

## **RESPONSE TO REGULATION 28 REPORT TO PREVENT FUTURE DEATHS**

### **ON BEHALF OF THE CHIEF CONSTABLE OF BEDFORDSHIRE POLICE**

#### **Introduction**

1. This response is provided on behalf of the Chief Constable of Bedfordshire Police to the report to prevent future deaths<sup>1</sup> dated 24 July 2017 made by Assistant Coroner for Cambridgeshire and Peterborough, Nicholas Moss, following the inquest touching the death of Richard Thomas Davies on 21 October 2015 in St Neots, Cambridgeshire.
2. The Chief Constable of Bedfordshire Police provides this response in his capacity as the Chief Constable of the lead force for the collaborated joint Armed Policing Unit (APU) for the police forces of Bedfordshire, Cambridgeshire and Hertfordshire (BCH).
3. Since 2012, the APU has been part of a collaboration of services across the tri-force area, encompassing armed response and major crime units, collectively known as the Joint Protective Services (JPS). Bedfordshire Police is currently the strategic lead for firearms within the tri-force area.

#### **Relevant background**

4. Firearms officers from the BCH APU attended Mr Davies' home address on 21 October 2015. After several rounds fired by Mr Davies, one of the firearms officers fired a single fatal round from a police-issue Heckler & Koch G36 carbine. The bullet used was "un-bonded"<sup>2</sup> 55 grain jacketed soft point (JSP) 5.56mm ammunition manufactured by an American company called Federal.
5. The inquest revealed that this un-bonded type of ammunition was not one of the two types of 5.56mm ammunition recommended for police use by the Association of Chief Police Officers (ACPO) in national circulars dated 20 December 2005 and 4 May 2012.<sup>3</sup>
6. The ACPO recommendations, which were not mandatory or binding on police forces, were based on advice provided by the Home Office Centre for Applied Science and Technology (CAST) and its predecessor, PSDB.<sup>4</sup> In July 2005 PSDB advised ACPO of ballistics studies conducted by Nordic police forces in 2004, which had shown that

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<sup>1</sup> Under paragraph 7 of Schedule 5 to the Coroners & Justice Act 2009 and Regulations 28 and 29 of the Coroners (Investigations) Regulations 2013.

<sup>2</sup> Meaning the lead core of the bullet is not chemically bonded to the bullet jacket.

<sup>3</sup> The Federal 62 grain tactical bonded round was recommended in 2005; the Federal 55 grain tactical bonded round was added as an alternative in 2012.

<sup>4</sup> Home Office Police Scientific Development Branch (PSDB) also known as the Home Office Scientific Development Branch (HOSDB).

bonded JSP 5.56mm ammunition did not carry the risk of excessive fragmentation identified in other (rejected) rounds.<sup>5</sup>

7. The results of the Nordic testing led to the inclusion of the ammunition recommended in the December 2005 ACPO circular (62 grain tactical bonded). In 2009 the Metropolitan Police Service (MPS) produced a specification for 5.56mm ammunition, which led to the inclusion of the ammunition recommended in the May 2012 ACPO circular (55 grain tactical bonded). The MPS specification was never adopted nationally or distributed to the BCH APU.
8. Both of the ammunition types recommended by ACPO in 2005 and 2012 were bonded JSP bullets (they were also manufactured by Federal).<sup>6</sup> The un-bonded bullet used by the BCH APU was not one of the rounds tested as part of the Nordic studies, nor has it ever been tested by PSDB/CAST (or the MPS).
9. In May 2012 a request was made by the Chief Firearms Instructor within the BCH APU, to the Senior Scientific Officer at CAST, as to the continued suitability of the un-bonded ammunition being used by the APU. Unfortunately the response from CAST, if it was intended not to convey approval for BCH's continued use of the un-bonded ammunition (which was not stated explicitly), was misinterpreted by the Chief Firearms Officer, who understood that CAST had recommended its use.<sup>7</sup>
10. The Authorised Professional Practice on Armed Policing (APP-AP), which was issued by the College of Policing<sup>8</sup> in 2013 and remains in place, states:

“Details in respect of ammunition configuration are contained within CAST publications. Bullet configuration is designed to address issues associated with the penetrative qualities of the ammunition as well as minimising the potential of ricochet and over penetration.

