



Stroud Against Racism

[REDACTED]  
Stroud

Gloucestershire

Gl [REDACTED]

Email - [REDACTED]@protonmail.com

6<sup>th</sup> June 2022

Dear Sir or Madam,

**PSD Ref: CO/291/22, OPCC Ref: 033/2022**

On the 28<sup>th</sup> April 2022 you wrote to the Office of the Police and Crime Commissioner (OPCC) in Gloucestershire to ask for the handling of your recent complaint by Gloucestershire Constabulary to be reviewed. I am the Independent Review Officer appointed by the Chief Executive for the OPCC in Gloucestershire, and I have been asked to conduct the review you have requested. I can confirm that I have had no prior involvement with the handling of the complaint, nor do I have any knowledge of or connection with the involved parties.

It is important at the outset to make my position as the Independent Review Officer clear. It is not my role to re-investigate the complaint or the matters which led to your initial contact with the police. Nor am I permitted to determine whether or not any actions taken by the police were lawful - only a judicial process can determine this. Rather, my role is to consider whether the outcome and handling of the complaint was reasonable and proportionate. I would like to reassure you that I have not simply quality checked what has already happened. I have examined the history of the complaint, your representations, and all of the surrounding circumstances, and I am confident that I have conducted the review fairly and in good faith.

In order to conduct my review I have accessed all of the relevant material that has been collated and retained by Gloucestershire Constabulary's Professional Standards Department under complaint reference number CO/291/22. This includes:

- Your initial complaint, dated the 31<sup>st</sup> January 2022
- Complaint Assessment, dated the 29<sup>th</sup> March 2022
- Complaint Response Letter, dated the 31<sup>st</sup> March 2022
- Correspondence between Mr Kitchen and Chief Inspector Pegler

I have also made additional enquiries with DCI Harris, Superintendent Pegler, Inspector Soderland, Inspector Shingler, and Mr Kitchen from your organisation.

I have reviewed the Best Use of Stop and Search Scheme document (Home Office, 2014); Gloucestershire Constabulary's Stop and Search Policy; Stop and Search in Gloucestershire Report (2019); HMIC Best Use of Stop and Search Scheme Report (September 2016); Gloucestershire Constabulary's Stop and Search Community Scrutiny Panel (SSCSP)'s Terms of Reference; the Scrutiny Panel's Confidentiality Agreement, and the Independent Office for Police Conduct's Statutory Guidance on the Police Complaints System (2020).

Finally, I have carefully considered your request for a review, dated the 25<sup>th</sup> April 2022 and I am very grateful to you for setting out so clearly the reasons for your ongoing dissatisfaction.

## **Summary of Your Complaint**

Your complaint was received by the Independent Office for Police Conduct (IOPC) on the 31<sup>st</sup> January 2022 and passed on to Gloucestershire Constabulary on the 1<sup>st</sup> March 2022 as they were the correct body to consider it. The complaint was allocated to DCI Harris in her capacity as the Appropriate Authority.

Your complaint was recorded as follows:

- *The complainant is making a complaint on behalf of a grass roots community group called SAR (Stroud Against Racism) stating that Gloucestershire Constabulary are not complying with the Home Office Best Use of Stop & Search (BUSS) Scheme by failing to honour the 'community complaints trigger mechanism' contained within Section 2.6.3(1), 2.6.3(3) and 2.6.8 of the Stop & Search Policy.*
- *The complainant is dissatisfied that the number of Stop & Search Community Scrutiny Panel meetings has been reduced from 12 to 4 meaning that complaints cannot be assessed and community feedback sought in a timely fashion.*

- *The complainant is dissatisfied that the Constabulary has mandated a confidentiality agreement for those who participate in the Stop & Search Community Scrutiny Panel meetings which happened without any community consultation and which now prohibits representatives reporting back to their respective community groups.*
- *The complainant states that recent changes to the way in which the Stop & Search Community Scrutiny Panel is structured and administered amounts to discrimination.*

### **The way in which your complaint was handled**

Having considered the circumstances of your complaint, DCI Harris determined that it should be handled under Schedule 3 to the Police Reform Act 2002. I am satisfied that this decision was correct.

