



**Strategic Policing and Crime Board**

**16<sup>th</sup> April 2019**

**Police and Crime Plan Priority:** Improving confidence in policing

**Title:** Stop and Search and Use of Force

**Presented by:** DCS Chris Todd, Head of Professional Standards

**Purpose of paper**

1. To allow members of the Strategic Policing and Crime Board to support the Police and Crime Commissioner in holding West Midlands Police to account in their use of stop and search powers and in their use of force.

**Stop and Search**

***Background***

2. Police officers have the power to stop and detain members of the public for the purpose of a search when reasonable grounds for doing so can be made out by that officer. There are a number of specific pieces of legislation under which such a power can be exercised, but predominantly stop and search is carried out either under the powers conveyed by the Police and Criminal Evidence Act 1984, to search for prohibited weapons, items for use in stealing or stolen property, or the powers conveyed by the Misuse of Drugs Act 1971. The Firearms Act 1968 is also sometimes used and very occasionally other various bespoke pieces of legislation. When any of these powers are used, however, there is a requirement for the officer to record the circumstances of the search and it is the data generated in these circumstances that is presented within this report.
3. Stop and search can also be authorised by a senior officer within a designated geography for a specified period of time when there is reason to believe that serious violence is likely to take place within that geography and timeframe. This

power is then conveyed to all officers without them requiring to form their own reasonable grounds for a search under section 60 of the Criminal Justice and Public Order Act 1960 (from hereon in referred to as section 60s). The use of these powers are also examined within this report.

4. When officers stop members of the public and speak to them or even question them if they are suspicious of their activity at that time, there is no requirement in law to record that encounter. Similarly, a police officer has the power to stop any motor vehicle on a public road and check that the driver of that vehicle is a licensed and insured driver, but there is no requirement in law to record that this encounter has taken place. Therefore, unless the police stopping the vehicle leads to a physical search of the vehicle or its occupants, it will not be included in the data discussed here. There is, however, discussion within this paper about the potential to record such encounters under section 163 of the Road Traffic Act 1988 in the future.
5. The use of all police powers to carry out stop and search have come under intense public scrutiny since Her Majesty's Inspectorate of Constabulary, Fire and Rescue Services (HMICFRS) conducted an inspection in 2013 and found most police forces to be wanting in the lawful use of these powers. Prior to this inspection, in 2011/12, 64,000 people were being subject to stop and search across the West Midlands every year. Only 4% of such encounters resulted in an arrest, 27% of records did not meet the requirements to demonstrate lawful use of the power and members of the black and minority ethnic (BME) community were five times more likely to be subject to stop and search than members of the white population.
6. A Gold, Silver, Bronze command structure was established within West Midlands Police with the intention of reviewing our use of such powers and the manner in which data relating such encounters was collected. In addition, the command structure was also charged with understanding how West Midlands Police was publicly held to account and how our officers were trained in order to regain public trust and confidence in the use of such intrusive powers.

### ***Key Performance Data***

7. In 2018/19, 17,762 stop and searches were carried out across the West Midlands. Table 1 sets out some key performance for West Midlands Police over the course of this year.

**Table 1. Key Performance indicators by Force and NPU, 2018/19**

Area	Total	Live %	Positive Outcomes %	Arrest %	PACE s.1 by %	Drugs by %	Firearms by %
BE	4,420	84	27	16	33	44	4.8
BW	6,718	83	27	16	31	44	6.8
CV	1,509	69	29	19	42	51	5.3
DY	655	75	28	19	55	35	6.1
SH	906	75	28	13	50	43	2.8
SW	1,385	81	31	18	45	50	4.0
WS	985	72	30	16	44	46	9.1
WV	1,181	79	33	19	50	44	3.9
<b>Force</b>	<b>17,762</b>	<b>80</b>	<b>28</b>	<b>16</b>	<b>38</b>	<b>45</b>	<b>5.7</b>

- Live – Search Record created at the time tat the officer was dealing with the subject, or immediately thereafter
- PACE – Search under S.1 Police & Criminal Evidence Act 1984, for weapons, stolen property or articles used to commit crime
- Drugs – Search under S.23 of the Misuse of Drugs Act 1971, for controlled drugs
- Firearms – Search under S.47 Firearms Act 1969 – for unlawful firearms or ammunition

