

Stop and Search Powers 2: Are the police using them effectively and fairly

An inspection of Derbyshire Constabulary

August 2015

© HMIC 2015

ISBN: 978-1-78246-834-9

www.justiceinspectorates.gov.uk/hmic

Contents

Introduction	4
Methodology	5
Part 1 - Findings in respect of recommendations made in HMIC's 2013 report, Stop and search powers: Are the police using them effectively and fairly?	6
Recommendation 1 from 2013	6
Recommendation 2 from 2013	7
Recommendation 3 from 2013	10
Recommendation 4 from 2013	12
Recommendation 5 from 2013	12
Recommendation 6 from 2013	13
Recommendation 7 from 2013	15
Recommendation 8 from 2013	16
Recommendation 9 from 2013	17
Recommendation 10 from 2013	18
Conclusions for Part 1	18
Part 2 - How effectively and fairly does Derbyshire Constabulary use section 163 of the Road Traffic Act 1988?.....	21
Powers to stop vehicles	21
Findings in respect of Derbyshire Constabulary regarding the use of section 163 of the Road Traffic Act 1988	22
How effectively and fairly do police community support officers use their powers to search for and seize alcohol and tobacco?.....	23
Findings in respect of Derbyshire Constabulary regarding the use of powers under the Police Reform Act 2002	23
Conclusions for Part 2	24
Part 3 - Searches involving the removal of more than an outer coat, jacket or gloves.....	25

Findings in respect of Derbyshire Constabulary regarding stop and search encounters requiring the removal of more than outer coat, jacket or gloves.....	26
Conclusions for Part 3	27

Introduction

In 2013, HMIC published its report, *Stop and Search Powers: Are the police using them effectively and fairly?* This report concluded that stop and search powers were rarely targeted at priority crimes in particular areas, and that there was very little understanding in forces about how the powers should be used most effectively and fairly to cut crime.

HMIC made ten recommendations in the 2013 report, and made a commitment to assess the progress made by forces and the College of Policing in carrying out the recommended actions 18 months later.

Additionally, in 2014, the Home Secretary commissioned HMIC to:

- review other powers that the police can use to stop people, such as section 163 of the Road Traffic Act 1988, in order to establish that they are being used effectively and fairly;
- provide analysis of how forces in England and Wales compare with overseas jurisdictions, both in terms of the powers available and the way they are used; and
- examine the use of search powers involving the removal of more than a person's outer clothing, including strip searches, to identify whether these searches are lawful, necessary and appropriate.

In 2015, as part of the review of progress from 2013 and the reviews set by the Home Secretary, all forces were required to carry out a self-assessment and, to supplement that, HMIC carried out in-depth fieldwork in nine forces. Derbyshire Constabulary was one of those forces. The national report *Stop and Search Powers 2: Are the police using them effectively and fairly?*¹ was published on 24 March 2015.

Our findings in respect of Derbyshire Constabulary in relation to the recommendations made in 2013 are reported in part 1 of this report.

Our inspection of the use of powers to stop people (other than specific stop and search powers), and the use of stop and search powers that involve the removal of more than outer clothing, are reported in parts 2 and 3 of this report.

¹ *Stop and Search Powers 2: are the police using them effectively and fairly?* 2015, HMIC, London. Available from www.justiceinspectors.gov.uk/hmic

Methodology

As part of this inspection, all 43 Home Office forces in England and Wales and the British Transport Police were required to complete a self-assessment of their progress against the 2013 recommendations. They also submitted supporting documents, including relevant policies and reports.

In January 2015, we carried out fieldwork in Derbyshire Constabulary and eight other forces, in which we conducted:

- interviews with community representatives;
- interviews with senior managers;
- focus groups with a total of 50 operational sergeants and inspectors;
- focus groups with a total of 100 operational constables and PCSOs; and
- 237 knowledge checks.²

In order to verify and strengthen our findings, we carried out visits to police stations where we spoke with officers in intelligence units, investigation units, response teams, neighbourhood teams and custody suites. We attended briefings to see the information that officers received before going out on patrol and attended management meetings to observe how resources were deployed and managed.

² A short test of five questions on the application of the PACE Codes of Practice, Code A.

Part 1 - Findings in respect of recommendations made in HMIC's 2013 report, *Stop and search powers: Are the police using them effectively and fairly?*³

This section sets out our findings from the self-assessment provided by Derbyshire Constabulary and the evidence collected from fieldwork in the force.

Recommendation 1 from 2013

Chief constables and the College of Policing should establish in the stop and search Authorised Professional Practice a clear specification of what constitutes effective and fair exercise of stop and search powers, and guidance in this respect. This should be compliant with the Code of Practice.

Grounds for recommendation 1

In our inspection in 2013 we found that, with a few exceptions, forces were not able to demonstrate how effective and fair their use of stop and search powers had been. Forces were unclear about what effective and fair meant in the context of stop and search encounters, and there was little evidence that officers were provided with guidance or instruction to assist their understanding.

Findings in respect of Derbyshire Constabulary regarding recommendation 1

Notwithstanding the absence of progress on the development of authorised professional practice, many forces have made efforts to define effective and fair stop and search encounters and have provided guidance and instruction to their officers.