Where forces choose a calibre or bullet configuration that has not been assessed by CAST to ACPO operational requirement, the ammunition must comply with international conventions and any policy issued by ACPO. In addition, forces must be satisfied that the ammunition functions correctly in the weapon issued and that the ballistic performance of the ammunition meets operational requirements.”<sup>9</sup>  
(emphasis added)
11. In 2015 ACPO was replaced by the National Police Chiefs' Council (NPCC).

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<sup>5</sup> PDSB letter to ACPO dated 13 July 2005.

<sup>6</sup> See footnote 3.

<sup>7</sup> As explained in paragraph 9 of the Coroner's Reg. 28 report.

<sup>8</sup> The body responsible for issuing guidance, in the form of APP, on professional practice in policing.

<sup>9</sup> Paragraph 2.4 of the APP-AP: Ammunition configuration.

12. On 28 July 2017, in response to the Coroner's Reg. 28 report, the NPCC issued a circular stating that guidance on the evaluation and approval of ammunition for police use is to be found in:
- i. The Home Office Code of Practice on the Police Use of Firearms and Less Lethal Weapons 2003. This does not contain any guidance on the use or approval of ammunition, although according to the NPCC circular the Code of Practice is in the process of being revised and "*will include further advice on the process for the evaluation of weapons and ammunition*";
  - ii. The APP-AP, as set out at paragraph 10 above; and
  - iii. The advice published by CAST, most recently contained in the May 2012 ACPO circular.

13. The July 2017 NPCC circular further stated (emphasis added):

"Current procurement arrangements and capacity mean that it is not feasible for CAST to evaluate every type of ammunition available from manufacturers. The ammunition included in the recommendations is therefore not definitive or exclusive. Where a force decides to adopt ammunition for operational use which is not included on the circular, the guidance below, provided by APP-AP, should be complied with.

[extract from APP-AP as outlined in paragraph 10 above]

The key operational requirements identified by the police service are that the operational ammunition;

- complies with the Hague Conventions (1899 and 1907). The fundamental principle being to avoid ..."*the employment of arms, projectiles or material calculated to cause unnecessary suffering...*"
- has the ability to stop a threat with a minimum number of rounds. For this reason the ammunition should deliver most of its energy within the subject and not over penetrate
- should be capable of penetrating car body work, glazing, wooden doors and panels. An ability to penetrate commercially available body armour would also be an advantage
- has an effective range of about 2 – 100 metres.

Where a force is using, or considering adopting, ammunition that is not included on the 2012 recommended list, the force must be satisfied that the ammunition meets the operational requirement. This requires that the ammunition meets or exceeds the requirements outlined above, identified within the police service

operational requirement, and the performance of ammunition listed in the national circular 12/2012.

Any decision to approve ammunition for operational use other than in accordance with this guidance must be documented and justified on the basis of a threat and risk assessment.”

14. As the Coroner has noted, no national policy or performance specification has been issued for 5.56mm ammunition – by ACPO, the NPCC or CAST – since the last, non-binding ACPO recommendation in May 2012.<sup>10</sup>
15. CAST has not issued any advice in relation to the 2004 Nordic studies since the advice offered by its predecessor (PDSB) to ACPO in July 2005.

