrence Inquiry (Macpherson 1999). While nominally limited to matters arising from the death of Stephen Lawrence and the investigation and prosecution of racially motivated crimes, a number of the Inquiry’s recommendations related to stop and search. The Inquiry pointed to the countrywide disparity in stop and search figures as one indicator of institutional racism, concluding that, while the figures raised complex issues, ‘there remains...a clear core conclusion of racist stereotyping’ (ibid., para.6.45). Its uncompromising tone and acknowledgment of the deep-seated police-community tensions around the use of the powers, regarded as a ‘universal’ area of complaint (ibid., para.45.8), distinguish it from earlier reports. On its recommendation all stops and searches began to be recorded, not just those under PACE, and police authorities undertook publicity campaigns to inform the public of the relevant law and their rights (PACE (Codes of Practice) Order 2004, SI 2004/1887, APA 2009). As noted in part one, the report influenced the decision to prohibit non-statutory stops and searches or ‘so called ‘voluntary’ stops’ (Macpherson 1999, para.45.8).

During the mid to late 2000s the use of the Terrorism Act 2000, s.44 became the most prominent issue (see Home Affairs Committee, 2005, Carlile, 2008, Joint Committee on Human Rights, 2009). However, the next major report to tackle stop and search in general was the Equality and Human Rights Commission’s ‘Stop and Think’ (EHRC 2010). The Commission pointed to some areas of best practice but remained pessimistic, given the consistent racial disproportionality evident in the deployment of stop and search. The report rejected the various justificatory arguments as inadequate and suggested the powers may have been used in a discriminatory and unlawful manner. It subsequently held further inquiries into five forces, initiating legal action against two of these, with positive results in terms of driving down disproportionality and overall search rates (EHRC 2013).

Next, the Home Secretary commissioned the HMIC Report ‘Stop And Search Powers: Are The Police Using Them Effectively And Fairly?’ (2013), prompted in part by the 2011 riots. Its conclusions were damning, highlighting poor leadership, ineffective supervision, failure to adhere to recording requirements and the likelihood of a large number of stops without reasonable grounds. In terms of effectiveness, it concluded that ‘[v]ery few forces could demonstrate that use of stop and search powers were based on an understanding of what works best to cut crime’ (ibid., p.8). The HMIC made ten recommendations in relation to training, guidance on effective and fair use, supervision and monitoring of stops and stop forms, stop forms, complaints procedures, communication with the public, and the use of technology and processing intelligence.

In 2014, while laying the responses to a public consultation on stop and search before Parliament, the Home Secretary announced a series of measures aimed at reducing the overall number of stops and searches and improving the hit-rate (May 2014). There were four main developments. First, the College of Policing reviewed its stop and search training, and published a definition of what a ‘fair and effective’ stop and search (2015). Second, PACE Code A was revised to clarify the meaning of ‘reasonable suspicion’. Third, stop and search was added to the Government’s crime maps and finally, the BUSS scheme was announced (see part two).

In 2015, HMIC published a follow-up report that tracked the progress of forces against the ten recommendations from its 2013 report and added additional recommendations. It concluded that of the ten original recommendations, good progress had been made towards one, some progress towards four and insufficient progress towards the remainder. Finally, the HMIC’s PEEL inspections include a question whether stop and search decisions are fair and appropriate (2015a). This on-going scrutiny by the HMIC is a new departure and its latest report serves as a reminder of the challenges involved in changing policing cultures.

### *Scotland*

In Scotland, scrutiny of stop and search is in its infancy. Looking back, divergence between the jurisdictions may be traced to the publication of the Macpherson report, which in regard to stop and search received a non-committal response in Scotland. The Association of Chief Police Officers in Scotland (ACPOS) Cross-standing Committee Working Group initially considered the recommendations (NAS HH41/3406, 27/9/1999). Viewed exclusively through the prism of ‘race’, and with no clear evidence of ethnic disproportionality, the Group deemed the introduction of accountability mechanisms for stop and search unwarranted.