Derbyshire Constabulary had a comprehensive policy entitled 'powers to stop persons and vehicles' which included guidance to officers about their use of stop and search powers. The policy sets out that the use of the powers must be effective and fair and we were pleased to find that it included definitions of fair and effective use in the following policy statement:

The principle focus of our policy is to reinforce **quality and not quantity**...Stop and Search needs to be intelligence led, used proportionately, sensitively and fairly and those stopped should clearly understand the reason for the search. Where the grounds are not sufficiently explained and/or the person is not treated with respect and dignity, the long-term impact could be that the police are perceived to be acting unfairly. This can lead to a loss of

³ *Stop and search powers: Are police using them effectively and fairly?* HMIC, London, 2013, www.justiceinspectorates.gov.uk/hmic/media/stop-and-search-powers-20130709.pdf

trust, which could lead to a withdrawal of the public's co-operation and a reluctance to take up their responsibility to report crime, provide intelligence about criminal activity and give evidence in court, making it more difficult for the police to work with the public to reduce crime.

For a stop and search encounter to be effective and lawful, a police officer must have reasonable grounds for suspicion (based on specific and objective information) that a person is in possession of a stolen or prohibited item. Those grounds should be fully explained to the person being stopped and searched, and the person should be treated with fairness, courtesy and respect.

In such circumstances, finding the item and arresting the offender or, alternatively, eliminating the suspicion and avoiding unnecessary arrests are both valid and successful outcomes.

By using their powers fairly and in a way that is effective in keeping the public safe, the police can build community confidence and encourage people to be more responsible in helping the police to reduce crime and disorder."

While the force policy is very comprehensive and clearly sets out that the force measures the success of stop and search encounters on the basis of the quality of encounters rather than the quantity, there is no reference to the measures it uses to monitor the effectiveness or success of encounters.

Recommendation 2 from 2013

Chief constables should establish, or improve, monitoring of the way officers stop and search people so that they can be satisfied their officers are acting in accordance with the law (including equality legislation and the Code of Practice) and that the power is used effectively to prevent crime, catch criminals and maintain public trust. This monitoring should, in particular, enable police leaders to ensure officers have the reasonable grounds (and, where applicable, authorising officers have the reasonable belief) required by law to justify each stop and search encounter.

Grounds for recommendation 2

In 2013, HMIC found that very few forces could demonstrate that the use of stop and search powers was based on an understanding of what works best to cut crime, and rarely was it targeted at priority crimes in their areas. Forces had reduced the amount of data collected to tackle bureaucracy, but this had diminished their capability to understand the impact of the use of stop and search powers on crime levels and community confidence. Of the 8,783 stop and search records HMIC examined in 2013, 27 percent did not include sufficient reasonable grounds to justify the lawful use of the power.

Findings in respect of Derbyshire Constabulary regarding recommendation 2

Similar to the vast majority of forces, Derbyshire Constabulary systematically collects information about stop and search encounters.

We were encouraged to find that Derbyshire Constabulary no longer monitored individual officers in respect of the number of stop and search encounters they carried out and the use of stop and search powers was not seen as a performance measure. The force analysed and monitored trends in the use of stop and search powers and identified any disproportionate use. It also undertook monthly analysis of data from each policing area which was reported to the senior officers in each area. However, the monitoring included only:

- the monthly total of stop and search encounters;
- the ethnicity of those stopped and searched;
- the number of stop and search encounters resulting in an arrest; and
- the percentage of arrests involving black and minority ethnic people.

We were disappointed to find that the force did not monitor the positive outcomes other than arrest, for instance, cannabis warnings, or exclude those arrests that did not link directly to the finding of an item, for instance, where nothing is found but the person is arrested for disorderly behaviour.

While we were pleased to find that the force required its officers to record if they had found the item searched for or some other prohibited item, there was no monitoring to identify how many times the item searched for had been found, or the number of times some other prohibited item had been found. Such analysis would help the force to establish on how many occasions the reasonable grounds for suspicion were proved to be accurate.

We were disappointed to find that the outcomes recorded included only:

- whether or not an arrest had been made;
- whether or not an item had been found; and
- if an item had been found, whether it related to:
 - stolen property;
 - going equipped for theft;
 - drugs;
 - weapons;

- firearms;
- terrorism; or
- other.

We were surprised that the force did not record any of the following outcomes from stop and search encounters:

- Summons;
- Caution;
- Khat or cannabis warning;
- Penalty Notice for Disorder;
- Community resolution; and
- No further action.

The force did not record the reason for arrest and, while it can establish how many arrests are made during an encounter involving the finding of a prohibited item, it cannot necessarily establish how many arrests are directly linked to the item found. For instance, a stop and search encounter involving the finding of an item which is dealt with by way of a caution, but where the person is also arrested because a check on the Police National Computer revealed the person was wanted for a separate offence, would likely be recorded as an arrest resulting from a stop and search encounter. The oversight process is therefore not establishing how effectively the powers are used, i.e. how many arrests occur because a prohibited item was found and the original suspicion proved to be accurate.

Similarly, the lack of data relating to other outcomes such as summons, Penalty Notice for Disorder, caution, drug warning and no further action means that the force was not able to determine fully the effectiveness of the use of the powers.

The force monitored the ethnicity, age and gender of people stopped and searched to help it to determine fairness. However, despite recording the names of people stopped and searched (if they were content to give their details), the force monitoring did not include a review of the frequency of the use of the powers on individuals which may help it to determine if the powers were used fairly. We also found that the gender of people stopped and searched was not well recorded; between 1 November 2013 and 31 October 2014, of the 6,087 stop and search encounters recorded by the force, 2,194 did not record if the subject was male or female.