### **Response**

16. Following the most recent tender process in 2017, the BCH APU has, in conjunction with the Eastern Region Armed Policing area,<sup>11</sup> moved to using the 55 grain tactical bonded version of the 5.56 ammunition, as recommended in the May 2012 ACPO circular, for all operational purposes. The BCH APU is no longer using un-bonded 5.56mm 55 grain JSP ammunition operationally.
17. Decisions relating to the use of ammunition by the BCH APU are taken by the Firearms Steering Group (FSG), which is chaired by Paul Fullwood, the Assistant Chief Constable (ACC) for Joint Protective Services (JPS). In attendance at the FSG are the Chief Superintendent Commands for Bedfordshire, Cambridgeshire and Hertfordshire, the JPS trainer, the Uniformed JPS Superintendent and the JPS Staff Officer. Each force has its own firearms user group which raises issues for discussion by the FSG.
18. The FSG meets every three months. Any policy decisions taken by the FSG are recorded in a report, which is sent to the Board of the JPS for approval. The minutes of FSG meetings and any reports submitted to the JPS Board (and/or any minutes of JPS Board meetings) are recorded on a local computer system called “OneNote”.
19. The BCH APU is also required to produce an annual Strategic Threat and Risk Assessment (STRA), the purpose of which is to establish the operational requirements for the use of firearms and less lethal options within the tri-force area and to enable decisions to be taken in areas including firearms capability and policy.

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<sup>10</sup> As explained in paragraphs 5 to 8 and 11 to 13 of the Coroner’s Reg. 28 report.

<sup>11</sup> Comprising seven police forces: Bedfordshire, Cambridgeshire, Hertfordshire, Essex, Kent, Norfolk and Suffolk.

20. The STRA is a living document, available in electronic format and hard copy, which is maintained and updated following decisions made by the JSP Board. Any decisions made by the FSG and approved by the JSP Board are added to the STRA.
21. The BCH APU recognises that, notwithstanding that it is no longer using the un-bonded 5.56mm ammunition, the Coroner has identified three areas of concern relating to the extent to which the BCH APU is/was aware of relevant NPCC (previously ACPO)/CAST recommendations and its systems for responding to such recommendations.<sup>12</sup>
22. These concerns have been addressed as follows.

**(1) Treating recommendations as superseding previous recommendations**

23. The BCH APU is reliant on any recommendations issued by the NPCC or CAST being disseminated to local forces and making clear on their face whether they supersede, or are to be read in conjunction with, any previous recommendations issued by either body.
24. All national circulars are now kept on the “POLKA” system (Police Online Knowledge Area) which is accessible to firearms departments throughout the country. Selected approved users have access to the site on a restricted access basis. This part of the POLKA system is managed nationally by two Secretariats.
25. If there is any uncertainty over the meaning of a circular, the FSG will clarify its meaning with the NPCC and/or CAST as necessary, and record the outcome of any such communication<sup>12</sup> within the minutes and/or reports produced by the FSG.

**(2) System if NPCC/CAST recommendations are not followed**

26. Any decision regarding the choice and use of 5.56mm ammunition by the BCH APU must be taken in accordance with an approved tendering process containing a technical specification and requirement for the chosen ammunition to meet international standards.<sup>13</sup>
27. Although the recommendations made by the NPCC (previously ACPO) are not mandatory or binding on police forces, the BCH APU has selected the 55 grain bonded version of the 5.56 ammunition, as recommended in the May 2012 ACPO circular, as the most suitable ammunition for operational use.

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<sup>12</sup> Three concerns set out at paragraph 17 of the Coroner’s Reg. 28 report.

<sup>13</sup> Such as those set by CIP (Permanent International Commission for Firearms Testing), SAAMI (the Sporting Arms & Ammunition Manufacturers Institute) and ANSI (American National Standards Institute).

