



Northern
Ireland
Office

Outcome of the Public
Consultation on Paragraph 8.78
of the Justice and Security
(Northern Ireland) Act 2007
Code of Practice
and follow-up Report
by the NIO

October 2015

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1. Introduction

1.1 Following a 12-week consultation period the Northern Ireland Office (NIO) introduced a Code of Practice¹ in May 2013 for the exercise by the Police Service of Northern Ireland (PSNI) of certain statutory powers under the Justice and Security (Northern Ireland) Act 2007 (the 2007 Act). The purpose of the Code is to set out how these powers should be exercised. It also sets out the fundamental principles which underpin the use of the powers.

1.2 The final Code of Practice included amendments to paragraph 8.78 on page 35 in the '*Stopping and searching persons: Records*' section compared to the version of paragraph 8.78 that was consulted on. The amended paragraph was the subject of a recent Judicial Review decision by the High Court of Northern Ireland which determined that the Secretary of State for Northern Ireland should have re-consulted with the public on the amended paragraph prior to seeking approval from Parliament for the final version of the Code.

1.3 The NIO subsequently completed a 6-week public consultation on this specific paragraph only. The consultation commenced on 11 November 2014 and ended on 22 December 2014. This document sets out a summary of the responses to our 2014 consultation and also the Government's own response to the matters raised.

1.4 This document is available on the NIO Website: www.nio.gov.uk under *Public Consultation*. You may make additional copies of the summary without seeking permission; it can also be made available on request in different formats for individuals with particular needs. If you require any additional copies of the summary, or have any concerns or questions about the consultation process you should contact the consultation co-ordinator, in writing, by email or telephone as follows:

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¹ The Code of Practice is available at: <https://www.gov.uk/government/publications/code-of-practice-for-the-exercise-of-powers-in-the-justice-and-security-northern-ireland-act-2007>

2. Background

2.1 When the draft Code of Practice was originally issued for public consultation in 2012 paragraph 8.78 was drafted as follows:

‘When an officer makes a record of the stop electronically and if the officer is able to provide a copy of the record at the time of the stop and search, he or she must do so. This means that if the officer has or has access to a portable printer for use with the electronic recording equipment, then a copy of the record must be provided. Otherwise a unique reference number and guidance on how to obtain a full copy of the record should be provided to the person searched.’

2.2 However, following the 12-week consultation period which commenced 13 December 2012 and ended 06 March 2013 the paragraph was amended. The reason for this change was that shortly after the consultation period ended the NIO became aware that the PSNI did not have routine access to portable printers and were unlikely to do so in the near future. This remains the case. The paragraph was subsequently rewritten as follows:

‘A record of the stop will be made electronically by the officer. A unique reference number and guidance on how to obtain a full copy of the record must be provided to the person searched. If for any reason an electronic record cannot be made or a unique reference number cannot be provided at the time, guidance must still be given to the person searched.’

2.3 This redraft was considered necessary to reflect the fact that the PSNI did not have access to portable printers and in order to ensure the public was correctly advised on how they could expect to receive a written record.

2.4 Further consultation was not carried out on this change on the basis that the NIO did not consider it to be a fundamental change and therefore there was no requirement to do so. In May 2014 however Mr Justice Treacy found that the Government’s failure to re-consult on this amendment was unlawful, on the basis that

he considered the change to paragraph 8.78 was fundamental. Paragraph 41 of Justice Treacy's judgement² states:

'Given that one of the major purposes of the drafting of the Code of Practice was to ensure that the use of s21 and s24 powers was convention compliant, the nature and extent of provisions intended to accord essential safeguards to those affected by the powers were some of the most fundamental provisions to be consulted upon. Whatever the subjective intention of the two respondents in putting together the draft Code, objectively and from the perspective of interested parties, the provision of on the spot written evidence went to the level of safeguards attending the various powers and was therefore fundamental. Truncating the nature and extent of the safeguards in the Code was clearly a fundamental change and one which in the interests of fairness needed to be consulted upon.'

2.5 The subsequent consultation on paragraph 8.78 of the Code of Practice, carried out between 11 November 2014 and 22 December 2014, was conducted to comply with that judgement. On launching it the Secretary of State for Northern Ireland, Rt Hon Theresa Villiers MP said:

"The Justice and Security (Northern Ireland) Act 2007 provides the PSNI with important powers to help protect the public. The police take very seriously their obligation to use these powers in a legal, fair and reasonable way.

The original version of paragraph 8.78 was drafted on the basis that police officers would usually carry portable printers to provide electronic records of stop and search exercises. However, after the consultation ended my officials became aware that the PSNI does not routinely have access to such equipment. As a consequence the paragraph was rewritten to say that individuals stopped and searched must be told how they can obtain a record of their search.

² Justice Treacy's judgement: [http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2014/\[2014\]%20NIQB%2062/j_j_TRE9268Final-PUBLISH.htm](http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2014/[2014]%20NIQB%2062/j_j_TRE9268Final-PUBLISH.htm)

The NIO did not publically consult on this change as it wasn't considered to be fundamental. This new consultation is intended to address Justice Treacy's judgement by seeking the public's views on the version of paragraph 8.78 that is currently in the Code of Practice."

SUMMARY OF RESPONSES

3. Detail of responses received

3.1 The Secretary of State for Northern Ireland must consider the responses received during the consultation and decide, in light of such representations, whether it is appropriate to make any modifications to paragraph 8.78 of the Code of Practice. A total of five responses were received from:

- Minister of Justice – Mr David Ford
- Independent Reviewer of National Security Arrangements in Northern Ireland – Lord Alex Carlile
- Committee for the Administration of Justice (CAJ) Ltd
- Sinn Féin
- Chief Constable of the Police Service of Northern Ireland (PSNI) – Mr George Hamilton

Responses in favour of revised paragraph 8.78

3.2 Three of the five respondents, Minister Ford, Lord Carlile and the Chief Constable expressed that they were content with the revised paragraph as written in the Code of Practice. Their comments in favour of the revised paragraph are summarised as follows:

Minister of Justice, Mr David Ford

"I have considered the consultation paper and I have no objections to the revised paragraph 8.78. I consider the change to be appropriate given the absence of portable printers for PSNI use".

**Independent Reviewer of National Security Arrangements in
Northern Ireland, Lord Alex Carlile**

“Plainly there needed to be another consultation on the paragraph included in the final version of the Code, as recommended by Mr Justice Treacy in his May ruling.

I agree that individuals should be provided with information regarding the details of their stop and search. Should this information not be immediately available at the time of the search, then the individual must be told how they can obtain the record of their search.

I am content that the version of paragraph 8.78 that is currently in the Code of Practice satisfies these requirements”.

**Chief Constable of the Police Service of Northern Ireland,
Mr George Hamilton**

“Thank you for the opportunity to comment on paragraph 8.78 of the Justice and Security (Northern Ireland) Act 2007. PSNI methodology regarding electronic recording of Stop and Search is in accordance with this paragraph and we do not seek any change.

...we are currently operating a system which is efficient, cost effective and fair, and I would respectfully propose that there is therefore no justifiable reason to amend the Code of Practice”.