8. It is worthy of note that since 25<sup>th</sup> February 2019 there has been a significant upsurge in the use of section 60s across the whole of Birmingham and on occasion more widely, in response to the number of stabbings and murders involving young people. Examination of the use of this power is covered in more detail below, but the effect on performance data has been significant. For example, prior to the implementation of the section 60s the positive outcome rate for the force was 31% compared to 27% following their implementation. Between January 2019 and March 2019 the positive outcome rate has dropped from 32% to 19%.
9. Nevertheless our performance continues to measure favourably against most similar forces (MSF). The arrest rates in Greater Manchester are 11%, Merseyside 15% and West Yorkshire 18%, compared to 17% in WMP despite the impact of the section 60s. It should also be noted that our positive outcome rate in 2015/16 sat at only 25% compared to last year’s rate of 28%. The highest outcome rate achieved was in 2017/18 at 31% and this would have been maintained this year if the section 60 data were discounted.
10. Table 2 provides further breakdown of outcomes.

**Table 2. Outcomes overview forcewide, 2018/19**

<b>Outcome</b>	<b>No.</b>	<b>%</b>
Arrested – consequence of stop and search	2,348	13.2
Cannabis warning	745	4.2
Arrested – unrelated offence including warrant/pnc	571	3.2
Substance seized, person not arrested	928	5.2
Fixed penalty	175	1.0
Community resolution	76	0.5
Street summons	99	0.6
Out of custody caution	38	0.2
Street bail	38	0.2
Conditional bail	1	-
<b>All positive outcomes</b>	<b>5,019</b>	<b>28</b>
<b>No further action</b>	<b>12,743</b>	<b>72</b>

11. Table 3 sets out data in relation to disproportionality.

**Table 3. Disproportionality data by Force, NPU and comparison forces, 2018/19**

Area	Disproportionality rate		Searches per 1,000 population			
	Black	Asian	White	Black	Asian	Mixed
BE	3.2	2.3	-	-	-	-
BW	4.2	2.6	-	-	-	-
CV	4.4	1.4	-	-	-	-
DY	7.2	4.6	-	-	-	-
SH	8.4	3.7	-	-	-	-
SW	3.2	2.2	-	-	-	-
WS	5.9	2.3	-	-	-	-
WV	2.6	1.0	-	-	-	-
<b>Force</b>	<b>5.0</b>	<b>2.8</b>	<b>3</b>	<b>14</b>	<b>8</b>	<b>11</b>
GMP	-	-	1	3	1	2
Merseyside	-	-	7	18	5	7
West Yorkshire	-	-	2	6	5	4
England & Wales	-	-	3	29	8	9

\* Disproportionality Rate – how many times more a person from a minority community is likely to be stopped and searched than is a white person, based on figures from the 2011 Census

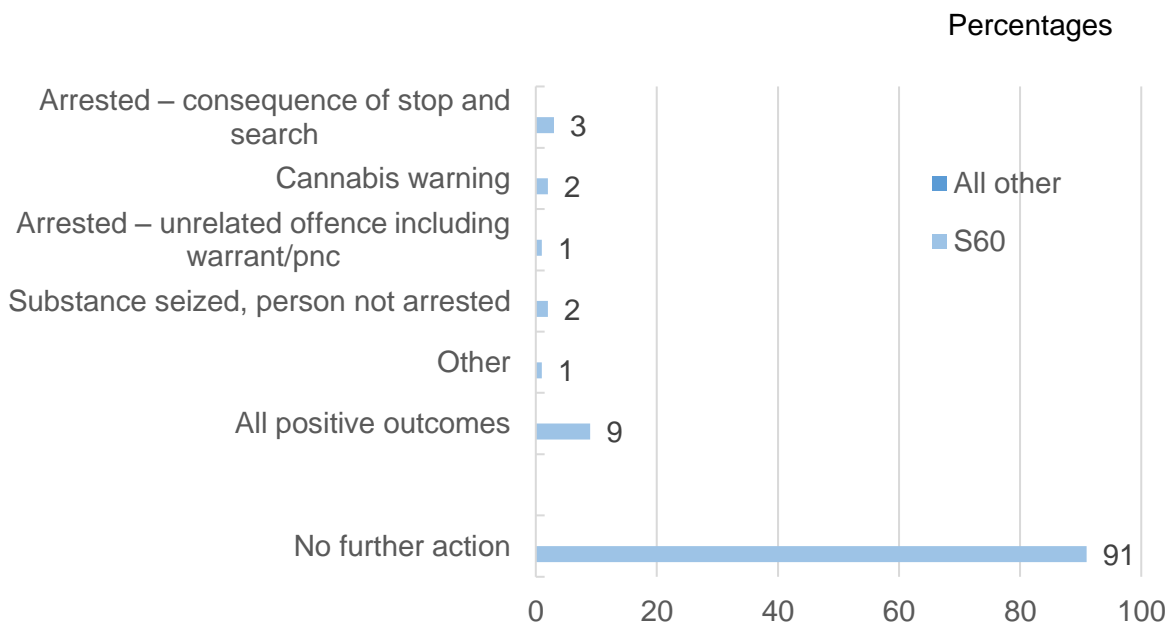
\* Figures for most similar forces based on performance year 2017/18