Additionally, the force did not monitor the frequency with which officers were using stop and search powers to establish if individual officers might be overusing them.

The force did not map the locations of stop and search encounters and could not, therefore, compare the locations of encounters with the locations of reported crimes. There was no analysis to determine if stop and search powers had been targeted to high crime areas, or if there had been any impact of their use on crime rates.

The force did not collect data about the prosecutions and convictions arising from stop and search encounters and this limited its ability to determine effective use of the powers.

However, we were pleased to find that in each policing area the monthly monitoring included a recently introduced review of ten randomly selected stop and search records to determine if the records were completed accurately, and that the grounds recorded are reasonable. We considered this to be good practice.

Similar to the majority of forces, Derbyshire Constabulary included a field in its custody system to show whether an arrest has resulted from a stop and search encounter. This helps the force not only to record outcomes more accurately but also assess the effectiveness and fairness of the use of the powers.

Derbyshire Constabulary, similar to all other forces, had designated a senior manager to oversee the use of stop and search powers.

In general, the force did not record sufficient information from stop and search encounters, or analyse or monitor it comprehensively enough, to be able fully to determine if its use of the powers was effective and fair.

Recommendation 3 from 2013

Chief constables should ensure that officers carrying out stop and search encounters are supervised so that they can be confident that the law is being complied with and that the power is being used fairly and effectively. Particular attention should be given to compliance with the Code of Practice and equality legislation.

Grounds for recommendation 3

Code A places a specific obligation on supervisors to monitor the use of stop and search in order to prevent its misuse, and directs that:

- supervisors must monitor the use of stop and search powers and should consider, in particular, whether there is any evidence that the powers are being exercised on the basis of stereotypes or inappropriate generalisations;
- supervisors should satisfy themselves that the practice of officers under their supervision in stopping, searching and recording is fully in accordance with the Code; and

- supervisors must also examine whether the records reveal any trends or patterns which give cause for concern and, if so, take appropriate action to address them.⁴

In 2013, we found little evidence that supervisors observed their constables using stop and search powers. There were inconsistencies in the recording of searches, evidence that people searched were not always provided with the information required by Code A and that they were not always fairly treated.

Findings in respect of Derbyshire Constabulary regarding recommendation 3

Similar to the vast majority of forces, Derbyshire Constabulary required supervisors to review a stop and search record. The stop and search policy includes guidance to supervisors on how they should carry this out and there is a field on the record for completion by the supervisor. Officers are instructed to complete stop and search records and ensure an electronic record is made before the end of the duty period in which the encounter was carried out. While there is no explicit instruction in the force policy for records to be submitted to supervisors, they are instructed to review each record, endorse it and send it to the business support department at headquarters. However, there was no requirement for the supervisor to check that the details on the electronic record match those on the paper record. The policy was also not clear on how supervisors should monitor and endorse the electronic records. The monthly dip-sampling of stop and search records included a check that the supervisor had endorsed the record.

Most of the officers we spoke to were aware of the active supervision of the stop and search records they submitted and many were able to recall occasions when they, or colleagues, had been challenged by supervisors about the detail recorded. We were pleased to find that most officers we spoke also told us that, as well as reviewing records, their supervisors also patrolled with them on occasion and offered hands-on guidance during stop and search encounters.

⁴ *Revised code of practice for the exercise by: Police Officers of Statutory Powers of stop and search*, Police and Criminal Evidence Act 1984, HM Government, December 2014, Code A, paragraph 5.1, www.gov.uk/government/uploads/system/uploads/attachment_data/file/384122/PaceCodeAWeb.pdf.

Recommendation 4 from 2013

The College of Policing should work with chief constables to design national training requirements to improve officers': understanding of the legal basis for their use of stop and search powers; skills in establishing and recording the necessary reasonable grounds for suspicion; knowledge of how best to use the powers to prevent and detect crime; and understanding of the impact that stop and search encounters can have on community confidence and trust in the police. Specific training should also be tailored to the supervisors and leaders of those carrying out stops and searches.

Grounds for recommendation 4

In 2013, we found that training, where it was given, was focused almost exclusively on law, procedure and officer safety and very little on what works best to catch criminals, or how officer behaviour can affect the way the encounter is experienced by the person being stopped and searched. We were worried that little was being done by forces to help officers understand how they should judge when they have reasonable grounds to stop and search, how they communicate these grounds to the person being searched and how they record them in accordance with the Police and Criminal Evidence Act 1984.

Addressing recommendation 4 is dependent on the development of a national training package by the College of Policing.

Recommendation 5 from 2013

Chief constables should ensure that officers and supervisors who need this training are required to complete it and that their understanding of what they learn is tested.

Grounds for recommendation 5

In 2013, we found that supervisors were given little or no training about how to supervise, or to help them understand what is expected of them. We found many examples of supervisors reviewing and signing stop and search records that clearly did not include a description of reasonable grounds for suspicion. For example, on one record signed by a supervisor, the grounds had been recorded as 'Parked in a remote car park after dark'.

Findings in respect of Derbyshire Constabulary regarding recommendation 5

Addressing recommendation 5 is first dependent on the development of a national training package which is not yet available (see recommendation 4 above).