After considering your complaint, DCI Harris made contact with Superintendent Pegler, with whom Mr Kitchen had previously raised concerns during his time on the Stop and Search Community Scrutiny Panel (SSCSP). The complaint was assessed and DCI Harris determined that you had raised no new allegations and provided no new information in addition to that previously raised by Mr Kitchen with Superintendent Pegler. On the 31<sup>st</sup> March 2022 DCI Harris wrote to you to explain how she had reached her conclusion that the service provided to you was acceptable and that no further action should be taken.

### **Your reasons for requesting a review**

You have requested a review of the outcome and handling of your complaint as you do not believe that it was reasonable and proportionate. Within your application for a review, you have raised the following points:

- 1. We (SAR CIC) request a review by an independent review officer as our complaint (31st January 2022) has not been responded to reasonably. We believe that the service, relating to areas covered by the complaint, provided by the police, is not acceptable.*
- 2. You have cited, in your response, an e-mail dated 13th November 2021 from the Chief Insp. to Mr Kitchen. This was in response to a document that Mr Kitchen, sent in a personal capacity, to the Chair of the Police & Crime Panel at Gloucestershire County Council on 26th Oct 2021. It was clearly marked as such, it was not a complaint and was not related to SAR CIC.*

3. *There has been no contact from the Chief Insp./Supt. seeking our view on how our formal complaint, of the 31st January 2022, was to be handled. We did however outline four steps for preferred local resolution towards the end of the document.*

4. *Your response alleges that Mr Kitchen made the decision to leave the Stop & Search Panel. Although the issue was not raised in our complaint, he did not 'leave' or resign, he was forced off the panel because of a Constabulary decision to 100% mandate a confidentiality agreement. Mr Kitchen (and SAR CIC) were clearly and demonstrably adversely affected by this decision. He made it clear that he would not be able to discharge his responsibilities by submitting to such an agreement.*

5. *Consequently, the directors of SAR CIC were left with no option but to submit the January 2022 formal complaint to (re)establish proper working community oversight of Stop & Search, for SAR CIC or any other appropriate community group, through the SSSP (Stop & Search Scrutiny Panel) inline with Home Office best practice (BUSSS). Items 1,2&4 of our complaint have not been recognised or addressed in your response.*

6. *We have attached the Home Office Best Use Guidance as it is the crux of the original complaint. Note that the constabulary has introduced clauses into its the SSSP Terms of Reference (most notably 7.5) which negates compliance with the best use scheme and can delay community scrutiny for up to two years.*

7. *We understand, to the best of our knowledge that no Stop & Search complaints have ever come before the SSSP. Also, there are still eight or nine outstanding Stop & Search complaints from 2021 about which the SSSP has no knowledge. With the Child-Q case recently in national headlines, this is an unacceptable state of affairs.*

8. *As 30 days have elapsed, since submission, we have lifted the public embargo on this complaint and have now discussed it with our MP, local district and county councillors.*

9. *Our local MP feels that a meeting is not appropriate at this stage. However, local county and district councillors are supportive. Trusting that the constabulary embraces a culture of continuous improvement and reflection we think that a meeting with the constabulary along with councillors (either separate or in parallel to this complaint) would be the best route for local resolution.*

As I have explained above, my role is limited to determining whether or not the way in which your complaint was handled and the outcome provided were reasonable and proportionate. It is not for me to re-investigate your complaint or the matters that led to you making contact with the police initially. However, I am permitted to provide you with additional information (where that information is readily available to me) in order to help resolve your ongoing dissatisfaction, and I will endeavour to do so as far as my role allows. Taking each of your points in turn:

1. Noted.
2. Your formal complaint to Gloucestershire Constabulary raised 4 main concerns:
  1. The Constabulary's failure to honour the Community Complaints Trigger Mechanism.
  2. The disproportionality of the use of stop and search powers within Gloucestershire
  3. The reduction of SSCSP meetings from twelve to four per year
  4. The introduction of mandatory confidentiality agreements for SSCSP participants.

During her consideration of your complaint, DCI Harris made enquiries with Superintendent Pegler and he provided a copy of his response to Mr Kitchen's email of the 26<sup>th</sup> October 2021. Although that email was sent in a personal capacity by Mr Kitchen, it referred to the same issues that you subsequently raised within your formal complaint. Superintendent Pegler was in the best position to respond to the points that you raised and as he had already researched and responded to them, I consider it to have been entirely reasonable and proportionate for DCI Harris to have referred to this document within her response to your formal complaint.