3.3 The Chief Constable also pointed out that the PSNI, like many Police Services throughout the United Kingdom, have moved to electronic recording of stop, search and question powers by means of a mobile data device. Police officers electronically record and store details on a data base called ‘STOPS’ on BlackBerry devices via their PUMA³ system. He advises that the Independent Reviewer of the 2007 Act and the Northern Ireland Policing Board (NIPB) have noted the benefits of electronic recording to both the public and the police.

3.4 Furthermore the Chief Constable advised that he had revisited the details of the estimated financial outlay that would be required if he were to try and introduce the provision of portable printers. He concluded that the costs were too expensive

³ The PSNI’s Providing Users Mobile Access (PUMA) system provides police officers on patrol with up to date access to police information and the capability to record and submit crime and incident related information electronically.

and the logistics of deploying and distributing printers would be complex. One key factor regarding the introduction of portable printers is that they would need to be connected to the BlackBerry mobile devices via Bluetooth which also increases the security risk. All these factors brought the Chief Constable to the conclusion that there is no justifiable reason to amend the Code of Practice.

Responses not in favour of revised paragraph 8.78

3.5 The two remaining respondents, Sinn Féin and CAJ were not satisfied with paragraph 8.78 as it is currently written as they believe that those who are stopped and searched may be reluctant to go to a police station to collect a paper copy of the record. CAJ believe:

“...it appears much more likely that records will no longer be collected by affected persons and hence less likely that challenges to misuse of the powers will be successfully pursued”.

Both believe that the PSNI should provide a contemporaneous record when conducting a stop and search.

Sinn Féin

“Sinn Féin is concerned at the proposal to no longer require an officer to give a paper record of the stop and search, if he/she is able to do so, to the person searched. The form is not very long and it would not be very time consuming to make and provide a paper copy as before even if a record of the stop is now made electronically.

Those stopped and searched, and particularly those stopped and searched in an area where this happens frequently, may be reluctant to go to a police station to collect a paper copy of the record.

We are particularly concerned that although the proposed new paragraph says that a unique reference number must be given to the person searched this is qualified in the next paragraph. This could, and in our view probably will, often lead to a situation where the person stopped has nothing to indicate that any record of the stop and search has actually been made.

The paragraph should state that the officer

- must give a paper record of the search where he/she is able to do so; and*
- must give a unique reference number and guidance on how to obtain a full copy of the record if for any reason it is not possible to provide a paper copy*

at the time of the search

This is an important safeguard in the use of a power that goes to the heart of community confidence in policing.

Sinn Féin is also concerned that the present consultation is ONLY on paragraph 8.78 and that the opportunity was not taken to also consult on paragraph 8.75 and to provide for the inclusion of compulsory monitoring of stop and search by community background.

Monitoring of stop and search by community background is in the PSNI Equality Scheme and the Policing Board requested in October 2013 that the PSNI within 3 months consider how to include within its recording form the community background of all persons stopped and searched.

We are very concerned that a consultation that concludes in December 2014 still does not include a proposal on how to include within the record of a stop and search the community background of the person stopped and searched.”

Committee for the Administration of Justice (CAJ)

The following is an excerpt from the response received from CAJ in which they summarised their main points.

“CAJ opposes the proposed paragraph 8.78 set out in the consultation document for the reasons set out in this submission which draw on our research indicating the ‘electronic’ record only format, especially which then requires collection from a police station, is much less likely to afford persons access to records of their stop and search and hence less likely to assist monitoring of the use of the powers and accountability for them;

CAJ would urge reverting to the provision, already consulted upon, whereby Police Officers are obliged to provide copies of records at the time of the search when able to do so, and concurrently that measures are put into place to facilitate this;

Furthermore this present issue of the format of records is directly linked to the question of ethnic monitoring, inclusive of community background, given as one of the most effective and less intrusive methods of doing so is self-identification by way of a paper monitoring form;

CAJ therefore urges the NIO to also introduce changes, further to recommendations by the Policing Board and duties under the PSNI Equality

Scheme, to ensure that there is mandatory ethnic monitoring (inclusive of community background) provided for under the code of practice,”

3.6 In addition to their comments regarding paragraph 8.78 both Sinn Féin and CAJ advised that they felt an opportunity was missed regarding the consultation exercise and that the NIO should have also consulted the public on paragraph 8.75. This paragraph sets out the details the PSNI must include when making a record of a stop and search. An excerpt from the Code of Practice as published puts this paragraph in context and can be found in Annex A. Both organisations feel that paragraph 8.75 should also include the requirement to record and monitor ethnicity and community background details. Both of these issues will be addressed fully in this report.

3.7 Sinn Féin and CAJ are clear in their view that the PSNI should revert to providing contemporaneous paper records, if the officer is able to do so as stated in the draft of paragraph 8.78 originally consulted on. Sinn Féin also express the view that even if police officers carrying out a stop and search now record that stop electronically, they should also provide a handwritten contemporaneous note. They say that the form is not very long and that it would not be time consuming to make and provide a paper copy as before.

NIO RESPONSE TO THE CONSULTATION

4. Current Operational Practice

4.1 Whilst it may seem to be an easy solution to revert, as suggested by Sinn Féin and CAJ, to the version of the Code with paragraph 8.78 as it was at the original consultation, it would be misleading to the public who would have unrealistic expectations of how they may obtain a record. It is imperative to maintaining public confidence in the PSNI during the operation of the powers available to them that the public have a clear understanding of what the obligations for the PSNI are when conducting a stop and search and how records may be obtained.

4.2 With effect from 1 February 2012 stops and searches are recorded on an electronic form on BlackBerry devices, and are not handwritten. The PSNI do not have portable printers available to them. A card⁴ attached at Annex B, which contains advice on how to obtain the record is completed at the time of the search and provided to the person who is stopped. The information is recorded electronically and held on a central stop and search PUMA BlackBerry database which enables a member of the public requiring a copy of their stop and search record to attend any operational police station in Northern Ireland to obtain their record. An additional benefit to the central database is that it enables the PSNI to access information about how many times the member of the public has been stopped which can be required for example in responding to a complaint. This ability enables the individual stopped to get a full account of their record of stop and search should they have been stopped on multiple occasions and wish to obtain a full history of stops and also protects the officer concerned against unjustified complaints.

4.3 Safeguards exist during the recording of the stop and search details to ensure the specifics required under the Code are recorded. There is clear sequencing of actions via a 'drop-down menu' on the screen which the police officer must follow when completing the form on the BlackBerry. The sequencing does not allow the officer to proceed through it when completing a stop and search, without noting the power used, and the basis for it⁵. There is also a reminder on the BlackBerry that the officer must tell the member of the public how they can obtain a copy of the record. A Unique Reference Number (URN)⁶ is provided to the member of the public to enable them to request a copy of the record from any operational police station in Northern Ireland, anytime within 12 months of the stop and search.

4.4 In addition to the mechanics of recording, the Blackberry devices have enabled significant improvements in the accessibility of guidance for police officers. For example, the hand-held device enables the police officer to access the stop and search Aide Memoire and the Code of Practice. The stop and search BlackBerry functionality includes the ability to copy a record, meaning a reduction in time taken to

⁴ Since December 2014 further to an NIPB recommendation the PSNI have added more detail to the card including information about stop and search powers and rights. This also includes information for under 18s on how to obtain legal advice. The card was drafted in association with the Children's Law Centre for Northern Ireland.