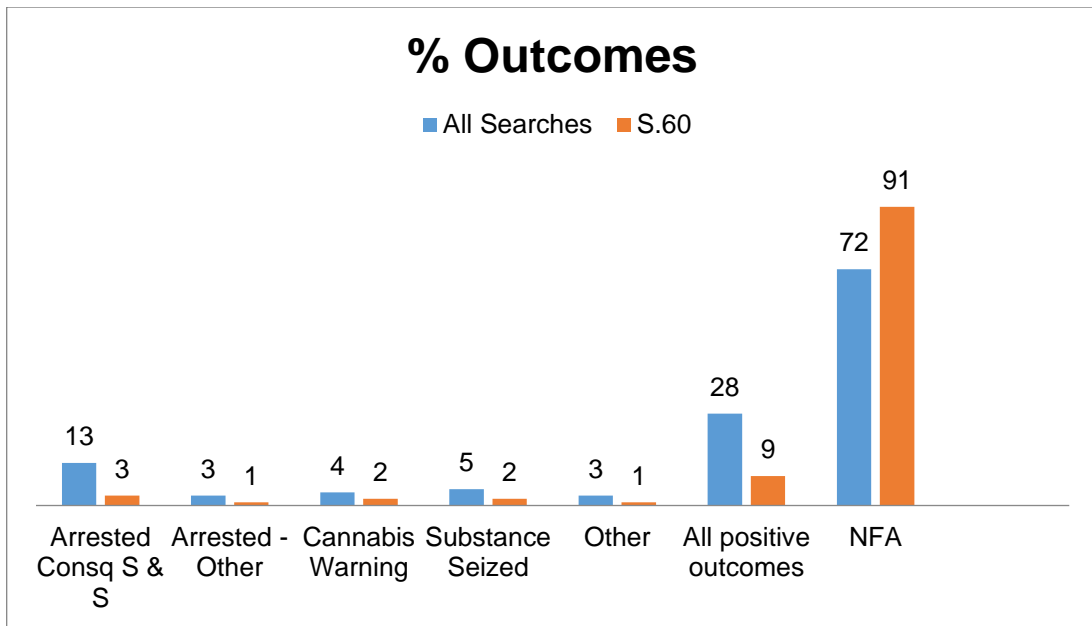
- Prior to the implementation of the sections 60s the disproportionality rate for members of the black community was 4.5 which increased to 5.0 following implementation. Although the section 60s have largely been limited to Birmingham, the city is disproportionately represented in the forcewide data by virtue of the sheer volume of activity across Birmingham (67% of all stop and searches shown). WMP continues to compare favourably at a national level and with some of our MSF.

**Section 60 Criminal Justice and Public Order Act 1994**

13. As was reflected above there has been considerable use of the section 60 power since the 25<sup>th</sup> February 2019. Tactical options were considered through the Gold Group managing the impact of a quick succession of murders of children with knives across the city and increasing volume of non-fatal stabbings of young people being recognised.
  