This logic subsequently fed into ‘The Stephen Lawrence Inquiry: Action Plan for Scotland’. Published by the Scottish Executive in July 1999, the plan stated that the stop search recommendations would require a ‘large bureaucracy to implement’ and noted a lack of criticism to date. Towards the end of 1999, a Scottish Executive appointed Steering Group commissioned an independent study into young people’s experiences of stop and search, which makes for prescient reading. In addition to recommendations on recording, publishing statistics and making people aware of their rights, the researchers suggested that ACPOS provide guidance on searching children, and engage with the legal and civil liberties issues raised by non-statutory stop and search. Caution was advised over the use of performance



targets, and it was suggested ‘as a matter of urgency’, that all forces address ‘the perceived failure of some officers to interact routinely with members of black and minority ethnic communities’ (Reid Howie Associates 2002, p. 102). However, following the dissolution of the Steering Group in 2002, no initiatives were forthcoming. Prompted by the Race Relations (Amendment) Act 2000, Scottish forces began to record stop searches from 2005 onwards, but did not publish national statistics.

Within the first year of Police Scotland, media reports began to pick up the scale of stop and search. In January 2014, the issue came to the fore following the publication of a report by the Scottish Centre for Crime and Justice Research (SCCJR) which revealed the scale of search activity, the extensive use of non-statutory stop and search, and the disproportionate targeting of young people (Murray 2014a). Published into a politicized and volatile policing climate, the report was met with a defensive response from the Scottish Government and Police Scotland, who asserted that high volume stop and search had significantly contributed to the fall in violent crime in Scotland, and represented a proportionate policing response (Guardian, 17/1/2014, SP Official Report 23/1/2014, col. 26968). In May 2014, the SPA’s ‘Scrutiny Review’ of stop and search policy and practice challenged the Scottish Government and Police Scotland position. The Authority found ‘no robust evidence to prove a causal relationship between the level of stop and search activity and violent crime or anti-social behaviour’, nor could it ‘establish the extent to which use of the tactic contributes to a reduction in violence’ (2014, p. 17).

Thereafter, against a backdrop of intense media and political scrutiny, Police Scotland announced a number of policy initiatives. These included: the establishment of a National Stop and Search Unit; the abolition of non-statutory searches on children aged eleven and under; a pilot scheme aimed at improving effectiveness, recording practices and community confidence; and the appointment of Expert Reference Groups to provide informed comment on policy development (HMICS, 2015). Whilst these changes prompted a fall in the number of searches on young children, in February 2015, it was revealed that some non-statutory searches were still being carried out on under twelves, despite a commitment to abolish the practice (BBC 4/2/2015). The ensuing scandal crystallized existing criticism of non-statutory stop and search by the Scottish Human Rights Commission, the Scottish Commissioner for Children and Young People and opposition MSPs. In response, the Scottish Government and Police Scotland announced their broad support for the abolition of non-statutory stop and search, with the proviso that ‘alternative measures’ would be considered, including search powers for alcohol. Shortly thereafter, in a move which signalled the first serious democratic engagement with wider regulation of stop and search powers, the Scottish Liberal Democrats tabled a series of amendments to the Criminal Justice (Scotland) Bill 2013 to place stop and search on an exclusively statutory footing, introduce a statutory code of practice, improve recording and require annual publication of data.

In March 2015, HMICS reported that it had no confidence in Police Scotland’s stop and search data; that training was limited; that targets, key performance indicators and pressure from managers to carry out searches had resulted in negative behaviours; and that the internal governance processes were unclear. Echoing the SPA, the HMIC noted a lack of evidence to support a causal relationship between search rates and crime reduction. Key

recommendations included consultation on a Statutory Code of Practice; a presumption towards the use of statutory powers; clear counting rules; and improved recording procedures. Thereafter, the Scottish Government (31/3/2015) appointed an Independent Advisory Group to examine the use of stop and search powers. Both the Group's remit and the appointment of John Scott QC, solicitor advocate and human rights lawyer, as Chair, signalled a major shift by the Scottish government, which under the previous Justice Secretary, had viewed stop and search as an 'operational matter' (2/4/2014 MacAskill, SP Official Report col. 29702). In September, following the publication of the Independent Advisory Group report (Scott 2015), the Justice Secretary, Michael Matheson, announced that non-statutory stop and search would end and that the Scottish Parliament would establish a Statutory Code of Practice. At the time of writing, both proposals have been added to the Criminal Justice (Scotland) Bill which is currently under consideration by the Scottish Parliament.

