



Barnardo's Scotland response to the Independent Advisory Group on Stop and Search

Key points

- **Many young people don't understand why they are being stopped and searched.**
- **Young people do not feel they have a choice, they often think police always have the right to stop and search them.**
- **This can lead to young people in certain areas and groups feeling targeted.**
- **It is often not possible for young people to distinguish between a non-statutory and a statutory stop and search**

We welcome the opportunity to respond to this call for evidence by the Independent Advisory Group on Stop and Search and we commend the Scottish Government for establishing the group.

Barnardo's is the UK's largest children's charity; we work with some of the most vulnerable and disadvantaged children and young people in Scotland; we do a wide range of work within the justice sector, both inside and outside the prison estate. We run over 120 services and work with over 20,000 children, young people and their families every year throughout Scotland.

We have multiple services and projects across Scotland which work with children and young people who display offending behaviour or who are involved in the justice system. However, as we know, the use of stop and search is not confined to children and young people who are engaged in anti-social or criminal behaviour, our response is therefore based on the views and experiences of a broad range of children and young people who are involved with our services.

The experience of our young people is that they are often not able to understand the difference between a statutory and non-statutory stop and search and this is often not made clear by police when they are stopped. More often than not, young people told us that the police do not explain that a search is 'voluntary'. No young person told us that they had ever been asked or informed by police that they had the right to refuse a consensual or voluntary search.

Young people also highlighted that the police do not tend to give reasons for the search. This lack of explanation and clarity about why they are being searched can lead to young people feeling targeted. This issue of being targeted was raised by a lot of our young people. In relation to this we are also concerned that the line between statutory vs non-statutory searches is blurred, making it often impossible for the young person to know whether the police are working under statutory or non-statutory powers.

Barnardo's Scotland Project Worker

"We have been working with a number of looked after young people in residential placements who have experienced being stopped and searched in various places across Scotland (due to being in and out of authority placements). These young people have reported that the approach taken by police is varied.

Some have explained why they were being stopped and searched whilst others gave little reasons/explanations leading to the young people feeling targeted"

Similarly, although not directly related to stop & search:

Barnardo's Scotland Project Worker

"We have also dealt with an issue where looked after children and young people have been picked up by the police and returned to residential placements (some quite rural) despite being out on authorised 'free time'. The police would not believe them (as they were known to the police as being looked after) and took them back to the residential units. There may not have been searches involved but these experiences certainly gave the young people the impression they were being targeted"

Police do not have the statutory power to search a young person who they believe to be in possession of alcohol. Therefore the power used most often for dealing with anti-social behaviour related to alcohol is consensual or non-statutory stop and search. Whilst we understand the rationale behind this in terms of keeping young people safe from harm, we also know from experience that this can lead to young people being stopped, searched and targeted because of previous behaviour, peer group, geographical location etc.

This can lead to issues where young people do not trust police and are not willing to cooperate or contact police when there is a real problem, this can then be detrimental to their safety.

Barnardo's Scotland Project Worker

One of our services recently worked with a young person who has been stopped and searched on many occasions. For some of these searches he has understood why he has been searched; e.g. been drinking on the street, hanging around with young people who are known to the police. On other occasions he felt as though he was being targeted and was stopped and searched for no reason. I can remember at one point he was getting stopped nearly every day"

We believe one of the key elements to consensual stop and search is young people understanding and being able to exercise their rights. Most young people do not realise they have the right to refuse a consensual stop and search, and of those who do, the fear that refusal may lead to a stronger punishment may be enough to submit to a search, even though they have every right to refuse one. Some of our staff have anecdotal evidence of young men being adversely treated by police after they were informed of their rights, and then attempted to exercise them on their next encounter with police.

Below are some case studies from some of the young men we are working with in HM YOI Polmont about their experience of being stopped and searched (names have been changed). This workshop came about from a discussion on general rights with prison staff and some of the young men asked about what their specific rights were when they got stopped and searched, so they could be more informed.

Jack age 17

"I've never been asked to be searched, they jumped out of the car and started to search me, they never asked me anything. It's the same police that stop me all the time, they've got it in for me, they tell you that every time they see me I'm getting stopped until they get me off the streets. They said that they had suspicion of me carrying a knife, I've never had a knife, I don't carry knives. They just make things up, any excuse."

Ben age 17

"Boys get targeted more than the girls"
"They try and get as much on you so they can get you an ASBO"
"When they do they always try and bam you up so you lose the head and they can lift you"
"They definitely target young people especially me"

Declan age 16

"They pulled me cause I had dilated eyes, that's what they said but I had just woke up and started walking round to the shops"
"I've never been asked to be searched and I've never asked for a reason, I thought they had a right to just stop you cause they're the police and they can do what they want. As soon as I see the police I know I'm getting stopped"
"They're always trying to get me in the jail, they tell me that"
"It only bothers me when I'm sober, or on nothing and they stop me. I actually get harassed with them"

Liam age 16

"They waste my time, every time they see me they stop me. They never give me a reason, and I've never asked, they don't need a reason as they can do what they want. I feel as though they are out to get me. Just because I'm young they want to harass me"

Travis age 16

"When I got out of secure they were waiting for me, they never give you a reason, they don't have to. I've definitely never been asked for consent, that's a laugh even being asked that. I don't ask why cause I expect it when I see them. Most of the time I've given them no reason to be stopped. Sometimes I feel so frustrated."

Some of the above case studies highlight how the use of stop and search can often be used to target 'known suspects', young people who are known to the police, and perceived as being 'troublemakers'. This disproportionately affects young people, particularly young men in deprived communities. This is a concern for Barnardo's Scotland, we would only want to see children and young people being consensually stopped and searched if it was on the basis of a welfare concern.

We are concerned that the remit of non-statutory stop and search is so broad that young people can be searched for almost anything; there is a danger that police concern can be conflated with prejudice, personal judgements or previous interactions with a particular individual or group of individuals.

One of the main issues raised by the young men in the above case studies is that young people themselves are not aware of the distinction between non-statutory stop and search and statutory stop and search; this seems to only be a nuance understood by the police. As mentioned above, many young people are under the impression the police can "do what they want" they are not aware that in some circumstances they have the right to refuse to be searched. This indicates firstly that the police are not explaining to young people when searches are consensual and secondly that young people do not understand their rights in these situations.

We understand that Police Scotland have called for additional statutory powers to search young people for alcohol. We would be interested in wider discussion about this as we can see merit in such a move should the decision to abolish non-statutory stop and search be taken. Police should have the ability to search for, and remove alcohol from children and young people in line with GIRFEC principles, if the child or young person is putting their own health and safety at risk, this is a wellbeing concern and police should be able to deal with it as such.

However, if the power of non-statutory stop and search is retained, we would also welcome further discussion around duties on police to inform a child or young person of their rights at the point they are stopped, in line with obligations under the United Nations Convention on the Rights of the Child (UNCRC). As noted previously, when young people are taught about their rights by someone else they can be treated harshly by police when they try to exercise those rights. Therefore it would be useful to explore duties on the police themselves to inform young people of their rights at point of contact.

What we would like to see come out of the Independent Advisory Group is some recommendations for police behaviour. We would welcome a Rights Based Code of Practice for police, which runs alongside a programme of education and information for young people to make them aware of their rights, as too often trust and communication breaks down between police and young people.

We look forward to engaging further with this process as the Scottish Government and Police Scotland continue to look at potential reforms to the use of non-statutory stop and search.

For more information contact:

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