14. In the year to date there have been 42 Section 60 authorities resulting in 1,818 searches and 75 arrests following searches under S.60. This equates to one arrest for every 24 searches under S.60. 20 authorities have been given across Birmingham since 21<sup>st</sup> February 2019. In comparison, over the whole of 2017/18, 19 authorities were granted and 103 searches conducted. Outcomes for S.60s compared to all stop and searches are set out in Figure 1.

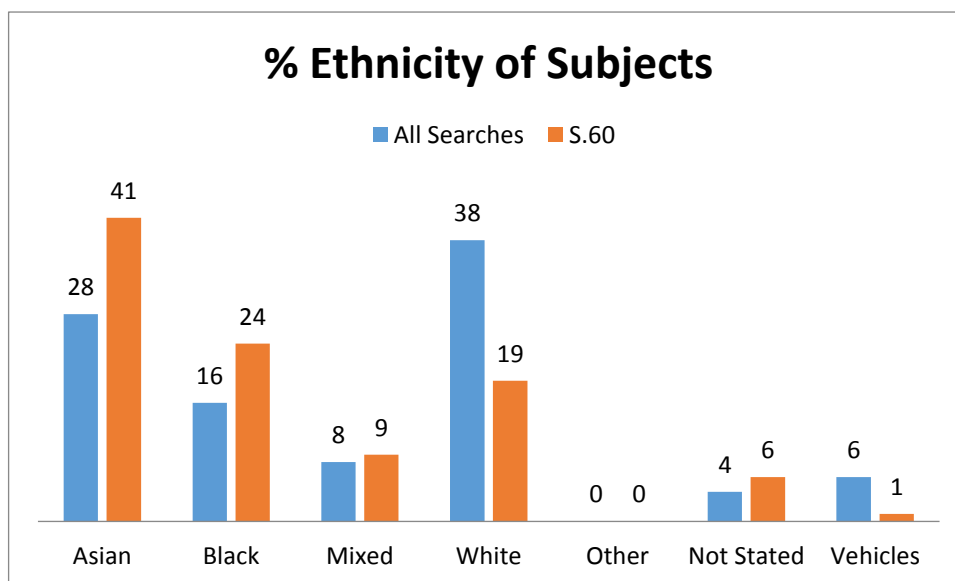
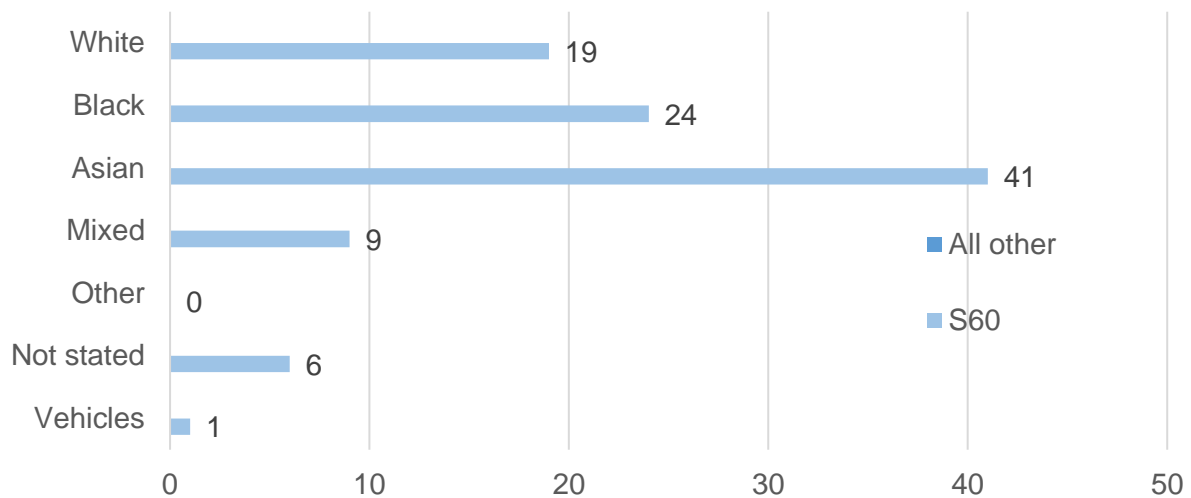
**Figure 1. Outcomes forcewide, S.60 compared all stop and searches, 2018/19 (YTD)**





15. The positive outcome rate when section 60 is used is only 9%, and members of the black community are 13 times more likely to be searched, whereas members of the Asian community 7 times more likely. Disproportionality data are set out in Figure 2.