Looking back, the absence of significant or sustained scrutiny into stop and search in Scotland undoubtedly fed into the permissive and unregulated approach to the powers. By the same token, the degree of critical scrutiny following reform prompted tighter rules and regulation, and a fall in search levels. In addition to formal scrutiny by the SPA and HMICS, critical media attention placed further pressure on Police Scotland and the Scottish Government. With coverage no longer diluted along regional lines, stop and search surfaced as a national policing 'scandal' that tapped into wider concerns around a lack of local accountability and a target culture (Murray 2015a p. 322). By August 2015, the number of recorded searches and seizures had fallen by 81% compared to the same period in the previous year. Of these, 25% were non-statutory and 75% statutory, more than a reversal of the long-standing ratio between the two types of searches (Police Scotland 2015).

## **Conclusion**

The findings in this paper provide an example of how regulation and scrutiny can influence police practice. To begin, the paper argued that the variation in search rates between England and Wales, and Scotland is not explicable in terms of statutory powers or crime trends, which are broadly similar. Looking back, the analysis suggests a target-driven proactive policy, based on volume rather than detection, initiated the rise of stop and search in Scotland. Whilst some forces retained a reactive, suspicion-led approach, the volume of searches in Strathclyde drove up the national search rate. The salient observation for our purposes is that this approach was enabled by a permissive regulatory environment: by the ability to search on a non-statutory basis, poor accountability, and a lack of scrutiny and oversight. Whilst an emphasis on performance was evident in England and Wales, principally in the Metropolitan police, comparative analysis suggests that police discretion was, to some extent, tempered by legal and quasi-legal rules and regulations. Recorded search rates in England and Wales rose by 84% between 2003/4 and 2008/9, compared to a 325% increase in Scotland in the nearest comparable six year period (2005 to 2010). The paper also provides insights into the role of scrutiny. In England and Wales, a series of legal challenges prompted a sharp fall in suspicionless statutory searches. In Scotland, an unprecedented degree of media and political interest under the single service can be linked to the fall in search levels.

In terms of future research, the findings underline the need, as recognised by others such as Delsol and Shiner (2006), to broaden the scope of enquiry around stop and search. Although this paper focuses on Great Britain, globally stop and search is often viewed through the lens of 'race' and/or ethnicity (Weber and Bowling 2012). In the case of Scotland, it is perverse that the absence of one form of disproportionality was used to avoid, in an example of Nelsonian blindness, acknowledging other flaws in the practice. The lens through which stop and search is scrutinised needs to be widened beyond 'race'. One could view the various groups (and sub-groups) that are subjected to greater levels of stop and search as falling within Lee's broad category of 'police property' (1981, pp. 53-4). Discovering which characteristics of each group makes them susceptible will require researchers to disentangle the multiple direct and indirect discriminations suffered by the communities or groups, whether cumulatively or intersectionally. Disaggregation would permit a closer investigation of the origins of disproportionality and could highlight areas where accountability can, and should be, strengthened. Analysis may also reveal under-researched commonalities. For instance, it is clear that young males bear the brunt of stop and search in England and Wales, and Scotland. Socio-economic status is another likely common thread (see further Loftus 2009). Whilst this approach has been taken before (Jefferson and Walker 1992), stop and search remains principally viewed through the lens of 'race'. In this regard, the findings are relevant beyond the geographical focus presented here. Specifically the findings show how such a framing can overlook other examples of disproportionality, as well as issues of accountability and effectiveness more generally. A broader focus on intersectional disproportionality is urgently needed, alongside a more general focus on accountability over these high-discretionary powers.