⁵ Following a PONI recommendation the PSNI updated the BlackBerry Device system in October 2013 and cannot proceed through the fields to be populated until they have recorded the basis on the search record. Paragraph 11.4, 11.5 and 11.6 of the Independent Reviewers 7th report refers.

⁶ With effect from December 2014 the URN is written on the new information card.

complete the record if more than one person is stopped because identical information, for example, the date and time of the stop can be copied by a simple action on the BlackBerry. This ability is safeguarded to ensure that information is not copied in error.

5. Evidence in support of electronic recording

Northern Ireland Policing Board

Thematic Review

5.1 The report, '*Human Rights Thematic Review⁷ on the use of police powers to stop and search and stop and question under the Terrorism Act 2000 and Justice and Security (NI) Act 2007*' (Thematic Review) completed by the NIPB states that record-keeping is not bureaucracy and that it is a fundamental requirement to ensure compliance with the European Court of Human Rights (ECHR). The review points out:

- the Chief Constable's obligations to make arrangements for securing that a record is made of each exercise by a constable of a power under sections 21 to 26 in the 2007 Act in so far as it is reasonably practicable to do so, and a record is not required to be made under another enactment.
- that police officers must advise the subject of a stop and search of their entitlement to a copy of the record of the search.

5.2 In drafting this Thematic Review the Performance Committee of the NIPB advised on the difficulties incurred in scrutinising and monitoring stop and search records and statistics. This was largely due to the reliance of the PSNI on manual paper forms for a large part of the thematic review which created a number of difficulties not least in the monitoring of record-keeping. The report states that there were issues with manual record keeping as follows:

- delay between the completion of a search and the submission of the record to the central data-base;
- a risk (realised in a very small number of cases) of records going missing for periods of time; and

⁷ The NIPB Report:
http://www.nipolicingboard.org.uk/stop_and_search_thematic_review_final_draft_15_october_2013.pdf

- the quality of the record-keeping, as in some instances, the forms did not contain all of the requisite information.

5.3 The report states that all of the issues were addressed by the provision of additional guidance to officers on form filling and the importance of record-keeping. When the review was underway full-time officers were issued with the hand-held BlackBerry devices. The Human Rights Advisor to the NIPB was given a demonstration on the devices and their capability. The report states that:

“The use of the devices, each of which is identified to an individual officer, should ensure that record-keeping is both straightforward and reliable. The drop-down menu requires that all records must be filled in sequentially: no part may be manually overridden. In addition to the mechanics of recording, the devices have enabled significant improvements in the accessibility of guidance for police officers.....

.....Since introduction of the devices, the consistency and reliability of record-keeping has improved considerably and has removed the initial cause for concern about the standard of record-keeping. This will continue to be monitored”.

5.4 The report also points out the importance of oversight by the Independent Reviewer (see below) who scrutinises the record-keeping of the exercise of the 2007 Act powers in each annual report, is uniquely placed to do so and has developed detailed analysis of the use of the JSA powers.

Former Independent Reviewer – Mr Robert Whalley CB

Fourth Report⁸

5.5 The former Independent Reviewer of the 2007 Act has also commended the system of electronic recording in several of his reports. In the fourth report, by Robert Whalley CB, published in December 2011, under the heading ‘Benefits for the public and the police’ at paragraphs 194 and 195 he says:

“The new system benefits both members of the public and police officers. The

⁸ Fourth Report -

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/89833/fourth_annual_report_of_the_independent_reviewer_of_the_justice_and_security.pdf

advantages to the public lie mainly in the reduction of the time needed in conversation with an officer, since information given (for example addresses or car registration numbers) can be checked immediately, reducing scope for confusion and hence delay. It will also give a much clearer indication to the subject of the stop about the police power used and the basis for it.

For the individual officer, the benefits lie in the clarity of the recording requirements and in speed and accuracy in verifying information. For PSNI as a whole, the instant capture of data makes it much easier to compare data, to correlate databases (for example names and addresses) and to interrogate records to show whether the subject has been stopped recently. When the new system is fully operational, it will bring about dramatic changes in the way in which patrolling officers operate. In the field of security operations, there are significant potential benefits”.

5.6 The sixth recommendation of Mr Whalley’s fourth report was:

“PSNI should accelerate the transition to the system of electronic recording of stop and search and stop and question activity and should review their training to ensure that officers are trained to use the system effectively (paragraphs 194 and 195)”.

Fifth Report⁹

5.7 The PSNI acted on the Independent Reviewer’s sixth recommendation of the fourth report and moved to default electronic recording on 1 February 2012. Mr Whalley commented in his fifth report, published December 2012, in paragraphs 296 – 305 that the early results were encouraging and they were meeting his previous year’s recommendation. He comments that the core of the process is the drop down menu on the BlackBerry device which he points out, makes the direct link between the authorisation at Assistant Chief Constable (ACC) level and the basis for the stop under section 24, and paragraph 4A of Schedule 3 to the 2007 Act by the individual officer. If the basis as described by the ACC were to change during the period of an authorisation (although unlikely), the drop down menu on the BlackBerry which the officer must proceed through will also be changed by remote central action across the

⁹ Fifth Report – https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/89808/5th-Report-of-the-Independent-Reviewer-of-the-Justice-and-Security-_NI_-Act-2007-2011-2012.PDF

PSNI as a whole ensuring that officers are fully up to date with the basis for the authorisation at the time.

5.8 Further detail is provided by Mr Whalley in that the BlackBerry devices are not used by part-time officers who are required to make a notebook entry of the stop and arrange for this to be transferred onto the electronic recording system before the termination of their duty. An aide-memoire has been prepared for officers recording stops and searches in a notebook. This also applies if electronic recording was unavailable for example, if the connection failed.

5.9 The introduction of a central stop and search PUMA BlackBerry database enables a member of the public requiring a copy of their stop and search record to attend any operational Police Station in Northern Ireland, where the Station Enquiry Assistant has the ability to print any stop and search record.

Sixth Report¹⁰

5.10 In paragraph 704 of his sixth and last report, published December 2013, while conscious of Mr McAreavey's pending judicial review and writing about records Mr Whalley states:

“Recent progress in developing electronic recording of stops has made it easier to hold the police to account, by improving the accuracy of recording and the speed of record retrieval. It has brought its own challenges in terms of enabling people to gain access to records on terms which suit them and in circumstances with which they feel comfortable. Current judicial proceedings bear on this but I believe that solutions can be found which meet all the necessary requirements”.

5.11 It is clear that the former Independent Reviewer saw the development of electronic recording as a positive step, and one which he recommended in his fourth report and endorsed in both his fifth and sixth reports.