**Figure 2. Section 60 disproportionality compared to all other Stop and Search Forcewide 2018/19 (YTD)**



16. Since the 26<sup>th</sup> February 2019, under the authority of section 60s, 1,601 searches were conducted, 67 arrests were made and 15 knives were recovered in the course of these searches.
  
17. However, across the 1,601 searches carried out in this period only 77 people were searched more than once and levels of violence have reduced. The fact only 15 knives were found in these searches should be viewed as a positive outcome given



that no reasonable grounds needed to be formed by the searching officer. Ideally we would hope to live in communities where searches of young people never yielded a knife, so low returns on searches is a move towards greater safety. Our strategy now though is to move away from section 60 authorised stop and searches to more 'stop and talk' and more 'stop and think' with young people in order to prevent knife crime and violence.

### ***Internal and External Scrutiny***

18. The force continues to hold quarterly governance meetings, chaired by the Chief Officer lead (ACC), supported by the Force Tactical Lead (Chief Superintendent) with representation from all NPUs and Departments and the OPCC. Data scrutiny continues to be applied at a granular level, whilst best practice is also shared through this group and accountability is provided to both the public, inspectorate and the OPCC. HMICFRS recorded in their 2017 inspection that they were impressed by the manner in which WMP conducts internal governance around the use of stop and search.
19. Each Neighbourhood Policing Unit (NPU) continues to hold its own stop and search scrutiny panel, chaired by independent community members, supported by the NPU senior leadership team and SPOCs (single points of contact). The make up of each panel is determined locally with some panels using social media to encourage engagement and some having made good use of feedback offered in the course of stop and search encounters themselves to recruit new panel members. Considerable progress has been made in refreshing the representation of scrutiny panels and in particular from young people through the great efforts of youth trainers. Feedback received has been positive and it has been noted that the quality of search records has shown marked improvement.
20. Body worn video (BWV) has now been authorised for use in public scrutiny panels and is being viewed by community members in such circumstances to provide greater reassurance and insight into how police use search powers. Feedback from scrutiny panel members has been overwhelmingly positive.
21. Youth Trainers are employed by the Office of the Police and Crime Commissioner (OPCC) to deliver inputs on stop and search to schools. As well as encouraging young people to provide feedback on stop and search and join scrutiny panels, the youth trainers have been invaluable over recent weeks in raising awareness with young people about the risks of knife crime. The Youth Trainers have also helped young people understand the need for additional levels of stop and search across the West Midlands in order to keep themselves and their friends safe. Community

engagement such as this has been critical to ensure that communities remain supportive of the necessary operational policing activity.

22. The OPCC also holds twice yearly commissions where all scrutiny panels, guests and the general public are invited to hold the PCC and West Midlands Police to account. The last Commission was held on 10<sup>th</sup> January 2019 and it will next convene on 4<sup>th</sup> July 2019.
23. WMP was inspected by HMICFRS in 2017 and found to be fully compliant with the Best Use of Stop and Search Scheme. The inspectorate commented, “The public can be confident that most officers carrying out stop and search in the West Midlands understand how to do so lawfully, fairly and respectfully”. HMICFRS have revisited West Midlands Police in 2018 and carried out a further Integrated PEEL assessment. The results of the inspection have not been published at the time of writing.
24. Beyond this region, West Midlands Police continues to enjoy the support of non-governmental organisations, having been invited in recent times to represent UK law enforcement at overseas events. The force has also worked with civil society groups and stakeholders across academia, government and policing at a workshop hosted by Northamptonshire Police in February 2019 where learning from across the disciplines was shared.

