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Disproportionate use of police powers: A spotlight on stop and search and the use of force

Thank you for inviting a response to the report of the disproportionate use of police powers. This report comes at a crucial time – in the harsh light of the Covid pandemic and the worldwide protests following the death of George Floyd and the Black Lives Matters movement. I welcome its recommendations.

A recent poll conducted by *Focaldata* and the charity *Hope Not Hate* (August 2020) found that 8 out of 10 black Britons feel that the police are biased against them. If police forces do not explain and reform the disproportionate use of their powers on underrepresented groups – particularly Black, Asian, and Minority Ethnic people – they risk losing the trust of the communities they serve. This is not a matter of political correctness or ‘wokeness’, but an operational necessity. The police cannot function if they do not enjoy the confidence of the public.

In the West Midlands, we have taken positive steps to combat disproportionality over a number of years. The OPCC has established 10 Stop and Search and Use of Force community panels – which have continued to function remotely during the Covid-19 lockdowns – as well as a bi-annual Stop and Search Commission which have embedded the voices of ordinary members of the public at the heart of police scrutiny. Along with West Midland Police bodies, such as the Fair and Effective Use of Police Powers Board, these community led forums have highlighted key areas for improvement and helped to drive down disproportionality in policing across the region.

In 2020, the Chief Constable and I launched the “Fairness and Belonging Plan”. The plan was conceived to ensure that West Midlands Police is as fair and inclusive as possible, drawing on the strength and talents of individuals from a diversity of background across the region. It has developed into a programme to address specific issues pertaining to Black residents and is part of a wider Diversity and Inclusion Plan that is co-chaired by the Deputy Chief Constable and Deputy Police and Crime Commissioner. This follows a commitment to recruit 1,000 new police officers from under-represented groups over the next three years to ensure that West Midlands Police looks more like the communities it serves.

The demand on individual officers and police institutions to give reality to the tradition that they are the public and the public are them is more important than ever. This report sets out how to start rebuilding that relationship with communities who have been historically disproportionately impacted by the use of police powers. It provides a direction of travel for data gathering and scrutiny that will provide for meaningful accountability, drive organisational learning, and improve practices.

Yours sincerely,

David Jamieson

A handwritten signature in black ink that reads "David Jamieson". The signature is written in a cursive style with a horizontal line underneath.

Police and Crime Commissioner for the West Midlands

Recommendation 3: By September 2021, forces should:

- **ensure that officers record on body-worn video (when this is available) the entirety of all stop and search encounters, including traffic stops and use of force incidents;**
- **have a structured process for regularly reviewing and monitoring internally a sufficient sample of body-worn video footage to identify and disseminate learning and hold officers to account when behaviour falls below acceptable standards; and**
- **provide external scrutiny panel members with access to samples of body-worn video footage showing stop and search encounters and use of force incidents, taking account of the safeguards in the College of Policing's Authorised Professional Practice**

West Midlands Police have seen increases in the use of Body Worn Video on both Stop and Search and Use of Force encounters over a number of year. Compliance across the Force now sits at 89%, climbing from 48% in 2018/19 (and this figure is continuing to rise). The use of Body Worn Video is important for several reasons:

- Holding individual officers, police units, and the institution as a whole to account
- It is the hard evidence for good as well as bad practice and is consequently vital to learning for individual officers and the institution as a whole.
- It is the essential foundation for ensuring there is transparency around the use of Stop & Search powers and the key to winning the confidence of the communities WMP serves, underpinning police legitimacy.

WMP Body Worn Video compliance rates are monitored at monthly Stop and Search and Use of Force 'Silver' meetings. NPU commanders and team leads give updates on compliance rates in their area in front of colleagues (inspiring a healthy degree of competition which is helping to drive up standards). If compliance rates within a particular team or NPU are significantly below the Force average, positive steps are taken – including additional oversight – to improve this in agreement with the Use of Force and Stop and Search Force leads as well as the OPCC. On top of this, police supervisors regularly review random BWV samples to ensure that practices are good, individual officers are accountable for their actions, and reflective practice takes place when needed.