Notwithstanding the absence of a national training package, some forces including Derbyshire Constabulary have sought to improve the training of their officers on the use of stop and search powers.

New recruits in Derbyshire Constabulary receive training on stop and search powers as part of their initial training. However, we found that there was little training provided to officers beyond that. The constabulary used the National Centre for Applied Learning Technologies (NCALT) computer-based training packages on a variety of subjects but the officers we spoke to were unable to recall completing NCALT training on stop and search powers. There was a reminder made by the chief constable on weekly orders and a video on the intranet about the use of stop and search powers and the Best Use of Stop and Search Scheme. However, the officers we spoke to had not seen the video or reminder.

Frontline officers received training on stop and search encounters during their annual personal safety training but this was focused on how to search thoroughly and safely rather than providing training on how to use the powers effectively and fairly.

We were disappointed to find that there had been no refresher training delivered within the previous 18 months and officers had received no training beyond that received on recruitment which, for some, was many years ago. The constabulary had made a decision to wait until the national training package was available from the College of Policing. However, a short video on the force intranet on stop and search powers and the Best Use of Stop and Search Scheme had been made as an interim measure.

However, we were pleased to find that the Independent Advisory Group was given opportunities to assist in the design and development of training lesson notes in respect of the use of stop and search powers.

Recommendation 6 from 2013

Chief constables should ensure that relevant intelligence gleaned from stop and search encounters is gathered, promptly placed on their force intelligence systems, and analysed to assist the broader crime-fighting effort.

Grounds for recommendation 6

Intelligence is a valuable by-product of stop and search encounters. However, in 2013 we were surprised at how little effort was given to monitoring how effectively stop and search powers were used to prevent crime and catch criminals. Only five forces had an intelligence field included on their stop and search record, and in a further eight it was noted on the record that a separate intelligence submission had been made. In those forces that did gather intelligence, there was confusion as to whether the stop and search record acted as an automatic intelligence submission or whether a separate intelligence form should be submitted, and we saw evidence of delays in placing the intelligence onto computer systems.

This reduced the quality of the intelligence available to officers. Very few forces carried out sufficient analysis to map the locations of stops and searches against recorded crime, or to link stop and search encounters to prosecutions and convictions.

Findings in respect of Derbyshire Constabulary regarding recommendation 6

In Derbyshire Constabulary, similar to the vast majority of forces, the details of stop and search encounters were recorded on paper records and not automatically onto a computer system. A small number of officers were using personal digital assistants but, at the time of our inspection, the use of these had been almost entirely phased out.

Officers were required to input the details of the stop and search encounter to the force's intelligence system before the end of the duty period in which the encounter occurred. This meant that the intelligence from stop and search encounters was available relatively quickly. However, the record did not have a specific field to record the description of the person and clothing worn; rather it was requested as part of an 'additional information' section which was not always completed. This is a missed opportunity as more emphasis on recording the description and clothing worn could provide valuable information to assist in the detection of crime.

The stop and search record did not include a field in which officers could record other intelligence. While there was an instruction to officers in the stop and search policy to submit a separate intelligence record if they had other intelligence, there was no guidance to reinforce the importance of gathering intelligence and the force relied on officers to submit supplementary intelligence reports. There was also no time limit by which officers must submit it. The value of intelligence may reduce if submissions are late.

Disappointingly, and similar to about a half of forces, Derbyshire Constabulary did not map the locations of stop and search encounters and therefore did not consider them alongside the locations of reported crime to help it understand how best to prevent crime.

Recommendation 7 from 2013

Chief constables should, in consultation with elected policing bodies, ensure that they comply with the Code of Practice by explaining to the public the way stop and search powers are used in their areas and by making arrangements for stop and search records to be scrutinised by community representatives. This should be done in a way that involves those people who are stopped and searched, for example, young people.

Grounds for recommendation 7

In 2013, we found that fewer than half of forces complied with the requirement in Code A to make arrangements for the public to scrutinise the use of stop and search powers. Recognising the importance of keeping the public informed, it is surprising how little forces consulted or communicated with the public about their use of stop and search powers. Almost half of forces did nothing to understand the impact of stop and search encounters on their communities, with only a very small number proactively seeking the views of the people and communities most affected.

Findings in respect of Derbyshire Constabulary regarding recommendation 7

Similar to over half of all forces, Derbyshire Constabulary published information to the public via its website which helps to explain the use of stop and search powers in their area. However, the information published on the stop and search page of the website is limited. The force policy was published as well as some stop and search data, but these related to the number of stop and search encounters in 2009/10 broken down by ethnicity. There were more recent data within the equality information section of the website which was so difficult to find that most members of the public would be unlikely to discover it.

In the equality information section of the website, the published data were limited to the number of stop and search encounters broken down by gender, age and ethnicity. Data on arrests and ethnicity were also included. However, the arrest data included those arrests made that did not relate to the finding of a prohibited item, for instance, arrests for disorderly behaviour. No data were published on the number of other positive outcomes, such as caution or cannabis warning, and no data on the number of times the item searched for, or some other prohibited item, was found.

Similar to all forces, Derbyshire Constabulary offered opportunities for members of the community to observe officers on patrol – known as a ride-along scheme. However, it is recognised that, during a patrol period, observers may not witness officers conducting a stop search encounter.