5.12 On 1 February 2014 Mr David Seymour CB was appointed to the position of Independent Reviewer of the 2007 Act.

¹⁰ Sixth Report -

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/293786/6th_Report_of_the_Independent_Reviewer_of_the_Justice_and_Security_NI_Act_2007_2012-2013.PDF

The Current Independent Reviewer – Mr David Seymour CB

Seventh Report¹¹

5.13 In paragraph 2.3 of the ‘Executive Summary’ of Mr Seymour’s report, published January 2015, he comments on safeguards and says there are appropriate arrangements in place for the electronic recording by the PSNI of the use of the powers. He expands on the safeguards in place in paragraphs 5.6 to 5.9 of his report by elaborating on the training that the PSNI undergo and says:

“...I have attended these sessions. The standard of training is very high. It covers in some detail the legal powers available to the police and the procedure and etiquette which must be followed on each occasion. The training also includes practical exercises involving role play which is very realistic and challenging for the officers. Every aspect of stop and search is covered and the instruction is given by officers who themselves have long experience of public order policing and their experience is shared and available to those doing the training. The training is challenging both intellectually and physically and tests the officer’s interpersonal skills.

I was also shown how police officers electronically record and store details of every stop and question or stop and search under the JSA on a data base called ‘STOPS’ on BlackBerry devices via their PUMA system...

...The PUMA system permits supervising officers (sergeants and above) to go into the system to examine the records. This enables the PSNI to discharge their obligation under paragraphs 5.9 to 5.13 of the Code of Practice to monitor and supervise the use of stop and search powers. A Unique Reference Number (URN) and guidance on how to obtain a full copy of the record is then provided to the individual concerned.”

5.14 Mr Seymour also points out in paragraph 5.10 of his report that if any person wishes to make a complaint about the exercise of these powers by the PSNI including record making, they can do so to the office of the Police Ombudsman for Northern Ireland (PONI). This would be the appropriate course of action when individuals do not believe that an officer has abided by the Code of Practice or if they believe they have not been given the full details of their stop and search record.

¹¹ Seventh Report -

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397442/7th_Report_-_Independent_Reviewer_of_JSA_NI_2007.pdf

5.15 At paragraph 5.11 Mr Seymour summarises his comments on safeguards and concludes:

“These arrangements – and the willingness of the PSNI to respond positively to recommendations from outside bodies - are important. The HMIC Report on stop and search in England and Wales illustrates that, without proper arrangements in place and the correct approach, there is a real risk that powers of stop and search will not be exercised or recorded properly”.

5.16 The Independent Reviewer and Northern Ireland Policing Board’s reports clearly support the current PSNI method of electronic record keeping in Northern Ireland. Some additional information relating to reports concerning the use of stop and search powers in England and Wales are detailed in [Annex C](#) for background information only purposes.

6. Comments regarding Paragraph 8.75

6.1 In addition to their comments regarding paragraph 8.78 both Sinn Féin and CAJ advise that they felt an opportunity was missed regarding the consultation exercise and that the NIO should have also consulted on paragraph 8.75 which sets out what needs to be included when making a record. They consider that compulsory monitoring of stop and search by community background should be included in paragraph 8.75 and that this should have also been publically consulted upon at the same time as paragraph 8.78.

6.2 Both Sinn Féin and CAJ make reference to the format of records being directly linked to the question of ethnic monitoring, which they say for Northern Ireland should be inclusive of community background. They urge the NIO to introduce the changes, as recommended by the NIPB in their October 2013 *Thematic Report* to ensure that there is mandatory ethnic monitoring inclusive of community background. In that *Thematic Report* the section titled ‘*Monitoring Ethnicity And Community Background: TACT & JSA*’ states:

“The Policing Board, as the organisation with the statutory responsibility to monitor the use of the powers, has previously recommended that the PSNI should compile and publish statistics according to ethnicity but it has not previously recommended that the PSNI should compile and publish statistics

according to community background. However, taking into account the revised Codes of Practice and the continued concern amongst some stakeholders that the powers are being used disproportionately against people from a catholic/nationalist/republican background the Committee has reconsidered that issue. The PSNI may wish to consult the Equality Commission in this respect.

The Committee does not suggest that police officers require a person to identify according to community background, not least because there is no power to require that information during a stop, but recommends that the following policy should be considered. The PSNI should as soon as reasonably practicable but in any event within three months of the publication of this thematic review, include within its recording form the community background of the person stopped and searched or questioned. At the conclusion of the first 12 months of the recording period those statistics should be analysed. Thereafter, the PSNI should present its analysis of the statistics to the Performance Committee and thereafter publish the statistics in its statistical reports....

As the new JSA Code of Practice, which includes provisions on avoiding discrimination in the use of the powers, emphasises “Racial or religious profiling is the use of racial, ethnic, religious or other stereotypes, rather than individual behaviour or specific intelligence, as a basis for making operational or investigative decisions about who may be involved in criminal activity. Officers should take care to avoid any form of racial or religious profiling when selecting people to search under section 24 / Schedule 3 powers. Profiling in this way may amount to an act of unlawful discrimination, as would discrimination on the grounds of any protected characteristics...great care should be taken to ensure that the selection of people is not based solely on ethnic background, perceived religion or other protected characteristic. Profiling people from certain ethnicities or religious backgrounds may also lose the confidence of communities.”¹²

6.3 The NIO did not consult on paragraph 8.75 because this consultation was launched in response to the judgment in Mr McAreavy’s Judicial Review in which Judge Treacy found that the change made to paragraph 8.78 post consultation should have been publically re-consulted upon. It is this judgement that the NIO has sought to remedy. Although we do not have the views of others who might have commented if paragraph 8.75 had been included in the consultation, the issue raised by Sinn Féin and CAJ has been considered and has been addressed in this response.

¹² Code of Practice for the Exercise of Powers in the Justice and Security (Northern Ireland) Act 2007, Northern Ireland Office, May 2013, paragraphs 5.6 to 5.8.

6.4 Paragraph 8.75 is about the details to be recorded of a stop of search and what an individual stopped and searched should expect to see on that record. It provides that police officers must include in the record of a search, even if the person does not wish to provide any personal details the following:

- (i) the name of the person searched, or (if it is withheld) a description;
- (ii) the date, time, and place that the person was first detained;
- (iii) the date, time and place the person was searched (if different from (ii) above);
- (iv) the purpose of the search;
- (v) the basis¹³ for the use of the power, including any necessary authorisation that has been given;
- (vi) the outcome of the search (e.g. arrest, seizure or no further action);
- (vii) a note of any injury or damage to property resulting from it; and
- (viii) the officer's identification number and the name of the police station to which the officer is attached.

6.5 However, when conducting a stop and search under the 2007 Act the PSNI do gather more information than outlined above. In addition they record gender; perceived ethnicity, and the individual's address (or whether the address information was refused); onto the BlackBerry form. The PSNI are not legally obliged to record ethnicity however the practice is that it is recorded in Northern Ireland to enable supervising officers to check the powers are used in accordance with the equality legislation. The recording of ethnicity was incorporated into the STOPs mobile data system with effect from 01 November 2010. The PSNI have always considered that it is best practice to record the ethnicity of persons stopped and searched and this is also in keeping with the practice in England and Wales.