## References

- All Party Parliamentary Group for Children, 2014. *Inquiry into 'Children and the Police': Initial Analysis of information request to police forces*. London: NCB.
- Anderson, D., 2011. *Report on the Operation in 2010 of the Terrorism Act 2000 and of Part I of the Terrorism Act 2006*. London: The Stationary Office.
- Anderson, D., 2015. *The Terrorism Acts in 2014*. London: The Stationary Office.
- Audit Scotland/HMICS, 2011. *Strathclyde Police and Strathclyde Police Authority, Best Value Audit and Inspection*. Edinburgh: Audit Scotland.
- Bear, D., 2013. *Adapting, Acting Out, or Standing Firm: Understanding the Place of Drugs in the policing of a London Borough*. Thesis (PhD). LSE.
- BBC, 2015. *Police search hundreds of children despite commitment* [online]. Available from: <http://www.bbc.co.uk/news/uk-scotland-31022269> [accessed 8/3/2015].
- Sir Bichard, M., 2004. *The Bichard Inquiry Report*. London: The Stationary Office.
- Bland, N., Miller, J. and Quinton, P., 2000. *The Impact of Stops and Searches on Crime and the Community*. London: Home Office, Police Research Series, Paper 127.
- Bond, R., 2006. Belonging and Becoming: National Identity and Exclusion. *Sociology*, 40(4), 609-626.
- Bottomley, K., 1991. *The impact of PACE: policing in a northern force*. Hull: Centre for Criminology and Criminal Justice, University of Hull.
- Bowling, B., 2007. Fair and effective policing methods: towards 'good enough' policing. *Journal of Scandinavian Studies in Criminology and Crime Prevention*, 8(1), 17-32.
- Bowling, B., and Phillips, C., 2003. Policing ethnic minority communities. In: T. Newburn ed. *Handbook of Policing*, Abingdon: Willan, 528-555.
- Bradford, B., 2015. *Is Crime Really Falling?* Oxford: Centre for Social Investigation.
- Lord Carlile, A., 2008. *Report on the operation in 2007 of the Terrorism Act 2000 and of Part I of the Terrorism Act 2006*. London: The Stationary Office.
- College of Policing, 2015. *Stop and search* [online]. Available from: <https://www.app.college.police.uk/app-content/stop-and-search/> [Accessed 26<sup>th</sup> October 2015].

Croall, H. and Frondigoun. L., 2010. Race, ethnicity, crime and justice in Scotland. In: H. Croall, G. Mooney and M. Munro eds. *Criminal Justice in Scotland*. Abingdon: Willan, 111-131.

Delsol, R., 2006. *Institutional Racism, the Police and Stop and Search: A Comparative Study of Stop and Search in the UK and USA*. Thesis (Phd). University of Warwick.

Delsol, R. and Shiner, M., 2006. Regulating Stop and Search: A Challenge for Police and Community Relations in England and Wales. *Critical Criminology*, 14(3), 241-263.

Delsol, R. and Shiner, M., 2015. *Stop and Search. The Anatomy of a Police Power*. Basingstoke: Palgrave Macmillan.

Dixon, D., 1997. *Law in Policing: Legal Regulation and Police Practices*. Oxford: Clarendon Press.

Dixon, D., Coleman, D., and Bottomley, K., 1990. Consent and the legal regulation of policing. *Journal of Law and Society*, 17 (3), 346-348.

Equality and Human Rights Commission, 2010. *Stop and Think: A Critical Review of the Use of Stop and Search Powers in England and Wales*. London: EHRC.

Ericson, R., 1993. *Making Crime: A Study of Detective Work*. Toronto: University of Toronto Press.

Fielding, N., 2005. *The Police and Social Conflict*. London: Glass House Press.

Fielding, N. and Innes, M., 2006. Reassurance Policing, Community Policing and Measuring Police Performance. *Policing and Society*, 16(2), 127-145.

Flanagan, R., 2008. *The Review of Policing: Final Report*. London: The Stationary Office.

Carrell, S., 2014. Police stop and search rates in Scotland four times higher than in England. *Guardian*, 17 January.

HMIC, 2013. *Stop and Search Powers: Are the Police Using them Effectively and Fairly?* London: HMIC.