In September 2014, the constabulary introduced a stop and search steering group chaired by the assistant chief constable. The group included community members and it focused specifically on the recommendations in HMIC's report⁵, published in July 2013, and the Home Office's Best Use of Stop Search Scheme. A sub-group, the stop and search advisory group, was set up. This group was chaired by the same person as the Independent Advisory Group and included representatives from black and minority ethnic communities and youth groups. The constabulary intended that the advisory group will scrutinise the use of stop and search powers by reviewing complaints and stop and search and by taking part in the constabulary's ride-along scheme to observe the use of the powers at first hand. At the time of our inspection, this was work in progress and no actual scrutiny had taken place.

Recommendation 8 from 2013

Chief constables should ensure that those people who are dissatisfied with the way they are treated during stop and search encounters can report this to the force and have their views considered and, if they wish, make a formal complaint quickly and easily. This should include information about dissatisfaction reported to other agencies.

Grounds for recommendation 8

In 2013, we carried out a survey of people who had been stopped and searched⁶. Of the 391 respondents, there were too many occasions when people felt that the police had not treated them with respect (47 percent) or had not acted reasonably (44 percent). Thirty-nine percent said their experience of being stopped and searched lowered their opinion of the police. Of those people who said they were unhappy with the way they were treated by the police during the stop and search encounter, only 16 percent made a formal complaint. Many of those who did not complain, when asked why they had not done so, expressed a lack of faith in the complaints system.⁷

⁵ *Stop and Search Powers: Are the police using them effectively and fairly?* HMIC, 2013, www.justiceinspectorates.gov.uk/hmic/media/stop-and-search-powers-20130709.pdf

⁶ *Stop and Search Powers: Are the police using them effectively and fairly?* HMIC, 2013, www.justiceinspectorates.gov.uk/hmic/media/stop-and-search-powers-20130709.pdf

⁷ *IPCC position regarding police powers to stop and search*, IPCC, June 2009, www.ipcc.gov.uk/sites/default/files/Documents/guidelines_reports/stop_and_search_policy_position.pdf

Findings in respect of Derbyshire Constabulary regarding recommendation 8

We were encouraged to find that Derbyshire Constabulary gathered information about dissatisfaction relating to stop and search encounters. The constabulary website had an easily accessible page in which information was not only provided on how to make a complaint, but also on how to feed back dissatisfaction with any aspect of the constabulary. Dissatisfaction information is considered and used by the corporate services department to improve practices.

The police and crime commissioner held 'over to you' community engagement meetings at which the public had the opportunity to register dissatisfaction. The Independent Advisory Group also reports back any concerns expressed to it regarding stop and search powers.

The copy of the stop and search record, offered to people at the time of being stopped and searched, also includes information on how to complain.

We found that Derbyshire Constabulary had not carried out analysis of complaints made as a result of stop and search encounters, because of the low numbers of complaints it records as breaching Code A. However, not all complaints that arise from stop and search encounters are recorded under the breach of Code A category. We found that other categories of complaint such as incivility, oppressive conduct, harassment, and lack of fairness and impartiality were likely to be used to categorise complaints from stop and search encounters as these are often the behaviours that give rise to the complaint. However, we found that the force had not conducted any analysis to establish if any complaints arising from stop and search encounters had been recorded under categories other than breach of Code A. It is important that scanning is conducted which includes the categories listed above to ensure that all complaints arising from stop and search encounters are identified and included in analysis.

Recommendation 9 from 2013

Chief constables should introduce a nationally agreed form (paper or electronic) for the recording of stop and search encounters, in accordance with the Code of Practice.

Grounds for recommendation 9

In 2013, we found a variety of forms used to record stop and search encounters in use by forces. They differed substantially in terms of layout and the type of detail to be recorded. One force had five different stop and search forms in circulation at the time of our inspection.

The recommendation involves the agreement of all chief constables in England and Wales and as such, is not a recommendation applicable solely to Derbyshire Constabulary.

Recommendation 10 from 2013

Chief constables should work with their elected policing bodies to find a way of better using technology to record relevant information about stop and search encounters which complies with the law and reveals how effectively and fairly the power is being used.

Grounds for recommendation 10

Our 2013 inspection found that technology had the potential to improve the effective, lawful and fair use of stop and search powers. However, although there were a number of interesting developments, limited use was being made of technology to record stop and search encounters at that time.

Findings in respect of Derbyshire Constabulary regarding recommendation 10

In the past, Derbyshire Constabulary had used personal data assistant technology to help it record stop and search encounters. However, the force experienced significant issues with the technology and the force decided to stop using it in favour of reverting to recording the use of stop and search powers on paper records, with officers entering details manually onto the force intelligence system afterwards.

At the time of our inspection, the constabulary was trialling the use of body worn video and a small number of officers were using it. The use of body worn video, if used to record stop and search encounters, is likely to improve the effectiveness and fairness of encounters while, research suggests, also improving the behaviour of both the officers and the people stopped and searched⁸. However, the footage is not reviewed by supervisors and body worn video was used predominantly at domestic abuse incidents.

Aside from the body worn video pilot, the constabulary continues to review technological solutions in order to record when persons are stopped and was waiting for the national recording standards and national training package to be made available before committing funds.