6.6 Statistical information on stop and search is made available to the NIPB and published on the PSNI website. Additional information recorded on ethnicity is provided in a non-public NIPB report which categorises the numbers of persons stopped/searched and arrested by ethnicity and police district for each of the main stop and search powers. However, the numbers of minority ethnic groups involved are generally small, accordingly the PSNI have not published the same level of detail

¹³ The BlackBerry devices used by the PSNI require that the basis for using the power is recorded before the officer can input further details relating to the stop.

in their publically available report due to the risk of identification as a result of the small numbers involved.

7. NIO response to comments regarding paragraph 8.75

Suggestions on additional details to be recorded

7.1 Sinn Féin and CAJ have suggested there should be a mandatory requirement on PSNI to monitor the ethnicity and community background of persons searched. As mentioned above, ethnicity is already being recorded by the PSNI as a matter of practice although there is no legal requirement for them to do so. The NIPB recommended in their '*Human Rights Thematic Review' on the use of police powers to stop and search and stop and question under the Terrorism Act 2000 and the Justice and Security (NI) Act 2007*', published October 2013 that the PSNI should start recording community background details when completing a stop and search.

Ethnicity

7.2 Ethnicity is a much more sensitive issue in England and Wales. The Equality and Human Rights (ECHR) published a report in 2013¹⁴ which highlighted disproportionality in the use of stop and search powers and found that in some areas of England and Wales Black and Asian people were more likely to be stopped and searched by police than white people. This concern is regularly under review and the Home Secretary Theresa May launched a consultation¹⁵ on how police use stop and search powers in England and Wales on 2 July 2013 and then on 30 April 2014 announced a major package of measures to reform the way the police use stop and search powers in England and Wales.

7.3 In the Home Office report titled '*Summary of Consultation Responses and Conclusions*'¹⁶ section 4 covers '*Bureaucracy in policing*' and question 7 asked the public:

¹⁴ EHRC report - <http://www.equalityhumanrights.com/publication/briefing-paper-7-race-disproportionality-stops-and-searches-2011-12>

¹⁵ Home Office Consultation on Police powers to Stop and Search https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212014/Stop_and_Search_consultation_Revised_WEB_v2.pdf

¹⁶ Home office consultation summary - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307545/StopSearchConsultationResponse.pdf

“To what extent do you agree that it is right that the police are under a national requirement to record the information set out above in respect of each stop and search?”

7.4 Of the 4,897 responses received to this question, which covered ethnicity as information to be recorded, 78% agreed it was right that the police are statutorily required to record ethnicity. The reasons put forward were almost all to do with the importance of recording as a check against misuse of the powers and to increase accountability. Some respondents thought recording should be easier and less bureaucratic and a similar number thought that more information should be collected.

7.5 A number of those who responded thought that ethnicity should not be recorded as it was irrelevant and could be misleading. The vast majority of campaign groups were supportive of the existing recording requirements in England and Wales. The reasons given for this support were about monitoring the powers to ensure they are used fairly and without discrimination.

7.6 As ethnicity is already being recorded by the PSNI when conducting a stop and search and monitored by supervising officers, the NIO considers there is currently no need to amend the Code to make it a mandatory requirement. The NIO are content for the PSNI to continue with their current practice of recording perceived ethnicity. The current Independent Reviewer of the 2007 Act, Mr David Seymour CB has responsibility for reviewing all aspects of sections 21 to 32 and he is also content and is satisfied with record keeping and the details contained within those records.

7.7 Mr Seymour is satisfied that the electronic recording method enables supervising police officers to carry out their duties under paragraphs 5.9 to 5.13 of the Code in regards to monitoring and supervising the use of stop and search powers.

Community Background

7.8 The NIPB in their ‘*Thematic Review*’ made the following recommendation regarding community monitoring:

“The PSNI should as soon as personably practicable but in any event within 3 months of the publication of this thematic review consider how to include within its recording form the community background of all persons stopped and

searched under section 43, 43A or 47A of the Terrorism Act 2000 and all persons stopped and searched or questioned under section 21 and 24 of the Justice and Security (Northern Ireland) Act 2007. As soon as that has been completed the PSNI should present to the Performance Committee, for discussion, its proposal for monitoring community background. At the conclusion of the first 12 months of recording community background, the statistics should be analysed. Within 3 months of that analysis the PSNI should present its analysis of the statistics to the Performance Committee and thereafter publish the statistics in its statistical reports.”

7.9 David Seymour agrees with the NIPB recommendation on recording community background and reports on the arguments in favour of this in section 8 of the Seventh Report on the 2007 Act. He points out that recording community background will enable the PSNI to meet their duty to promote good relations and to use the powers without discrimination on the grounds of *“religious belief or political opinion, racial group, age, marital status, sexual orientation, gender, disability or whether or not a person has dependents”* under sections 75 and 76 of the Northern Ireland Act 1998. These obligations are also set out in the Code of Practice for the 2007 Act. Mr Seymour comments in paragraph 8.6:

“...transparency is the key to accountability and therefore confidence in the PSNI. In these circumstances it is hard to see how that accountability can be complete and properly assessed unless some form of community monitoring takes place”.

7.10 Mr Seymour also reports on comments made to him when he asked for views on recording community background. These comments were very varied, some thought statistics would be exploited for political purposes; some believed there would be indiscriminate targeting of the powers to redress any imbalances and; others thought monitoring community background was unnecessary and to do so would exacerbate community tensions. Mr Seymour points out however that a significant majority he consulted with believed that community background monitoring should be carried out.

7.11 In paragraph 8.7 of the Seventh report on the 2007 Act Mr Seymour refers to the difficulties in determining community background:

“The real difficulty is how this information should be obtained for these purposes. It is clear ... that this information can be obtained for the purposes of demonstrating that the powers are exercised in a proportionate way. However, a formal requirement in the JSA for the detained person to state his community background would be unacceptable. It could only be enforced by making it a criminal offence for the person to refuse to do so. This would amount to criminalising a refusal to declare religious or political allegiance. Much of the objection to community monitoring appears to be based on this concern. Indeed, many people I spoke to (including young people) were positively hostile to the idea of being asked this question in a public place. The PSNI themselves do not consider that having the power to ask for this information – as opposed to, for example, a name and address – is operationally necessary”.

7.12 The remarks of the Independent Reviewer indicate some of the difficulties inherent in the recording of community background, which in itself is a somewhat fluid concept, referring presumably to the person’s religious belief or political opinion or a combination of these. Mr Seymour highlights problems with the approach of directly asking a person what their community background is. Without asking directly however (which the NIO agrees is not appropriate), the collection of this data is not straightforward and is of course inherently more difficult than assessing perceived ethnicity. Factors such as the area a person lives in or the school they attended or their name could possibly be used to assess perceived community background but such considerations will not always deliver the right assessment and not every person stopped and searched will have a particular “community background”.

7.13 Although there appears to be no easy way to determine community background the PSNI has considered this recommendation in detail and have discussed the monitoring of community background data in stop and search and stop and question under the 2007 Act with the Performance Committee of NIPB on several occasions since the recommendation was made. The PSNI have subsequently made a commitment to accept the recommendation and are still in discussion with the Performance Committee on the options for delivery. Work is currently ongoing in preparation of a pilot programme to develop the most suitable means of monitoring community background.