### ***Joint Action Plan***

25. The OPCC and WMP continue to work closely together in developing the best use of stop and search locally and in ensuring that WMP leads the way both nationally and internationally in this area.
26. There are two key areas in the current joint action plan that are still pending delivery. The first relates to academic research commissioned through the OPCC with Warwick University. This concerns the levels of disproportionality still evidenced in the use of stop and search amongst BAME communities and research that endeavours to better understand this and improve policy. Professor Neil Stewart’s findings will be fed into the OPCC directly, once available.
27. The second area within the joint plan concerns the recording of vehicles stopped under section 163 of the Road Traffic Act 1988. Force Policy on the use of Body Worn Video is awaiting sign off by the Force Executive Team. The policy

mandates that, when BWV is being carried by an officer carrying out a stop & Search, it will be used to record the encounter.

### **Recording of Vehicle Stops**

28. Legislation under section 163 of the Road Traffic Act 1988 (RTA 1988) allows for an officer in uniform to stop the driver of any motor vehicle on a road without the need to form reasonable suspicion of the commission of any offence, but only to confirm that the driver is licenced and insured to drive that vehicle. Such a stop may then lead to the execution of further policing powers and although lawful, is perceived amongst some communities to be a power that is used disproportionately amongst those communities and is often difficult for the lay person to differentiate from stop and search. There is currently no requirement in law to record the use of this power to stop a motor vehicle on a road.
29. The Strategic Police and Crime Group has been updated on the outcomes of the WMP pilot of recording vehicle stops, since the Board last considered stop and search. The Group was advised that the pilot, using roads policing and central motorway patrol group officers only, confirmed that recording on mobile devices was feasible without impeding operational efficiency. It also concluded that the rates of disproportionality experienced in vehicle stops was not dissimilar to that experienced in stop and search. The final finding was that the data fields collected in the pilot were of limited value from both a public scrutiny and operational policing perspective and more data fields relating to both the vehicle itself and the driver and occupants are necessary. This would enable duplicate records to be eliminated and data quality to be assured. It will also allow for examination of the validity or otherwise of the suggestion that some vehicles and/or drivers are being repeatedly and unnecessarily stopped by police.
30. At the last group meeting it was agreed in principle that an extension of the pilot into Response Teams would allow the operational impact of recording to be assessed in a different operational arena and one where the primary operational activity of officers was not necessarily related to carrying out vehicle stops. It was also agreed in principle that any such extension of the pilot should seek to build in the requisite datafields identified through the first pilot.

## **Use of Force**

### ***Background***

31. The [Criminal Law Act 1967](#), the [Police and Criminal Evidence Act 1984](#) and common law apply to all uses of force by the police and require that any use of force should be 'reasonable' in the circumstances. Reasonable in these circumstances means:
  - a. absolutely necessary for a purpose permitted by law
  - b. the amount of force used must also be reasonable and proportionate (i.e., the degree of force used must be the minimum required in the circumstances to achieve the lawful objective) otherwise, it is likely that the use of force will be excessive and unlawful. Excessive use of force is unlawful.
  
32. [Section 76\(7\)](#) of the Criminal Justice and Immigration Act 2008 sets out two considerations that should be taken into account when deciding whether the force used was reasonable. Both are adopted from existing case law. They are:
  - a. that a person acting for a legitimate purpose may not be able to weigh to a nicety the exact measure of any necessary action
  - b. that evidence of a person's having only done what the person honestly and instinctively thought was necessary for a legitimate purpose constitutes strong evidence that only reasonable action was taken by that person for that purpose.

### ***Introduction of use of force recording***

33. The National Police Chiefs' Council Use of Force recording requirement, introduced following a review by former Chief Constable David Shaw in 2014-15, consisted of a nine page form with extensive details required about all types of use of force and numerous questions covering officer, subject and location information. It was intended that forces should start capturing this data by April 2017, publishing the data on a quarterly basis locally and that a subset of this data should appear in the mandated Annual Data Requirement (ADR).
  
34. The Chief Constable of West Midlands Police, following consultation with internal and external stakeholders, proposed that a more streamlined version of the form be adopted by the force. The intention was to reduce bureaucracy for officers, releasing them to focus on operational duties, and that the data would be captured by way of a technical solution to be developed by the force. This approach was

supported by key stakeholders and the Office of the Police and Crime Commissioner for the West Midlands (OPCC). The Chief Constable consequently derogated from the NPCC requirement.