In the West Midlands, the OPCC has established 10 scrutiny panels (all have continued to function during the Covid-19 lockdowns). These panels are chaired by members of the public. Along with NPU senior leadership, these chairs randomly select e-search records and samples of BWV from Stop and Search and Use of Force incidents which are reviewed by the panel.

WMP were the first Force in the country to conduct a recording pilot for section 163 traffic stops. That pilot is ongoing and is due to be rolled-out Force wide (conditionally) by early 2022. As the pilot is introduced across the Force, there will be a strong emphasis – as there is with 'ordinary' Stop and Searches – on training officers on procedural justice approaches and the importance of BWV. We fully anticipate that BWV video samples from section 163 stops will form a future part of scrutiny panels in the West Midlands.

Recommendation 5: By July 2021, forces should ensure they have effective internal monitoring processes on the use of force, to help them to identify and understand disproportionate use, explain the reasons, and implement any necessary improvement action.

Open information sharing and good governance are key to identifying opportunities for individual as well as organisational learning. Without either, the ability of Forces' to understand how fairly and effectively they use their powers is limited. Their capacity to improve their practices and secure their legitimacy in the eyes of the public they serve is, consequently, restricted.

Despite monitoring processes being in their infancy, as the report notes, West Midlands Police have worked hard to establish robust procedures conceived to understand how, why, and on whom Use of Force powers are used. Trigger reviews are in place which require police sergeants to sit-down with officers, review BWV, and conduct reflective practice. These reviews are prompted if an individual officer does *all* of the following: uses their baton, uses their pava spray, discharges their taser, uses force on a child under the age of 10, and hospitalises someone. Over 1,000 reviews of this kind have been conducted thus far, creating real space for reflective practice. WMP have also recently commissioned a review of 100 Use of Force reports (50 of which were records of Use of Force involving a black subject). This review was conducted with the positive action team and 50 and the results are being compiled currently.

Further to this, WMP have established a set of internal bodies geared towards monitoring Use of Force data, enforcing accountability where necessary, and improving practices:

- A monthly 'Silver' meeting, chaired by the Use of Force and Stop and Search Force leads, examines NPU and departmental data outlining BWV compliance and disproportionality rates.
- Every department and NPU hold their own performance meeting which looks at Use of Force data (including BWV and disproportionality rates) as a priority.
- Assistant Chief Constable Matthew Ward chairs the Fair and Effective Use of Police Powers Board which was conceived to make sure that WMP officers use their powers – Stop and Search, Use of Force, and section 163 – are used appropriately and legitimately. The Board's mission is to establish the truths regarding the use of these powers; to facilitate the sharing of experiences; to create a new culture which balances efficacy with empathy; to build new processes for police training; and review performance through credible oversight which propels organisational learning and inspires confidence.
- Police Learning and Development, Professional Standards, and Force Legal meet quarterly to review complaints data and a variety of legal issues facing the Force as well as consider organisational trends.

Recommendations 6: By July 2021, forces should ensure they have effective external scrutiny processes in place in relation to the use of force. Forces should take account of feedback and update the scrutiny panel and the community on the action taken.

Effective, independent scrutiny is the foundation of police transparency. It opens-up police practices – good and bad – and gives reality to the principle of policing by consent. It provides opportunities for the police to listen to communities' concerns and take steps, where necessary, to improve practices.

It is, in essence, elemental to “the historic tradition that the police are the public and the public are the police”.

As the report notes, however, too few Forces have good arrangements in place which provide for effective, open scrutiny. This is deeply damaging to the idea of police legitimacy and helps to ferment distrust in policing. When this happens – when people have no confidence that police officers and institutions are accountable for their behaviour – it compromises the effectiveness of law enforcement and the ability of the police to catch offenders.

In the West Midlands, the OPCC has established 10 scrutiny panels which have continued to function well during the Covid-19 lockdowns. These panels are independent, led by ordinary members of the community, and supported by NPU senior leadership teams. Each panel typically consists of approximately 5-7 independent members, a representative from the OPCC, and at least 2 WMP officers.

