

<b>Case 7   Issue 37 – Young people</b>		<b>LEARNING THE LESSONS</b>
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## Body worn video deleted after searching 17-year-old

*Search of a 17-year-old man, raising issues about:*

- *Retention of body worn video*
- *Recording use of force*
- *Line manager supervision*

This case is relevant if you work in:

**Professional standards**



**Stop and search**



## Overview of incident

Ms A telephoned the police at around 7.40pm to report various matters, including the behaviour of her son's friends. She said she thought drugs were being taken at her address. Ms A's son was Mr B and one of his friends was Mr C. Mr C was 17 at the time of the incident.

Around an hour after the first call, Ms A called police again to report her daughter had been assaulted.

A few hours later, PC D and PC E arrived at the address. PC D had around nine years policing experience and was the tutor constable of PC E, who had only been a police officer for a few weeks. PC D was recording on his body worn video.

Mr C told the IOPC he, Mr B and one other friend of Mr Bs, had been drinking alcohol and smoking cannabis before the arrival of PC D and PC E. Soon after arriving, PC D and PC E searched Mr C under section 23 of the *Misuse of Drugs Act*. This says a constable may search a person if the constable has reasonable grounds to suspect that the person is in possession of a controlled drug.

According to Mr C, PC D and PC E did not say which police station they were from before carrying out the search. PC D stated he noticed a knife on the floor of the room between Mr D and the officers. Mr B stated PC D and PC E informed them they wanted to conduct searches under the "drug act". PC E recorded in his daily feedback form he had gone through 'GO WISELY' with Mr C before he was searched. The daily feedback form is a running log completed by PC D as PC E's tutor constable to assess his performance. However, neither the

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police copy nor the searched person's copy of the search record was endorsed to state GOWISELY had been given. Mr B recorded part of the incident on his mobile phone. This footage showed Mr C saying he did not want to be searched before the officers moved towards Mr C and reached for him.

### College of Policing Authorised Professional Practice (APP) – Stop and search

#### GO WISELY

**G** - A clear explanation of the officer's **grounds** for suspicion, eg, info/intel or specific behaviour of person

**O** - A clear explanation of the **object** and purpose of the search in terms of the article being searched for.

**W** - **Warrant** card, if not in uniform or if requested

**I** - **Identity** of the officer(s): name and number or, in cases involving terrorism or where there is a specific risk to the officer, just warrant or collar number.

**S** - **Station** to which the officer is attached.

**E** - **Entitlement** to a copy of the search record within 3 months.

**L** - **Legal** power used.

**Y** - **You** are detained for the purpose of a search.

If the person understands the reasons for an officer's action, they are more likely to accept it and not see it as arbitrary or unfair. To maximise the person's understanding before starting the search, officers exercising stop and search powers must adopt the following steps in accordance with GOWISELY:

- identify themselves to the person
- show their warrant card if not in uniform
- identify their police station
- tell the person that they are being detained for the purpose of a search
- explain the grounds for the search (or authorisation in the case of section 60 searches)
- explain the object and purpose of the search
- state the legal power they are using
- inform the person that they are entitled to a copy of the search record and explain how this may be obtained.

#### Read more online:

<https://www.app.college.police.uk/app-content/stop-and-search/professional/>

PC D described his thought process as the following:

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- He was aware of the presence of a knife.
- Mr B's refusal to be searched heightened suspicion about what he might be in possession of.
- He considered the safety of himself and PC E, who he was aware only had a few weeks service at the time of this incident.
- He considered the safety of Mr B.
- Mr B had pulled away and had therefore gone from being verbally resistant to physically resistant.
- PC D and PC E were both in full uniform, so there was no confusion about them being police officers.

PC D and PC E grabbed Mr C and pinned him on the bed. PC D gave four distraction strikes to his back and he was handcuffed by PC E. At the point PC D struck Mr C, PC E had control of at least one of his arms. Following his strikes on Mr C, PC D was asked why he had done so. He replied "because you're acting like a f\*\*\*\*\*g dickhead".

PC D acknowledged distraction strikes are used to stun muscle groups and stated he struck Mr C close to his shoulder blades. However, when examined by a nurse eight days after the incident, the only bruises found were to his rear, right loin area, where the kidney sits. Neither PC D nor PC E submitted a use of force form. PC D stated he advised PC E not to complete a use of force form because he did not believe the level of force he had used required one.

### **National Police Chiefs Council (NPCC) Use of Force Monitoring Form: Guidance (2017)**

#### **When to record use of force:**

- A record is to be completed as soon as is practicable and preferably within the tour of duty the force was used. If you are going on a period of leave then this should be completed before you go.
- Each member of staff is required to record their own use of force. A record is to be completed when an individual officer or member of police staff uses force. If an officer / member of police staff uses force on more than one person, a new report will be completed for each person on whom force is used.
- Recognising the potential lack of detail, one record should be completed where force has been used over a period of time against person/s not subsequently apprehended in a **designated** public order event.
- Where the incident doesn't occur in your home force area, officers should complete their own Force's records.