35. West Midlands Police started capturing use of force data on 4<sup>th</sup> January 2018. The intention of the use of force recording process was for accurate information to be provided to the public and the OPCC to enable them to hold the West Midlands Police to account for its use of force. The purpose of the use of force recording system is to gather statistical data for analysis and publication. It does not provide an opportunity for officers and staff to justify their use of force. Officers and staff still need to record this in the usual manner which may be in their pocket notebook, by way of evidential statement, on the OASIS command and control log for the incident or on the ICIS custody system.
36. The form produced by the WMP system does not match the full 9 page NPCC form but does meet the majority of the requirements of the ADR. West Midlands Police will not make a record of the following types of use of force on the system, albeit officers and staff are still required to record this use of force in their pocket notebooks, evidential statement or on other systems as per current practice:
  - Tactical Communications
  - Compliant Handcuffing
  - Very low level unarmed skills
  - Baton deployed but not used
  - PAVA spray deployed but not used.
37. No formal training is necessary for completion of the use of force form as the form itself is very intuitive and during the testing period no issues were raised by officers as to its use. A briefing pack was designed and rolled out across the force to support the use of the recording system. The use of force recording process now features in the officer personal safety training refresher programme.

**Key performance data (see Appendix for more information)**

38. At the time this report<sup>1</sup> was written 6,625 use of force incidents were recorded on the system in 2018/19 (ytd). It is important to note that in an incident where more than one officer has used force against the same subject this will show as multiple use of force records. The largest number of proportion were recorded as:
- Location - street/higway
  - Use of force - unarmed skills
  - Reason - protect the officer
  - Outcome – arrest.
39. The majority of those against whom force was used were males (86% of all incidents where force used) and between 18 and 34 years old. 9 incidents involved children aged 10 or under. All incidents of use of force against children und er11 are examined as part of the internal scrutiny process to ensure the use of force was fair and appropriate.
40. The Use of Force can be examined in terms of Uses of Force per thousand of the population as indicated by the 2011 Census. This is shown as follows:
- White – 2.0 per 1,000
  - Asian – 2.0 per 1,000
  - Black – 7.0 per 1,000
  - Mixed – 3.8 per 1,000
  - Chinese/Other – 2.4 per 1,000
41. It is not possible, at this early stage in the recording process, to provide context and comparison to other similar forces to help interpret whether the use of force captured in these statistics is reasonable. This is in part due to the fact WMP is not recording all of the information that other forces are recording and also that thenational ADR data has not yet been published for the period under review. The most recent publication covers the performance year to March 2018, whereas West Midlands Police only began to record use of force in January of that year using the App based system.

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<sup>1</sup> The data cover the period 01 April 2018- 28 Feb 2019.

42. Consideration of 12 months of data from Greater Manchester Police (March 2017–April 2018) and Merseyside Police (July 2017–June 2018), aligned to our recording practice (not recording tactical communication or compliant handcuffing) shows that GMP recorded 5,428 uses of force and Merseyside 6,262. In the 11 months of this performance year West Midlands Police have recorded 6,481 uses of force, which projects to approximately 7,070 for a full 12 months.

### **Internal and External Scrutiny of Use of Force**

43. In terms of internal governance, the use of force group meets on a quarterly basis under the oversight of an ACC. The group analyses use of force data seeking to identify trends and areas of improvement for the force, in a similar fashion to that adopted to monitor the use of stop & search.
44. Public scrutiny of use of force mirrors the robust scrutiny arrangements for stop and search. The established local stop and search scrutiny panels are including use of force in their remits and are able to select a number of cases from their area for the relevant time period. These are presented with additional information such as incident logs, statements and BWV footage, if available, to allow the panel to make an assessment as to whether the use of force was, in their opinion, fair and appropriate. All panels have now scrutinised use of force.
45. The panels are presented with local use of force data for their area, for the relevant time period, to enable them to assess any trends in use or to raise any key issues.
46. Any individual and organisational learning will be gathered by the police representative at the panels and fed back into the use of force silver lead and local leaders to allow this to shape force policy. Where appropriate, it will also facilitate the delivery of both positive and developmental feedback to officers and staff.
47. Mental health facilities, as a location, do not feature in the top 5 locations where use of force has been recorded during the period. However, 124 incidents were recorded in mental health settings. Mental health as a subject behavioural impact factor (factors relating to the subject which were present and may have formed a part of the officers decision to use force) features in 31% of the records completed during the period.
48. Work is underway to develop a specific public scrutiny panel for the use of force aligned to the mental health IAG and one aligned to custody as these areas have

specific issues would benefit from the experience of a bespoke group familiar with work in that arena.