7.14 As previously stated, the PSNI are subject to an equality duty under section 75 of the Northern Ireland Act 1998 which provides that a public authority shall in carrying

out its functions relating to Northern Ireland, have due regard to the need to promote equality of opportunity between persons of different religious belief, political opinion (and other groups). The PSNI has given a commitment in its Equality, Diversity and Good Relations Strategy 2012 – 2017 to “ensure police powers are being exercised fairly and impartially”. The PSNI has accepted in principle that collecting data on community background would assist in the aim of ensuring stop and search is appropriately monitored by supervising officers and is not used in a discriminatory way and may also assist in the PSNI fulfilling its equality duty in this regard.

7.15 The PSNI completed some analysis of data on the community background of those stopped and searched under Section 24, Schedule 3 of the 2007 Act for the Performance Committee of the NIPB. The Independent Reviewer reports on this in paragraphs 7.11-7.13 of his seventh report as follows:

“Statistics provided to me by the PSNI indicate that 40% of the stop and searches are carried out against individuals who were searched more than once during the year (“multiple searches”). The three “busiest” districts all exceeded this 40% average – A District 43%; E District 42% and G District 70%. 81% of those individuals stopped on multiple occasions in the past year were suspected to be DRs or their associates accounting for 92% of all multiple searches. In G District 92% of those individuals searched on multiple occasions were suspected to be DRs or their associates accounting for 98% of all multiple searches in G District. Some might say that these figures indicate a bias towards one section of the community. The PSNI would argue that these figures show that the powers are targeted at those who pose a threat to the public and demonstrate that they are used on an intelligence led basis to protect the public. The PSNI told me that only 0.03% of the Northern Ireland population are stopped more than once a year under JSA and TACT 2000 powers.

So 81% of the stop and searches on multiple occasions are of individuals suspected to be DRs or their associates. The remaining 19% of the searches include 7% who had significant criminal association; 3% had loyalist association; 1% were firearms related; 1% were related to interface disorder; and 8% were of unspecified background.

It also worth noting that there are no internal or official “targets” for the exercise of these powers. They are intelligence led and exercised only when necessary to protect the public. I saw nothing to suggest that the powers are used in an arbitrary way or to harass – even though that is a common perception in some

quarters. All the facts and indicators suggest otherwise”.

7.16 The Reviewer is in agreement with the NIPB’s recommendation that the PSNI should consider recording community background details when conducting a stop and search or stop and question and he is also aware of the ongoing work in this regard.

Ethnicity and Community Background summary

7.17 The NIO can understand why Sinn Féin and CAJ have suggested there should be a mandatory requirement to record ethnicity and community background details. However, as ethnicity is already being recorded in practice and there is no suggestion this will stop; and because community background is already under consideration the Secretary of State does not intend amending the Code at this stage. When the NIO next come to fully review the Code however, consideration will be given to adding a requirement to record ethnicity and community background in stop and search records to the Code. At that stage, before revising the Code, there would be a public consultation which would provide the opportunity to consider the views of the public in Northern Ireland on the issue of recording ethnicity and community background details. At the end of a consultation process the Secretary of State would consider all responses. A draft revised Code would then have to be agreed by both Houses of Parliament before being published.

8. Conclusion

8.1 The NIO recognises the importance of the safeguard that a record of the stop and search is made and is accessible to the individual, section 37 of the 2007 Act refers:

“The Chief Constable of the Police Service of Northern Ireland shall make arrangements for securing that a record is made of each exercise by a constable of a power under sections 21 to 26 in so far as –
(a) it is reasonably practicable to do so, and
(b) a record is not required to be made under another enactment.”

However the NIO does not think it is necessary in order to comply with article 8 ECHR or any other requirement for the PSNI to provide a record of a search contemporaneously. The NIO considers that the procedural safeguards concerning record-keeping requirements as set out in the published Code are comprehensive and

that the arrangements currently in place for provision of the record are appropriate, in particular to safeguard the interests of the person stopped.

8.2 The NIO has concluded that the electronic recording system used by the PSNI is beneficial to both police and public. This conclusion is supported by the evidence of effective record keeping as reflected in the NIPB's report¹⁷, *'Thematic Review'* published in October 2013; and several reports of the Independent Reviewer of the 2007 Act. Although comparable Codes of Practice for stops and searches under the Police and Criminal Evidence Act (PACE) 1984 in England and Wales provide a presumption that a contemporaneous record will be given to a person stopped, the Northern Ireland PACE 1989 Code A for the exercise by police officers of statutory powers to stop and search does not provide this presumption. When considering both the merits of electronic recording and the limitations on PSNI with regards to portable printers, we are not proposing a change for the JSA 2007 Code.

8.3 The only way to provide a contemporaneous record (given the benefits to the police and the public of electronic recording) would be for PSNI to have access to portable printers for printing the electronic record or they would have to make a handwritten record in addition to recording the details electronically. However there would be undue expense and burden in providing portable printers to accompany the BlackBerry devices and to provide a handwritten record in addition to recording electronically would result in duplication of work. This duplication would unnecessarily impinge on police resources and it would also lengthen the time taken to conduct a search. Detaining individuals who have been stopped and searched for longer than is absolutely necessary is not appropriate and could lead to criticism from those stopped.

8.4 To provide portable printers to all officers conducting 2007 Act stop and search operations so as to enable an electronic print out of a stop and search record contemporaneously would involve considerable costs. The Chief Constable advised in his response to the consultation that he had revisited the provision of portable printing in order that he could be assured the PSNI are currently exercising the best

¹⁷ The NIPB Report:
http://www.nipolicingboard.org.uk/stop_and_search_thematic_review_final_draft_15_october_2013.pdf

option, both from a police and general public perspective. He provided some details regarding costs and also the security risk and advised:

“In short, a portable printing solution would be expensive to purchase with initial costs estimated in the region of £772k (1,200 printers at £600 each; paper costs of £18k per year; ink costs of £9k per year and upgrade of our existing mobile data application estimated at £25k). Beyond costs, the logistics of deploying and distributing such devices would also be complex. Some of the key hurdles that prevent such an item being used in the wider service include the fact that printers are not ruggedized and would therefore require a bespoke case to be designed and manufactured (further driving up costs). As printers would also need to be connected via Bluetooth to a mobile data device, this introduces a security risk requiring assessment and approval from the PSNI accreditor and most likely the National Accreditor.”

8.5 It is apparent that if the PSNI were to provide portable printers the costs would be considerable as set out above, and no doubt there would be additional costs in the training of officers in how to use the new equipment. The NIO is mindful of the pressures on the PSNI budget and the competing, serious, policing priorities they face. The NIO considers that the provision of the URN and guidance as to how to obtain a copy of the search record from any police station (not necessarily a local one) to be a sufficient safeguard and that provision of a record contemporaneously is not required under article 8 of the ECHR or any other requirement. Therefore it does not consider it necessary or reasonable to impose the additional financial and other burdens on the PSNI that would be involved in providing a search record on the spot.