A record is to be created when one of the following techniques or tactics is used:

- Handcuffing (compliant)
- Handcuffing (non-compliant)
- Unarmed skills (including pressure points, strikes, restraints and take downs)
- Use of dogs
- Drawing or use of baton
- Drawing or use of irritant spray
- Limb / body restraints
- Spit guard
- Shield

- Conductive Energy Device (C.E.D. currently TASER - in any of the seven categories of use)
- AEP: aimed or discharged
- Firearms: aimed or discharged
- Other / improvised

**Read more online:**

<https://www.npcc.police.uk/documents/Operations/Guidance%20on%20Use%20of%20Force%20Data%20V4Mar18.pdf>

PC D acknowledged in interview with the IOPC he had recorded the incident on his body worn video. However, he stated he subsequently deleted this footage around five days after the incident. He stated he had done this in compliance with force policy that officers should clear their body worn video cameras before going back out on shift. PC D stated he showed the footage to his line manager, PS F, before deleting it.

PC D told the IOPC that PS F had described the use of force as “not pretty but lawful” after viewing the footage. This account was supported by PS F. PC D stated he felt there was no need to keep the footage as he did not believe there would be a complaint because a complaint was usually made within 24 hours of an incident. Force policy and procedure on body worn video stated where an officer believes an incident is likely to be the subject of a complaint, the officer should retain the material for 31 days.

**IOPC body worn video position statement 2016**

In January 2016 we published a position statement outlining our view on body worn video. It said:

6. Retention of BWV footage

- 6.1 Chief officers have a statutory duty to obtain and preserve evidence relating to complaints, conduct matters and DSI matters. BWV footage should be obtained and preserved in line with this duty.
- 6.2 Where no complaint, conduct matter or DSI matter has been identified, force policy should allow decisions about retaining BWV footage to be made on a case-by-case basis according to the circumstances. For example, footage may be retained because someone has indicated that they intend to make a complaint or because an injury has been sustained and it is not yet clear how serious the injury is. Such decisions should be kept under review and the footage should not be retained for longer than necessary.

**Read more online:**

[https://policeconduct.gov.uk/sites/default/files/Documents/Who-we-are/Our-Policies/IPCC\\_position\\_statement\\_on\\_body\\_worn\\_video.pdf](https://policeconduct.gov.uk/sites/default/files/Documents/Who-we-are/Our-Policies/IPCC_position_statement_on_body_worn_video.pdf)

PS F stated he challenged PC D about swearing on the body worn footage. He did not challenge PC D on use of force as the footage did not show force being used. However, the footage did capture sounds to the effect of “What are you hitting me for?”

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PS F stated he did not challenge this because officers are trusted to complete the relevant paperwork, and unless the force used is deemed inappropriate, illegal, or excessive, he would have no reason to query the use of force. PS F also admitted he did not take steps to make sure the body worn video footage was preserved because officers were aware footage should be downloaded to force servers as soon as practicable.

Both PC D, PC E and Ms A stated she asked for Mr C to be removed from her address. Officers agreed to transport Mr C home. At first Mr C was handcuffed to the rear, but eventually the handcuffs were moved to the front as this was more comfortable. PC E prevented Mr C from using his phone in the car and kept him handcuffed until he was dropped off near his home address. It is not entirely clear under what power PC E prevented Mr C from using his phone. PC E described the rationale for taking Mr C to the police car after being removed from the property as follows:

- If Mr C was let go outside the property, he might try to make his way back into the property.
- Mr C stated he wanted to go home, stated it was not safe for him to walk home, had given no indication he wanted to walk home, and did not try to get out of the car.
- He thought Mr C knew the officers were taking him home.
- He assumed Mr C was a teenager and felt a duty of care to take him home.

PC E denied the detention of Mr C in this way was unlawful.

### Type of investigation

IOPC independent investigation

### Findings and recommendations

#### *Local recommendations*

##### **Finding 1**

1. PC D was able to delete footage from his body worn video camera. The footage could not be recovered.

##### **Local recommendation 1**

2. The force should implement a system so footage cannot be deleted without an audit trail.

### Outcomes for officers and staff

#### **PC D**

1. PC D, the tutor constable involved in the arrest of Mr C, had a case to answer for gross misconduct. This was in relation to allegations he struck Mr C unnecessarily and deleted

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body worn video footage of the incident. PC D attended a misconduct meeting and was given a written warning.

### **PC E**

2. PC E was the student constable involved in the arrest of Mr C. As PC E was only eight days into phase three of his training and was working under the direct supervision of his tutor constable, he was found to have no case to answer for misconduct. This was in respect of allegations he searched, handcuffed and detained Mr C. However, it was agreed his performance had been unsatisfactory. However, since regulations relating to unsatisfactory performance do not apply to student constables, the IOPC could not make this recommendation.

### **PS F**

3. PS F, PC D's line manager who had sight of the body worn video footage, had a case to answer for misconduct. This was in respect of allegations he did not take steps to preserve the body worn video footage shown to him by PC D. PS F received managed action. This was fed into his fast track hearing.

## Questions to consider

### **Questions for policy makers and managers**

1. What does your force policy on body worn video say about keeping footage?
2. How does your force make sure officers are aware of the circumstances in which use of force forms should be completed?
3. How do you make sure officers and staff are aware of the need to complete use of force forms to record force used?

### **Questions for police officers and police staff**

4. If you were the police officer's line manager, what steps would you have taken to preserve the body worn video footage?
5. What steps would you have taken to talk to the young people/de-escalate the situation before using force?
6. How do you make sure you avoid jumping to conclusions when dealing with suspected offenders?