HMIC, 2015. *Stop and Search Powers 2: Are the Police Using them Effectively and Fairly?* London: HMIC.

HMIC, 2015a. *PEEL 2015 questions*. [online] Available from: <https://www.justiceinspectorates.gov.uk/hmic/our-work/peel-assessments/peel-2015-questions/> [Accessed 26 October 2015].

- HMICS, 2015. *Audit & Assurance Review of Stop and Search: Phase 1*. London: HMIC.
- Holdaway, S., 1989. Discovering Structure: Studies of the British Police Occupational Culture. In: M. Weatheritt ed. *Police Research: Some Future Prospects*. Aldershot: Avebury.
- Holdaway, S., 1996. *The Racialisation of British Policing: Black or White?* Basingstoke: Macmillan.
- Home Affairs Committee, 2005. *Terrorism and Community Relations*. London: The Stationary Office, Cm 6593.
- Home Office, 2012. *Code of Practice (England, Wales and Scotland) for the Exercise of Stop and Search Powers Under Sections 43 and 43A of the Terrorism Act 2000, and the Authorisation and Exercise of Stop and Search Powers Under Section 47A of, and Schedule 6B to, the Terrorism Act 2000*. London: the Stationary Office.
- Home Office, 2014. *Best Use of Stop and Search Scheme*. London: The Stationary Office.
- Home Office, 2015. *Police Powers and Procedures England and Wales year stops and searches year ending 31 March 2014: data tables*. London: The Stationary Office.
- Home Office, 2015a. *Code of Practice for the Exercise by: Police Officers of Statutory Powers of Stop and Search*. London: The Stationary Office.
- Home Office, 2015b. *Code of Practice for examining officers and review officers under Schedule 7 to the Terrorism Act 2000*. London: The Stationary Office.
- Sir House, S., 2015. *Stop and search update report*. Police Scotland.
- Ip, J., 2013. The reform of counterterrorism stop and search after *Gillan v United Kingdom*. *Human Rights Law Review*, 13(4), 729-760.
- Jefferson, T and Walker, M., 1992. Ethnic minorities in the criminal justice system. *Criminal Law Review*, Feb, 83-95.
- Joint Committee on Human Rights, 2009. *Demonstrating Respect for Rights?* London: The Stationary Office, HL47-I, HC320-I.
- Lee, J., 1981. Some structural aspects of police deviance in relations with minority groups. In: C. Shearing ed. *Organizational Police Deviance*. London: Butterworth.

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Sir Macpherson, W., 1999. *The Stephen Lawrence Inquiry*. London: The Stationary Office, Cm 4262.

McAra, L. and McVie, S., 2005. The usual suspects? Street-life, young people and the police. *Criminal Justice*, 5(1), 5-36.

McBarnet, D., 1983. *Conviction*. 2<sup>nd</sup> ed. London: Macmillan.

McConville, M., Sanders, A., and Leng, R., 1991. *The Case for the Prosecution: Police Suspects and the Construction of Criminality*. London: Routledge.

May, T., 2014. HC Deb (2013-14) 579 col. 831-3.

Mead, D., 2002. Informed consent to police searches in England and Wales: a critical re-appraisal in the light of the Human Rights Act. *Criminal Law Review*, Oct, 791-804.

Metropolitan Police Federation, 2014. *The consequences of a target-driven culture within policing*. London: MPF.

Ministry of Justice, 2013. *Statistics on Race and the Criminal Justice System*. London: The Stationary Office.

Mooney, J. and Young, J., 1999. *Social Exclusion and Criminal Justice: Ethnic Minorities and Stop and Search in North London*. Middlesex: Centre for Criminology.

Murray, K. (2014a) *Stop and Search in Scotland: An Evaluation*, Scottish Centre for Crime and Justice Research.

Murray, K. (2014b), Non-statutory stop and search in Scotland.' SCCJR Briefing Paper 6/2014

Murray, K. (2015) 'The Proactive Turn: Stop and Search in Scotland, PhD Thesis, University of Edinburgh.