3. Superintendent Pegler has confirmed that he did not seek your views on how your complaint should be handled, and that he has not had any contact with Mr Kitchen since you made your formal complaint on the 31<sup>st</sup> January 2022. DCI Harris has confirmed that she spoke with Superintendent Pegler when your complaint was received and he informed her that he had spoken with Mr Kitchen on a number of occasions to try and resolve the issues that had been raised, and had made attempts to work with him to retain him on the SSCSP. It is this contact that DCI Harris was referring to within her response to your complaint.

4. Superintendent Pegler explained that confidentiality agreements are required to protect public data and that their introduction brought the SSCSP into line with other community panel groups. It is clear that Mr Kitchen felt unable to sign such an agreement and consequently felt that he was forced to leave the panel. Conversely, it was not possible for Mr Kitchen to remain on the panel unless he signed the agreement, and his decision not to sign was therefore taken as a decision to leave the panel. This is entirely a matter of interpretation and unfortunately it is not an issue that can be resolved within this report.
5. Item 1 of your complaint relates to the Constabulary failing to honour the Community Complaints Trigger Mechanism. This point was referred to and responded to within the complaint outcome letter.

Within Superintendent Pegler's response to Mr Kitchen's enquiry, which is repeated within the response to your complaint, he said he was unaware of any such community trigger complaints being made in relation to stop and search. Within your formal complaint, you explain that there were two formal complaints made about the Constabulary's use of stop and search in recent years but that neither had come before the SSCSP despite the Community Complaints Trigger being reached. I have made further enquiries with Superintendent Pegler and he does not believe there have been any events that have reached a trigger.

As part of my review I have examined the documents which refer to the Community Complaints Trigger and it has become apparent that there are two very different definitions of the trigger in circulation, which may be the cause of this discrepancy. Within the Stop and Search policy at 2.6.3, it says:

*The trigger mechanism threshold for Gloucestershire will be met if:*

- 1. There is a significant rise in the amount of Stop and Search-related complaints*
- 2. There is a significant increase in the disproportionality of those that are subject of stop and on the basis of race*
- 3. A single event or incident occurs related to Stop and Search activity that causes significant concern amongst our communities regarding police use of this tactic*

4. *Any other issue upon consultation with the Gloucestershire Constabulary Lead for Stop and Search*

Using this definition of the trigger threshold, it is feasible that complaints relating to stop and search could be received which do not meet the trigger. However, at point 7 of the SSCSP Terms of Reference (which you have highlighted) it says:

*“In Gloucestershire a Community Complaints Trigger Threshold will be met if any single complaint relating to the use of Stop and Search is received by the Constabulary.”*

Using this definition, every stop and search complaint received would meet the trigger threshold. This discrepancy must be resolved, and I have raised this with the Stop and Search lead for Gloucestershire Constabulary and the Professional Standards Department.

Point 2 of your complaint refers to the Constabulary being non-compliant with section 3.4 of the Best Use of Stop and Search Scheme as stop and search powers are used disproportionately within the Constabulary’s area and those communities are therefore discriminated against.

Section 3.4 of the Best Use of Stop and Search Scheme says:

*“In forces where complaints are particularly low, forces should consider treating every complaint as a ‘trigger’ – each requiring explanation and scrutiny by community groups.”*

The discrepancy between the SSCSP Terms of Reference (which state that a single complaint is a ‘trigger’) and the trigger criteria listed within the Stop and Search policy has been addressed above.

The issue of the disproportionate use of stop and search powers within Gloucestershire Constabulary was addressed by Superintendent Pegler within his response to Mr Kitchen’s email, and repeated in the response to your formal complaint. Superintendent Pegler explained some of the issues behind the data

within the 2019 report, and explained that further analysis has been tasked following the report's recommendations.

Point 4 of your complaint relates to the Constabulary mandating a confidentiality agreement for SSCSP participation. This was addressed within the response to your complaint. Superintendent Pegler explained that confidentiality agreements are a legal requirement of the Constabulary. They are needed to protect public data and their introduction brought the SSCSP into line with other community panel groups. I consider this response to have been reasonable and proportionate.