Conclusions for Part 1

Derbyshire Constabulary's policy on the use of stop and search powers is comprehensive and clearly sets out that the force measures the success of stop and search encounters on the basis of the quality of encounters rather than the quantity. We were pleased to find that it included guidance on effective and fair use of the powers. The constabulary had made efforts to improve the guidance it provides to its

⁸ *Guidance for the Police use of body-worn video devices*, Police and Crime Standards Directorate, Home Office, July 2007; *Picture This: body worn video devices ('headcams') as tools for ensuring fourth amendment compliance by police*, Harris, D., April 2010; and others.

officers in respect of the use of stop and search powers, the Home Office Best Use of Stop and Search Scheme and section 60 of the Criminal Justice and Public Order Act 1994. However, the force could do more to provide guidance on what it considers to be a successful and 'quality' stop and search encounter.

We were surprised to find that the constabulary recorded only a limited number of outcomes resulting from stop and search encounters; this severely inhibits its ability to assess if the powers are being used effectively and fairly.

While the constabulary had the ability to link an arrest to the finding of a prohibited item (though not necessarily the item searched for), it was concerning that it did not monitor the number of times that items were found and, again, this severely limited its ability fully to assess the effectiveness or fairness of the use of the powers.

We found that the supervision of the use of stop and search powers was good. All stop and search records were reviewed by supervisors and this was checked. We were also pleased to hear from some officers that supervisors sometimes patrol with them and provide hands-on advice and guidance.

In terms of training on stop and search powers, we found that there was little provided beyond initial recruitment. There had been messages from senior officers about the use of stop and search posted on the intranet, but officers we spoke to had not seen them. The constabulary had decided to wait until the national training package from the College of Policing was made available. However, this is not due for completion until early 2016 at the earliest.

The constabulary published some stop and search information and its policy on stop and search on its website. It also published limited data, but these were not on, or linked to, the stop and search webpage and were extremely difficult to find. More needs to be done to provide comprehensive information and data to the public in an accessible way.

The use of the powers was overseen by the newly introduced stop and search advisory group which is made up of police officers and representatives from local communities and chaired by the same person as the Independent Advisory Group. At the time of our inspection, this group had only recently been set up and had not actually scrutinised any stop and search-related information or records. With the exception of opportunities for members of the public to patrol with officers and observe stop and search encounters, no other public scrutiny of the use of the powers was carried out.

We were pleased to find that the constabulary had developed routes through which people could feed back if they felt dissatisfied about their stop and search encounter so that practice could be improved. The feedback section of the constabulary website was easy to find, clear and informative. However, receiving feedback was reliant on the person taking the initiative and volunteering the information.

We found that the constabulary had attempted to use technology, in the form of personal data assistants, to record stop and search encounters but had experienced problems. This meant they had reverted to recording encounters on paper records and directing officers subsequently to create manually an electronic record. The constabulary had made a decision to wait for the national training package and the national recording standard to be made available before exploring other technology options further.

Part 2 - How effectively and fairly does Derbyshire Constabulary use section 163 of the Road Traffic Act 1988?

In addition to requesting HMIC to inspect further on the progress that police forces had made since the 2013 inspection, the Home Secretary commissioned HMIC to:

“Review other powers that the police can use to stop people, such as section 163 of the Road Traffic Act 1988, in order to establish that they are being used effectively and fairly.”

Powers to stop vehicles

In our 2013 report, we highlighted that some people believed that they had been stopped and searched when, in fact, they had been stopped and spoken to by an officer or stopped in their car under the Road Traffic Act – without a search taking place⁹.

In England and Wales, police officers’ powers to stop vehicles are enshrined in section 163 Road Traffic Act 1988, which states:

“A person driving a motor vehicle on a road must stop the vehicle on being required to do so by a constable in uniform”¹⁰

Unlike stop and search powers which are subject to the requirements of a statutory Code of Practice¹¹, this power does not require an officer to have any particular reason to stop a motor vehicle and there is no requirement for the officer to explain why he or she has carried out the stop.

⁹ *Stop and Search Powers: Are the police using them effectively and fairly?* HMIC, July 2013, page 18, www.justiceinspectorates.gov.uk/hmic/media/stop-and-search-powers-20130709.pdf

¹⁰ *Road Traffic Act 1988* s.163, www.legislation.gov.uk/ukpga/1988/52/section/163

¹¹ *Revised code of practice for the exercise by: Police Officers of Statutory Powers of stop and search*, Police and Criminal Evidence Act 1984, HM Government, December 2014, Code A www.gov.uk/government/uploads/system/uploads/attachment_data/file/384122/PaceCodeAWeb.pdf

Findings in respect of Derbyshire Constabulary regarding the use of section 163 of the Road Traffic Act 1988

While work had been undertaken to understand how well officers used powers of stop and search, much less had been done to understand how well they used the Road Traffic Act power to stop vehicles.

We were pleased to find that, unlike the vast majority of forces, Derbyshire Constabulary's comprehensive 'powers to stop persons and vehicles policy' included instruction and guidance on stopping vehicles under section 163 of the Road Traffic Act 1988.

The policy included guidance on the fairness of stops; the '...stopping of a vehicle must be made with sound judgement and reason, be intelligence-led and undertaken in a non-discriminatory manner. On stopping a motor vehicle the officer must explain, immediately if possible, to the driver clearly and without using police jargon the reason for the stop...'

The policy goes on to advise that the routine stopping of drivers and requesting the production of driving documents '...on a non-intelligence led basis will no longer be acceptable. ...In addition, there will be consequential benefits for civil liberties if this practice ceases.'