8.6 The NIO has considered the responses received regarding paragraph 8.78 from Sinn Féin and CAJ requesting the reversion of the paragraph as written prior to consultation and recommencing the provision of records contemporaneously. The NIO has in particular considered the suggestion made by Sinn Féin and CAJ that some members of the public may be less inclined to request a record of their stop and search if they are required to attend a police station to obtain it. That may be the case for small number however they can attend any police station in any area in Northern Ireland for their record. Therefore the conclusion arrived at is that even if there is any such reluctance to attend a police station in a small number of cases, the opportunity is nonetheless there and any such effect is outweighed by the arguments **against** providing records contemporaneously. Electronic recording is the most efficient and

effective method of data collection and record keeping; it would be disproportionately burdensome to require the PSNI to supply portable printers or to complete handwritten records in addition to electronic records; and the Code of Practice will therefore remain as it is currently written in terms of record making and the provision of those records.

8.7 The NIO has detailed why it did not consider it necessary to consult the public in regards to amending paragraph 8.75. However, we note the PSNI has accepted the NIPB's recommendation that community background should be monitored and they are working closely with the NIPB's Performance Committee on progressing this issue and that the Committee; which has representation from a cross section of the community including political representatives; has been kept fully informed on progress with implementing the recording community background data. We also note that the police already record the perceived ethnicity of the person stopped. When the Secretary of State comes to review the Code that review will commence with a public consultation on the issue of adding a requirement in the Code on the police to record the ethnicity and community background of the person stopped.

8.8 The Government considers that the Code does not require amendment to paragraph 8.78 and is satisfied that the Code will continue to ensure that the 2007 Act stop and question, stop and search and other powers are used proportionately, where necessary and in accordance with the law.

Northern Ireland Office

October 2015

Excerpt from the Code of Practice as published.

Stopping and searching persons: Records

8.73 *A record must be made of every stop and search. An officer who is present at a search should ensure that a record is made at the time unless it is impractical to do so. The person should be informed that a full record will be available, how it can be accessed and that it can be requested within 12 months of the search.*

8.74 *In all cases the officer must ask for the name, address and date of birth of the person searched, but there is no obligation on a person to provide these details and no power to detain a person if they do not provide these details. However, they may be obliged to provide their name, address and date of birth under other relevant legislation and may be detained if this information is not provided.*

8.75 *The following information must always be included in the record of a search even if the person does not wish to provide any personal details:*

- (i) the name of the person searched, or (if it is withheld) a description;*
- (ii) the date, time, and place that the person was first detained;*
- (iii) the date, time and place the person was searched (if different from (ii) above);*
- (iv) the purpose of the search;*
- (v) the basis¹⁸ for the use of the power, including any necessary authorisation that has been given;*

¹⁸ The BlackBerry devices used by the PSNI require that the basis for using the power is recorded before the officer can input further details relating to the stop.

- (vi) *the outcome of the search (e.g. arrest, seizure or no further action);*
- (vii) *a note of any injury or damage to property resulting from it; and*
- (viii) *the officer's identification number and the name of the police station to which the officer is attached.*

8.76 *The names of police officers are not required to be shown on the search record or any other record required to be made under this Code.*

8.77 *A record is required for each person searched. However, if a person is in a vehicle and both are searched, and the object of the search is the same, only one record need be completed. Authorisations and records compiled under this section must be retained for at least one year, or for the duration of any associated legal proceedings, if longer.*

8.78 *A record of the stop will be made electronically by the officer. A unique reference number and guidance on how to obtain a full copy of the record must be provided to the person searched. If for any reason an electronic record cannot be made or a unique reference number cannot be provided at the time, guidance must still be given to the person searched.*



Stop and Search Information Card

Date:

Reference No:

To obtain a full written record of your stop/search produce this reference number in person at a police station within 12 months.

You may seek independent legal advice

If you are under 18 and would like free independent legal advice about stop and search and your experience please contact the Children's Law Centre 0808 808 5678.

Why do police have power to Stop and Search?

Stop and Search can help the police prevent and detect crime, to protect the public and make your area safer.

Your Rights

What should the police officer tell you?

Before you are searched, the police officer should tell you:

- The reason why you are to be searched,
- What law they are using to stop and search you,
- That you must wait to be searched,
- What they are looking for,
- Their name or their service number,
- The station they work at,
- That you have a right to get a form, giving details of the stop and search. The police officer will give you a reference number, which you can quote to ask for a copy from a police station. You can do this at any time within the next 12 months.

How should a Stop and Search be carried out?

You should be treated politely and with respect.

A search should normally be done by an officer of the same sex as you. This does not mean you are being arrested.

If you are stopped in a public place, you only have to take off your coat or jacket, hat and gloves, unless the officer believes you are using clothes to hide your identity. If you have been stopped in relation to terrorism, you can be asked to remove footwear.

Additional Relevant Reports

1. Home Office

1.1 On 02 July 2013 the Home Secretary launched a consultation¹⁹ which closed on 24 September 2013 on the use of the powers of stop and search in England and Wales. The consultation generated considerable interest and attracted over 5,000 responses resulting in the 2014 Home Office report titled '*Summary of Consultation Responses and Conclusions*'²⁰. Section 4 covers '*Bureaucracy in policing*' and question 8 asked the public:

“In your view, should Government require police forces to record stop and search events in a certain way (for example, using particular technology) or are individual forces better placed to make this decision?”

1.2 Views on question eight were almost evenly balanced. Of those that stated a view, the majority believed that police forces were better placed to make the decision on how they should record stop and search events, although a very large number of responses failed to express a view either way. Some of the respondents who gave reasons for their answer raised concerns around consistency and comparability if recording decisions were defined by local police forces and others questioned whether a solution involving technology was affordable. A range of suggestions were made about how best to capture information, from paper based to body worn video cameras. The most frequent suggestion was for a handheld device such as a smart phone with secure applications.

1.3 The most common response to this question from campaign groups was that technical solutions for collecting data should be a local matter for the Chief Constable and Police and Crime Commissioner to meet local needs. There were two main

¹⁹ Home Office consultation:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212014/Stop_and_Search_consultation_Revised_WEB_v2.pdf

²⁰ Home office consultation summary:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307545/StopSearchConsultationResponse.pdf

stated reasons for this: firstly, police forces have different needs dependent on their local policing context, and secondly, that decisions on investment in operational technology were properly a matter for the police force holding the budget.

1.4 The conclusions of the stop and search consultation for England and Wales adds support to the current methods of electronic record keeping used by the PSNI. The Home Office concluded that:

“As far as possible the police should be freed from unnecessary paperwork, enabling them to focus on the job of fighting crime and protecting the public. But to be able to make the best use of police time, information on stop and search needs to be recorded and processed. This will enable police forces to monitor whether stop and searches are effective. Searches conducted too often and for little reason is a waste of police time.

With the increasing use of technology by officers on the front line, modest recording requirements should not take much time. There are many non-paper ways of collecting data efficiently and effectively. Good examples of innovative solutions which reduce bureaucracy can be found across England and Wales. Greater Manchester Police, for example, are using Airwave to capture data – most of which is captured automatically with little input from the officer. Building on this success, other police forces (such as Staffordshire) have begun to mirror their approach.

There are potential benefits to police forces developing local technological solutions to minimise bureaucracy. However, there are also benefits in collaborative approaches and by police forces taking advantage of tried and tested technologies that deliver demonstrable results. Ultimately the approach taken is for the Chief Constable and Police and Crime Commissioner of each police force to decide - but the potential gains of investing in time-saving technology should not be underestimated.”