6. Within the final outcome report Superintendent Pegler explained that the Constabulary's governance will overrule any terms of reference and any change will be agreed by the Police Lead and the Chair. It is correct that any complaint must be dealt with before it can be passed on for scrutiny by the SSCSP. This may cause some delay in the panel considering such complaints, but would not prevent those complaints from being scrutinised. DCI Harris explained within the final outcome report that it is sometimes necessary to delay the handling of a complaint until the completion of any criminal justice process. This is true for all complaints. It is a decision that is scrutinised, and only made where there is a real risk of the complaint handling prejudicing the criminal case. Inevitably, this could cause further delay to the SSCSP being able to consider such complaints but again it would not prevent them from being considered once the complaint had been finalised, and for issues to be addressed and learning to be identified.
7. Gloucestershire Constabulary receive a very small number of complaints relating to stop and search and you are correct that at present not all of those complaints are referred to the SSCSP. I have made enquiries and there is currently no formal procedure in place for these complaints to be referred to the SSCSP, although there is a representative from the Professional Standards Department on the panel. DCI Harris is now liaising with the Constabulary's Stop and Search lead and looking to develop a policy for the way in which such complaints are brought to the attention of the panel to ensure transparency.
8. Noted
9. You have suggested a meeting between the Constabulary and local county and district councillors, but explained that your local MP does not feel that a meeting is appropriate at this stage. I have made enquiries with Superintendent Pegler. He is no longer the

Constabulary's Stop and Search Lead and is uncertain how much value there would be to such a meeting at this time.

## **Conclusions**

DCI Harris conducted enquiries with Superintendent Pegler who was at the time Gloucestershire Constabulary's Stop and Search lead. Given his role, knowledge and experience, conducting enquiries with Superintendent Pegler was the correct course of action to take. He had been in contact with Mr Kitchen from your organisation for some time and had previously considered and responded to the same issues you subsequently raised within your formal complaint. I am satisfied that this was a reasonable and proportionate way to gather information, and that the information gathered was considered and weighed appropriately and fairly. I am also confident that the conclusions reached logically flowed from that information.

Although the issues raised had previously been discussed between Superintendent Pegler and Mr Kitchen, it has been acknowledged that Stroud Against Racism as an organisation were not contacted to discuss your complaint and to ensure your concerns were fully understood. Within his response to Mr Kitchen's email, Superintendent Pegler made comments suggesting he had insufficient information to be able to address some of the concerns raised. In relation to the assertion that the Constabulary were not honouring the Community Complaints Trigger Mechanism, for example, Superintendent Pegler said "Please explain and provide an example." As it had already been identified that further information would have assisted in responding to this point, I consider it would have been reasonable and proportionate for contact to have been made to fully explore the issue once a formal complaint had been received.

Taking into account all of the circumstances, I am satisfied that in the main, the way in which your complaint was handled and the response provided to you by Gloucestershire Constabulary was reasonable and proportionate. However, for the reasons outlined above, it would have been appropriate for Stroud Against Racism to have been contacted once your formal complaint had been received. Had you been contacted, the issues which have since come to light may have been exposed sooner. On that basis, your review is upheld.

## **Recommendations**

DCI Harris has already begun to take steps towards the Professional Standards Department and the Constabulary's Stop and Search lead working more closely together to ensure stop and search complaints are properly scrutinised.

Under paragraph 28ZA of Schedule 3 to the Police Reform Act 2002, I recommend that Gloucestershire Constabulary addresses the conflicting definitions of the Community Complaints Trigger threshold within the Stop and Search Policy and the SSCSP Terms of Reference, taking into account the recommendation within section 3.4 of the Best Use of Stop and Search Scheme guidance, to ensure there is a clear, single definition.

This recommendation will be provided to the Professional Standards Department of Gloucestershire Constabulary for their consideration.

My decision is final and there is no mechanism to appeal it. However, you are quite within your rights to apply to the Administrative Court to seek a Judicial Review should you remain dissatisfied with the legality of the determination.

Yours sincerely

A handwritten signature in black ink, appearing to read 'NFT', written in a cursive style.

**Nadina Farley-Turner**

Independent Review Officer