National Archives of Scotland, HH41/3406, 1999-2000. *Macpherson Report of Stephen Lawrence Murder Enquiry*. Edinburgh.

Office for National Statistics, 2015. *Annual mid-year population estimates, 2014*. London: ONS.

Sir Philips, C., 1981. *Royal Commission on Criminal Procedure*. London: The Stationary Office, Cmnd 8092.

Police Scotland, 2014. *Stop and Search Operational Toolkit* (v. 1.02). Police Scotland.

Police Scotland, 2015. *Stop and search data publication* [online]. Available from: <http://www.scotland.police.uk/about-us/police-scotland/stop-and-search-data-publication> [Accessed 8/4/2015].

Quinton, P., 2011. The formation of suspicions: police stop and search practices in England and Wales. *Policing and Society*, 21(4), 357-368.

Quinton, P., Bland, N. and Miller, J., 2000. *Police Stops, Decision-making and Practice*. London: Home Office, Police Research Series, Paper 130.

Reid Howie Associates, 2002. *Police Stop and Search among White and Minority Ethnic Young People in Scotland*. Edinburgh: Scottish Executive.

Reiner, R., 2010. *The Politics of the Police*. Oxford: Oxford University Press.

Sanders, A and Young, R., 2007. *Criminal Justice*. Oxford: Oxford University Press.

Sanders, A. and Young, R., 2008. Police Powers. In: T. Newburn ed. *Handbook of Policing*. Cullompton: Willan.

Lord Scarman, L., 1981. *Brixton Disorders 10-12 April 1981*. London: The Stationary Office, Cmnd 8427.

Scott, J., 2015. *The report of the Advisory Group on Stop and Search*. Edinburgh: Scottish Government.

Scottish Executive, 1999. *The Stephen Lawrence Inquiry: Action Plan for Scotland*. Edinburgh: Scottish Executive.

Scottish Executive, 2003. *Crackdown on blades and booze*, news release [online]. Available from: <http://www.gov.scot/News/Releases/2003/11/4621> [Accessed 26 October 2015].

Scottish Government, 2012. *Scottish Index of Multiple Deprivation* [online]. Available from: <http://simd.scotland.gov.uk/publication-2012/>

Scottish Government, 2015. *Stop and Search review*, news release [online]. Available from: <http://news.scotland.gov.uk/News/Stop-and-Search-review-181d.aspx> [Accessed 8 April 2015].



Scottish Human Rights Commission, 2014. *Police Scotland: Good or Bad for Scottish Justice?* [online]. Available from: <http://www.scottishhumanrights.com/resources/presentations/policingandhumanrights> [Accessed 8 April 2015].

Scottish Human Rights Commission, 2015. *Commission calls for an end to non-statutory stop and search* [online]. Available from: <http://www.scottishhumanrights.com/news/latestnews/stopandsearchfeb15> [Accessed 8 March 2015].

Scottish Police Authority, 2014. *Scrutiny Review – Police Scotland’s Stop and Search Policy and Practice* [online]. Available from: <http://www.spa.police.uk/assets/126884/261737/item16.1> [Accessed 26 October 2015].

Scottish Police Authority (17/12/2014) ‘SPA Policing Performance Report’ [online]. Available from: <http://www.spa.police.uk/assets/126884/261737/item16.1> [Accessed 8 April 2015].

Young, J., 1994. *Policing the streets: stops and search in North London*. Middlesex: Centre for Criminology.

Waddington, P., Stenson, K. and Don, D., 2004. In Proportion: police stop and search. *British Journal of Criminology*, 44(6), 889-914.

Weber, L. and Bowling, B., 2012. *Stop and search: Police power in a global context*. London: Routledge.

Wilding, B., 2008. Tipping the Scales of Justice?: A Review of the Impact of PACE on the Police, Due Process and the Search for Truth 1984-2006. In: E. Cape and R. Young eds. *Regulating Policing: The Police & Criminal Evidence Act 1984: Past, Present and Future*. Oxford: Hart.

Willams, K., and Ryan, C., 1986. Police Discretion. *Public Law*, Sum, 285-310.