E-search records and randomly selected body worn video samples are viewed at these meetings. Panel members will air their concerns and offer comment on good as well as bad practice. Police managers and leaders expected to reflect on the issues raised and (if necessary) take action to remedy them. They are also expected to provide feedback on actions taken in response to community concerns and relay wider information regarding police performance trends. Either the officers of panel chairs will take the minutes for the meeting. Those minutes are then published on the OPCC website.

The scrutiny offered at the panels has helped to improve police practices and influenced positive change within WMP. As a consequence of feedback offered through scrutiny panels, for example, WMP committed to improving the use of BWV. Across the Force, BWV compliance has subsequently climbed from under 48% in 2018/19 to over 89% in 2020/21 (and this figure is continuing to rise). BWV provides the hard evidence for good and bad practice. It is a vital tool for holding individual officers as well as police institutions to account. It is thus the essential foundation of police transparency around the use of Stop & Search powers and the key to winning the confidence of the communities WMP serves. Improved BWV compliance within WMP, urged by open scrutiny, represents significant progress.

Feedback from scrutiny panels also encouraged action on the recording of section 163 traffic stops – WMP were the first Force in the country to conduct a recording pilot which is still ongoing and (conditionally) due to be rolled-out across the whole organisation in early 2022 – as well as compliant handcuffing during searches. The data from this will provide the evidence which propels better practices.

As WMP has opened itself up to more and more community-led scrutiny – working alongside the OPCC to rethink and improve their procedures – it is important to 3 noteworthy developments:

1. Overall Stop and Search numbers have fallen from 24,799 to 22,764 over the last 2 years (admittedly this is due in part to the Covid-19 lockdowns, but over the same period other similar sized Forces have increased their number of Stop and Searches).
2. Positive outcome rates have increased from 27.6% to just under 29.6 (for comparison Merseyside has a positive outcome rate at present of 23.2% and West Yorkshire has a positive outcome rate at present of 21%).
3. Black disproportionality rates have fallen from 4.5 to 3.9.

Taken in concert, these figures show that the drive to promote effective scrutiny is making the use of police powers more effective in the West Midlands. Whilst we acknowledge that these figures are not 'paradigm shifting', they are trending in the right direction. They thus show that concern for transparency and fairness goes hand-in-hand with effective policing.

Moving forward, the OPCC is committed to making sure that panels are even more robust and that panel members are provided with thorough, independent training – covering lawful grounds, GO WISELY, and the basis of procedural justice – to equip them with the expertise they need to challenge police practices effectively.

Recommendation 7: With immediate effect, forces should ensure that all stop and search records include detail of the self-defined ethnicity of the subject. When this information is refused by the subject, the officer-defined ethnicity code should be recorded.

Data is the evidence which propels better processes and makes real accountability possible. It is crucial that all efforts are made to access the whole Stop and Search data picture and to critique it openly. Where this is not done, as the Lammy Report (2017) argues, it inhibits and precludes understanding of the extent of disproportionality in Stop and Search and Use of Force.

In the West Midlands, ethnicity data is captured for all Stop and Search or Use of Force incidents. That data is brought together in a monthly dashboard and openly critiqued at Force 'Silver' meetings, the Strategic Police and Crime Board, and scrutiny panels. In other words, this data is not simply collated and publicised. It is subject to robust internal and external oversight which underpins the accountability of individual officers as well as the Force as an institution.

The challenges for Forces across the country are manifold:

- Following the lead of WMP, Forces should record data (including ethnicity data) for section 163 traffic stops in line with Stop & Searches.
- Make sure there are effective mechanisms for the governance of this data. Recording ethnicity data is a first necessary step toward understanding the whole disproportionality picture for Stop and Searches, but it will not guarantee that appropriate action will be taken. Effective data governance is the crucial link between the collation and real accountability. Without it, noting ethnicity data may risks becoming another tick-box exercise.