However, officers were not required to record their use of the power. This is not to say that individual officers never record these encounters. From our interviews with officers we found that, in addition to those stops that were not recorded, the use of this power was sometimes recorded in a pocket notebook, on a fixed penalty notice where one was issued or on the Police National Computer if the officer had conducted a check of the person or vehicle concerned. However, we found that, on those occasions when a stop was recorded, it was done so in an ad hoc manner and not according to any particular system that might allow effective oversight of the use of the power.

Due to the absence of recording requirements, supervision of the use of the power did not take place and the force is not able to carry out work to understand if the power is used effectively and fairly, or how the use of the power affects public trust. Like the vast majority of forces, Derbyshire Constabulary had not designated a senior manager to oversee the use of the power.

How effectively and fairly do police community support officers use their powers to search for and seize alcohol and tobacco?

The Police Reform Act 2002 enables forces to designate police community support officers (PCSOs) with the power to seize alcohol from any person they reasonably suspect to be in possession of alcohol, who is under the age of 18 and in a public place or place to which the person has gained unlawful access¹². It also allows forces to designate PCSOs with the power to seize tobacco from any person under the age of 16 who they find smoking in a public place¹³. In order to discharge these powers effectively, the Police Reform Act provides PCSOs with the power to search for the items if they reasonably believe the person is in possession of them¹⁴. Chief constables have a choice whether or not to designate these powers to their PCSOs.

HMIC asked all forces to provide a self-assessment of their use of the Police Reform Act 2002 powers to establish if they were making effective and fair use of these. We undertook further testing in this area while conducting fieldwork in the nine forces chosen for the inspection.

Findings in respect of Derbyshire Constabulary regarding the use of powers under the Police Reform Act 2002

Derbyshire Constabulary did not have a policy for the seizure of alcohol or tobacco. During recruitment, PCSOs were provided with training on the powers, and had also received refresher training and a booklet setting out their powers. The training included how to use the powers effectively but did not include guidance on how to use them fairly.

We were encouraged to find that, unlike most forces, the force required the use of the Police Reform Act powers to be recorded. PCSOs used the same method to record the use of the powers as officers used to record stop and search encounters and, similar to stop and search encounters, were required to input the details manually onto the intelligence system.

¹² Police Reform Act 2002, Schedule 4, Powers exercisable by police civilians, Part 1, Community Support Officers, paragraph 6, www.legislation.gov.uk/ukpga/2002/30/schedule/4

¹³ Police Reform Act 2002, Schedule 4, Powers exercisable by police civilians, Part 1, Community Support Officers, paragraph 7, www.legislation.gov.uk/ukpga/2002/30/schedule/4

¹⁴ Police Reform Act 2002, Schedule 4, Powers exercisable by police civilians, Part 1, Community Support Officers, paragraph 7A, www.legislation.gov.uk/ukpga/2002/30/schedule/4

The powers are relatively frequently used. From 1 November 2013 to 31 October 2014, PCSOs seized alcohol on 76 occasions and tobacco on 20 occasions. We were also pleased to find that supervisors are required to review and endorse the records.

Encouragingly, many of the PCSOs, officers and supervisors we spoke to had a good knowledge of PCSOs' powers in respect of alcohol and tobacco seizure.

Conclusions for Part 2

In Part 2 of this inspection, due to the absence of records, we were unable to assess how effectively and fairly officers in Derbyshire Constabulary use the Road Traffic Act power to stop vehicles. However, we were pleased to find that the force had a policy in which guidance was provided to officers on effective and fair use of the power. However, there was no management oversight of the use of the power.

The absence of reliable data about the use of the Road Traffic Act power means that the force cannot demonstrate that it is using these powers effectively and fairly.

While there was no policy guiding PCSOs in the use of the Police Reform Act powers to seize alcohol and tobacco, we were encouraged to find that the constabulary recorded the use of the powers. PCSOs were knowledgeable about the powers, and the numbers carried out in a 12 month period indicated that they were confident in their use. However, the constabulary did not monitor the use of powers to assess if they were used effectively and fairly.

In our report *Stop and Search Powers 2: Are the police using them effectively and fairly?*¹⁵, we made recommendations to all forces in respect of the use of these powers.

¹⁵ *Stop and Search Powers 2: Are the police using them effectively and fairly?* HMIC, 2015, London, HMSO. Available from www.justiceinspectors.gov.uk/hmic

Part 3 - Searches involving the removal of more than an outer coat, jacket or gloves

As part of this inspection, HMIC was commissioned by the Home Secretary to examine the use of search powers involving the removal of more than a person's outer clothing, including strip searches, to identify whether these searches are lawful, necessary and appropriate.

