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PSNI Stop and Search – A Reflection

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PSNI Stop and Search – A Reflection (conference note). 5/11/2021

Dr John Topping

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Ok, so good morning everyone and thank you for the opportunity CAJ/ICCJ to talk about stop and search today. Indeed, it's been almost 3 years to the day that I ran a conference in this very room on stop and search with the Chief Constable Simon Byrne on his first public appearance. But in the short time I have, what I want to say is not what has happened since then; nor indeed do I want to get bogged down in jousting over in-year S&S statistics (which I'm happy to later on). Because there are a much broader range of rights-based issues around stop and search which are both more complex and longstanding for PSNI than those contained in their annual statistical reviews .

And what I want to start off with is the elusive nature of stop and search. Setting the unique and arguably necessary JSA powers aside because of the security situation, it is the ordinary S&S powers under MDA and PACE which are a case in point. With PSNI in possession of the very same PACE and MDA S&S powers in England and Wales for the last 20 and beyond, they have tended to remain hidden in plain sight within the accountability and operational policing apparatus, relatively unchecked and unchallenged. It is indeed curious that between 2004/5 to 2015/16, PSNI's use of PACE AND MDA powers specifically, increased by 74% - with PSNI now commanding the 5 highest usage rate in the UK. Indeed, 8 out of 11 PSNI's policing districts have S&S rates above the average of England and Wales; and every single PSNI district has arrest rates below the average for England and Wales. Or in other words, PSNI by their own annual statistics are arguably, the worst performing police service in the UK when it comes to stop and search – seemingly immune to the reformatory focus witnessed in England and Wales, backed up by the fact stop and search has not been mentioned once in the past decade of NIPB policing plans.

And taking for example, MDA which comprises 76% of all non-terrorist stops, it has an arrest of 5% - in fact only 1% point above the arrest rate of the much derided suspicion-less s.60 powers in England and Wales. Notwithstanding the arrest rate for under 18s sits at 4%. So the question is, how in a rights-based sense, has S&S become so prolific, yet unseen in a Northern Irish context. Indeed, it's also remarkable that it has taken until September 2021 to publish their first ever service instruction on S&S – as a document which to some extent merely restates the rights incumbent upon PSNI S&S usage in the first place.

Yet, we have over a decade of empirical research which demonstrates not only the impact and effect of stop and search – particularly on children and young people – but as demonstrated in the recent Young Life and Times Survey and PSNI's own survey of over 3000 children and young people in 2021, that the powers in significant instances are not being used appropriately or correctly; that children are unaware of their rights; that records are not kept,

receipts are not given; and it is damaging relations and trust. Or in other words as my own research has demonstrated, the amplificatory effects of organisational culture around stop and search usage cause the legal boundaries of the power to be redrawn at an operational level. That is what the evidence tells us.

But should we be surprised? Well, on the one hand no. Because for the same MDA and PACE powers, these are the very same problems which evidence has pointed to have existed in England and Wales for decades. Yet somehow, beneath the police accountability architecture here, stop and search has evaded such questions and scrutiny. In fact, we had the opportunity to be ahead of policing across the rest of the UK and Ireland when we've had for children and young people, the UNCRC enshrined in stop and search policy Code of Practice A. But set against the policy based evidence which has driven stop and search usage in jurisdiction, set against NIPB performance committees at which I've spoken at many and where few fail to differentiate between stop and search legal regimes, stop and search as a rights based issue possess a dual role – as part of the 'overt criminal justice curriculum' which on the surface is human rights compliant, regulated, overseen and deals with crime. But stop and search is also part of a 'covert justice curriculum' as it might be called, where the evidence in fact points to people on the receiving end of stop and search experience a very different story – where relatively high levels of stop and search, concentrated in socio-economically deprived communities, categorise and exclude – not forgetting that in fact PSNI's main stop and search power – the MDA – doesn't actually deal with drugs or crime very much at all.

So in short, when it comes to stop and search and human rights issue, it is a power with diminishing returns on investment. As the evidence points to, the more the power is used, the lower the legal threshold gets around reasonable suspicion and the lower the outcome rates – not forgetting the impact and effect at a community. The question for today then is **not whether** a more rights based approach can be taken around stop and search, but why haven't we been seeing that as part of PSNI usage as the evidence tells us? And three years on from the Chief Constable having spoken about the critical effects of stop and search in this room, it would appear that the practical reality on the ground is not so much that PSNI S&S practice deviates from the law or civil liberties per se, but that these rights do not appear to be particularly relevant to some individuals and groups in society, particular young, socio-economically deprived males who bear the brunt of the powers.