2. Her Majesty’s Inspectorate of Constabulary

2.1 In the 2013 HMIC report²¹ titled ‘*Stop and Search Powers Report: Are the police using them effectively and fairly?*’ 10 recommendations were made for the England and Wales police forces to consider. A summarised account of the details of some of the

²¹ HMIC Report: HMIC <https://www.justiceinspectors.gov.uk/hmic/media/stop-and-search-powers-20130709.pdf>

HMIC recommendations relevant to record keeping and the current practices and processes that are currently used by the PSNI follows:

2.2 **Recommendation 1** - Chief Constables should establish and improve monitoring of stop and search powers so that they can be satisfied that the powers are exercised lawfully and to prevent crime, catch criminals and maintain trust.

2.3 **PSNI practice** - The PSNI have a monitoring system in place through the PUMA BlackBerry database. Electronic record keeping enables supervising officers to select records via the database to monitor the use of the 2007 Act powers. The PSNI are regularly scrutinised by the NIPB and also by the Independent Reviewer of the 2007 Act in regards to record keeping and monitoring of the use of powers.

2.4 **Recommendation 3** - Chief Constables should ensure that officers carrying out stop and search 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.

2.5 **PSNI practice** - The general principles governing the exercise of the powers and supervision of their use are covered in section 5 of the 2007 Act Code of Practice. Paragraphs 5.6 to 5.8 cover 'Avoiding Discrimination' and paragraphs 5.9 to 5.13 detail the responsibilities of the PSNI on 'Monitoring and supervising the use of stop and search powers'. The PUMA BlackBerry database facilitates general supervision of the stop and search powers as it enables the compilation of comprehensive statistical records for analysis for example to examine the record of someone who has been stopped and search on several occasions, or to assess how the powers are used in a certain area, such as a town or district to ensure that the powers are use when proportionate and necessary.

2.6 **Recommendation 7** - Chief Constables should, in consultation with elected local policing bodies, ensure that they comply with the code of practice by explaining to the public the way that 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 which involves those people who are stopped and searched, for example, young people.

2.7 PSNI practice - The use of these powers in Northern Ireland is subject to external scrutiny mechanisms which do not apply elsewhere in the United Kingdom. The PSNI is overseen by the NIPB, the elected policing body which is a unique structure in terms of policing within the United Kingdom. The PSNI engage regularly with the NIPB, specifically the Performance Committee and Human Rights Advisor²². HMIC may also conduct investigations on PSNI performance, assessing it against that of other United Kingdom Police Forces. At a local level, accountability structures require senior officers to attend meetings of the Police and Community Safety Partnerships (PCSPs) which are local bodies made up of Councillors and independent people from each Council area where specific concerns about police actions can be raised.

2.8 There is ongoing independent scrutiny of PSNI use of the 2007 Act powers by the Independent Reviewer, currently David Seymour CB, who engages with all sections of the community and reports annually to the Secretary of State for Northern Ireland. Section 13 of Mr Seymour's report, published January 2015 is a '*Summary of Views Expressed by Consultees*' and this includes comments from a range of individuals in the community who talked openly about their experiences with the PSNI both in the context of stop and search and wider policing issues.

2.9 Recommendation 8 - Chief Constables should ensure that those people who are dissatisfied with the way they are treated during a stop and search encounters can report this to the force and have their views considered and, if they wish, make a complaint quickly and easily. This should include gathering information about dissatisfaction reported to other agencies.

2.10 PSNI practice - In Northern Ireland any member of the public can make a complaint to PONI which is a non-departmental public body and provides an independent and impartial complaints system. Complaints can be made easily, in

²² The NIPB has a statutory duty under section 3(3)(b)(ii) of the Police (Northern Ireland) Act 2000 to monitor the performance of the PSNI in complying with the Human Rights Act 1998. It is the role of the Board's Performance Committee to carry out this monitoring work. The Committee is assisted in this task by the Human Rights Advisor to the Policing Board to advise the Board on how to meet its statutory duty under section 3(3)(b)(ii) of the 2000 Act.

person at the PONI office (no appointment necessary); in writing by letter, email or online complaints form; by telephone; via a solicitor; or by reporting a complaint to a local police station to forward onto PONI. This does happen, complaints are made and the Police Ombudsman does take stock of these complaints and makes recommendations to the PSNI, for example, on recording the basis of a stop and search on their Blackberry devices which the PSNI have implemented.

2.11 PONI has jurisdiction to consider any complaint made against the police in Northern Ireland. There is also some scope for less formal resolution in appropriate cases. It is important to note that for the financial year ending 31 March 2014 the total number of complaints was 3,738. However, only 50 of those complaints related to the use of the 2007 Act powers. Furthermore only one disciplinary matter involved the use of the 2007 Act powers in the preceding two years. In the year ending 31 March 2015 the total number of complaints was reduced by 10% to 3,367 and the number of complaints relating to the use of the 2007 Act powers reduced by 44% from 50 to 28.

2.12 **Recommendation 10** - Chief Constables should work with their elected policing bodies to find a better way of using technology to record relevant information about stop and search encounters which reveals how effectively and fairly the power is being used.

2.13 **PSNI practice** – The PSNI works closely with the NIPB their elected policing body on operational matters. Further to this the NIPB has a responsibility to have oversight of the PSNI and one of their priorities is to oversee the PSNI Information and Communications Technology (ICT) Strategy. This strategy has been developed to cover the period 1 April 2014 – 31 March 2017. It is focused on key information technology priorities while remaining considerate of the finite resources available in meeting the expectations of PSNI and the public. The PSNI ICT Strategy 2014 fulfils the *Patten Report*²³ recommendation 93 which stated that:

“There should be an urgent, independent and in-depth strategic review of the use of information technology in policing. It should benchmark the Northern

²³ The Independent Commission on Policing for Northern Ireland was established in 1998 as part of the Belfast Agreement. It was chaired by the conservative politician Chris Patten. On 9 September 1999 the Commission produced its report entitled ‘A New Beginning: Policing in Northern Ireland’ better known as the ‘Patten Report’.

Ireland police against police services in the rest of the world and devise a properly resourced strategy that places them at the forefront of law enforcement technology within 3 to 5 years. It should be validated by independent assessment. The strategy should deliver fully integrated technology systems that are readily accessible to all staff and should take advantage of the best analytical and communications systems currently available. Users of the technology should play a key part in devising the strategy and in assessing its implementation.”

2.14 In using the PUMA BlackBerry devices to record stop and searches the PSNI are already ahead of the HMIC recommendation and are continuing to fulfil the *Patten Report* recommendations. The Independent Reviewer has stated at paragraph 11.10 of the Seventh Report in regard to the HMIC Report:

“It is instructive to note that nearly all the recommendations for improvement involved taking actions which had already been taken in Northern Ireland by the PSNI. To that extent the PSNI were – and are – ahead of the game nationally.”

Although HMIC’s 2013 report is about general stop and search powers in England and Wales, the recommendations it makes are relevant as some of them suggest improvements in record keeping that have already been implemented by the PSNI.