49. On a quarterly basis, use of force data is published as part of the Freedom of Information publication scheme on the West Midlands Police external website for public consumption.
  
50. West Midlands Police was inspected as part of the 2018 HMICFRS Legitimacy inspection as part of its Integrated PEEL Assessment. At the time of preparing this report, the HMICFRS report had not yet been published.

### Next Steps

51. The following are planned as future developments in the management of use of force within WMP in collaboration with the OPCC.

<b>1</b>	Data collection and analysis	Improve data quality and collection, to assist the force in understanding factors that cause officers to use force, who we use force with and where. The App and use of force system now include geo-spatial data so use of force hot-spots can be mapped. Work is underway to incorporate the current detailed Taser and Dog Bite forms which at present are being completed in addition to the use of force form as per national requirements. The system will be developed to provide an enhanced analytical capability similar to those developed as part of the Stop and Search system used by the force, eSearch. Look to establish bench marking with other similar forces
<b>2</b>	Scrutiny	Develop training packages for scrutiny panel leads and members. Continue to develop mental health and custody scrutiny panels.
<b>3</b>	Youth Training	OPCC Youth Trainers to deliver a use of force workshop within schools. Consideration for OPCC Youth Commissioners to support scrutiny panels.
<b>4</b>	Compliance	Continue to embed compliance scrutiny for areas that appear to be under recording. The force has begun to attempt to assess the degree to which officers and staff are complying with the requirement to record use of force. This is carried out by dip sampling crime reports of assault on police and E-Safety



		report indicating an assault. Whilst this has been a recent introduction the indicated compliance rate has increased from 53% to 63% over 3 months, and this will continue to be monitored and driven at a local level.
5	Awareness	Embed use of force awareness in command & control, crimes service team, custody, and handover packages to ensure compliance. In longer term, Command & Control to include a prompt for use of force recording at log closure if appropriate.
6	Training	Review bias self awareness tool to enable officers to consciously understand their bias's which will positively influence their behaviours with peers and communities.  Integrate UoF in all refresher CPD deliveries where appropriate.
7	Procedural Justice	Force communication strategy will include sharing live body-cam footage of use of force examples. This will improve Procedural Justice by being open and transparent and enable our communities to understand how/why we use force. Long term aspiration for the Force to be able to have a mechanism to measure perceptions of fairness with all interactions we have with communities including citizens we use force against.
8	National Conflict Management Guidelines	New National Conflict Management Guidelines is looking at using communication & negotiation skills before using force. Consideration for the Force to conduct an experiment with the College of Policing with Bedfordshire and Humberside to measure the number and type of use of force incidents, number and severity of assaults against officers and number and severity of perceived subject injuries. Force response and custody are currently scoping the impact and value of the experiment before making a decision.
9	Research	To monitor research from the College of Policing and Exeter University regarding the annual analysis of use of force data from 30 police forces which will formulate national approach.  Now there is over 12 months of use of force data available, it is proposed to carry out an exploratory analysis of the data set. The exploratory analysis will assist in deciding whether a academic partner is the right approach to gain a better understanding of our data before any formal engagement.  We are considering using a third data set – we have currently only looked at census data and custody data. If we compare this to suspect data from crimes – this may add additional information in terms of a population data set to compare the use of force data against. This analysis may also indicate

		<p>where we need to improve our data collection or highlight gaps in our data collection to aid further understanding of the data.</p> <p>The ongoing work with Warwick University around stop &amp; search will inform decision making with regard to this piece of work moving forward. Improved compliance with the recording process will make our data more accurate and relevant, and also give a more comprehensive data set to work with.</p>
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## **Conclusion**

52. The board is asked to note the contents of the report and the progress made in relation to the governance and use of stop and search powers, and the use of force.

## **Author(s)**

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