- Code A¹⁶ informs police officers about how to conduct stop and search encounters, and makes certain distinctions about what clothing can be removed and where searches can take place. The following extracts from Code A describe what can and cannot be done in relation to the removal of clothing during a search.
- “There is no power to require a person to remove any clothing in public other than an outer coat, jacket or gloves, except under section 60AA of the Criminal Justice and Public Order Act 1994 (which empowers a constable to require a person to remove any item worn to conceal identity).”¹⁷
- “Where on reasonable grounds it is considered necessary to conduct a more thorough search (e.g. by requiring a person to take off a T-shirt), this must be done out of public view, for example, in a police van unless paragraph 3.7 applies, or police station if there is one nearby. Any search involving the removal of more than an outer coat, jacket, gloves, headgear or footwear, or any other item concealing identity, may only be made by an officer of the same sex as the person searched and may not be made in the presence of anyone of the opposite sex unless the person being searched specifically requests it.”¹⁸

¹⁶ *Revised code of practice for the exercise by: Police Officers of Statutory Powers of stop and search*, Police and Criminal Evidence Act 1984, HM Government, December 2014, Code A, www.gov.uk/government/uploads/system/uploads/attachment_data/file/384122/PaceCodeAWeb.pdf

¹⁷ *Revised code of practice for the exercise by: Police Officers of Statutory Powers of stop and search*, Police and Criminal Evidence Act 1984, HM Government, December 2014, Code A, paragraph 3.5, www.gov.uk/government/uploads/system/uploads/attachment_data/file/384122/PaceCodeAWeb.pdf

¹⁸ *Revised code of practice for the exercise by: Police Officers of Statutory Powers of stop and search*, Police and Criminal Evidence Act 1984, HM Government, December 2014, Code A, paragraph 3.6, www.gov.uk/government/uploads/system/uploads/attachment_data/file/384122/PaceCodeAWeb.pdf

- “Searches involving exposure of intimate parts of the body must not be conducted as a routine extension of a less thorough search, simply because nothing is found in the course of the initial search. Searches involving exposure of intimate parts of the body may be carried out only at a nearby police station or other nearby location which is out of public view (but not a police vehicle).¹⁹

In effect, Code A specifies three levels of search that are characterised by their increasing level of intrusiveness:

- A search involving no removal of clothing other than an outer coat, jacket or gloves;
- A search involving more than removal of an outer coat, jacket or gloves but not revealing intimate parts of the body; and
- A search involving more than the removal of an outer coat, jacket or gloves which reveals intimate parts of the body, often referred to as a strip-search.

While the code stipulates that there is only a power to require the removal of more than an outer coat, jacket or gloves out of public view, the accompanying guidance notes provide the officer with the opportunity to ask the person voluntarily to remove more than that clothing within public view.²⁰ However it does not give any further guidance on how this should be conducted.

Findings in respect of Derbyshire Constabulary regarding stop and search encounters requiring the removal of more than outer coat, jacket or gloves

While, in common with most other forces, Derbyshire Constabulary has a specific policy or guidance regarding the use of stop and search powers, it did not provide guidance about stop and search encounters in which there was a need to remove more than a person’s outer coat, jacket or gloves (including strip searches in which intimate body parts are exposed).

We were disappointed to find that officers do not record whether each stop and search encounter involved the removal of more than outer coat, jacket or gloves.

¹⁹ *Revised code of practice for the exercise by: Police Officers of Statutory Powers of stop and search*, Police and Criminal Evidence Act 1984, HM Government, December 2014, Code A, paragraph, 3.7, www.gov.uk/government/uploads/system/uploads/attachment_data/file/384122/PaceCodeAWeb.pdf.

²⁰ *Revised code of practice for the exercise by: Police Officers of Statutory Powers of stop and search*, Police and Criminal Evidence Act 1984, HM Government, December 2014, Code A, Notes for guidance: Recording, www.gov.uk/government/uploads/system/uploads/attachment_data/file/384122/PaceCodeAWeb.pdf

When asked to provide information about such searches, the force was unable to tell us how many had been carried out. Neither we nor the force can report, with any accuracy, how often officers conduct these more intrusive searches on the street and can not report how many, where and under what conditions strip searches are conducted.

However, despite the lack of guidance we found that the majority of officers we spoke to were clear that strip searches must be carried out at a police station, but not in a custody suite. There was confusion in respect of appropriate locations to conduct stop and search encounters involving the removal of more than outer coat, jacket or gloves, but not exposing intimate parts of the body. In any event, there was no more supervision of these intrusive searches than occurs for stop and search encounters that do not involve the removal of more than outer coat, jacket or gloves.

Therefore, senior officers had no knowledge or oversight of the searches conducted by their officers involving the removal of more than outer clothing. It is worrying to us that the leaders of officers using stop and search powers do not know, as a matter of course, how frequently their officers are conducting, or have conducted, more intrusive searches, including strip searches.

Conclusions for Part 3

The power of a police officer to stop a member of the public in the street and search them is an intrusive one. The ability to remove clothing that reveals the intimate parts of the person's body is extremely intrusive.

We were concerned that officers had been provided with no guidance on those encounters that require the removal of more than outer coat, jacket or gloves.

We were disappointed that Derbyshire Constabulary was not able to identify those stop and search encounters that involve the removal of more than outer coat, jacket or gloves. We would expect the level of scrutiny that takes place on stop and search encounters to increase in line with the level of intrusion. However, this is not the case. Derbyshire Constabulary was carrying out no greater scrutiny of these very intrusive searches than for searches that did not involve the removal of such clothing.

The current lack of additional scrutiny of these types of stop and search encounters does not allow the force to ensure that individuals' rights are not being severely breached. It also does not provide the force with any ability to identify officers that may require additional training, advice or discipline.

In our report *Stop and Search Powers 2: Are the police using them effectively and fairly?*, we made recommendations to all forces in respect of stop and search encounters involving the removal of more than outer coat, jacket or gloves²¹.

²¹ *Stop and Search Powers 2: Are the police using them effectively and fairly?* HMIC, 2015, London, HMSO. Available from www.justiceinspectorates.gov.uk/hmic