28. The most recent NPCC circular in July 2017 has confirmed that police forces may still use ammunition which is not one of those recommended in the May 2012 ACPO circular, provided that the APP-AP is complied with. The APP-AP states that in those circumstances the chosen ammunition must *“comply with international conventions and any policy issued by ACPO”* and meet operational requirements.<sup>14</sup>
29. The operational requirements outlined in the July 2017 NPCC circular involve balancing the risk of causing serious harm or injury to the subject who is posing a threat against the risk of harm being caused to third parties, if the bullet does not dissipate its energy inside the subject, either from the subject not being disabled or from the over-penetration of the bullet.<sup>15</sup>
30. As the Coroner has noted, the APP-AP does not specifically address the risk of excessive fragmentation identified in the 2004 Nordic studies; and there is currently no ACPO or NPCC policy or specification for 5.56mm ammunition.<sup>16</sup>
31. Accordingly, if the BCH APU were to decide to use a type of ammunition which was not one of those recommended by the NPCC (following advice by CAST) it would need a basis for doing so which is not currently provided by the APP-AP or any ACPO/NPCC policy or specification.
32. All national circulars are now discussed in the quarterly FSG meetings and those discussions are recorded in the meeting minutes. If a decision were to be taken for the APU to select and use ammunition which is not one of the types recommended by the NPCC or CAST, the justification and reasons for such a decision would be discussed by the FSG along with any evidence relevant to the decision. These discussions and any supporting evidence will be recorded in the minutes of the FSG meetings, which are stored on the “OneNote” system.
33. If such a decision were to be taken, the BCH APU would consult with the NPCC and/or CAST in order to seek advice on the proposed selection of ammunition and any risks which might be associated with it, such as the risk of excessive fragmentation identified in the Nordic studies.
34. Any advice provided by the NPCC and/or CAST would also be discussed in the FSG meetings and recorded in the minutes. Any correspondence with the NPCC, CAST or any other advisory body will be recorded on the “OneNote” system.

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<sup>14</sup> See paragraph 10 above.

<sup>15</sup> See paragraph 13 above.

<sup>16</sup> Paragraph 13 of the Coroner’s Reg. 28 report.

### **(3) Records of decisions taken in respect of operational ammunition**

35. The BCH APU recognises that all decisions bearing on the operational ammunition it uses should be properly recorded, particularly if a decision is made to depart from (albeit non-binding) ACPO recommendations as occurred in this case. The inquiry with CAST in May 2012 as to whether the un-bonded 5.56mm ammunition could still be used by the BCH APU, and the decision to continue using it, should have been recorded on the STRA but was not.
36. Many of the difficulties encountered by the BCH APU in the present case stem from the fact that until 2012, when the collaboration arrangement was introduced, there was no centralised record-keeping system for the tri-force area. It was apparent during the course of the inquest that records pre-dating 2012 were not readily accessible to the BCH APU.
37. The decision to move to using the 55 grain tactical bonded version of the 5.56 ammunition has been recorded in the STRA for 2017-18.
38. The STRA also includes an “action log” which is reviewed every three months at the FSG. If there are actions to be taken in response to a new circular, these will be discussed at the FSG and the STRA action log updated accordingly.
39. As a result of the inquest, an additional provision has been added to the BCH STRA (Appendix 10) to provide a central location for recording any decisions regarding the choice of ammunition and documents relevant to those decisions, including ACPO/NPCC circulars and any correspondence with CAST. The procedures outlined in this response (in particular paragraphs 24, 25, 32 to 34 and 38) are summarised in Appendix 10, a copy of which can be provided to the Coroner if required.
40. All national circulars are discussed in the quarterly FSG meetings so that they can be reviewed and responded to accordingly. National circulars have been a standing agenda item for FSG meetings for a number of years and this will continue in response to the Coroner’s Reg. 28 report.
41. The minutes of FSG meetings provide an audit trail and organisational memory for subsequent decisions which are made. These records will include any decisions to depart from the recommendations or guidance issued by the NPCC or CAST.

### **Conclusion**

42. The BCH APU is no longer using the un-bonded 5.56mm ammunition which was used in the present case.

43. However, the BCH APU recognises the concerns which have been raised regarding its process for selecting ammunition and considering relevant, albeit non-binding, recommendations issued by the NPCC or CAST.
44. There is currently no national policy or specification for 5.56mm ammunition although the BCH APU understands, from the recent July 2017 NPCC circular, that the Home Office Code of Practice on the Police Use of Firearms and Less Lethal Weapons 2003 is being revised and will include advice on the process for evaluating ammunition.
45. The BCH APU is reliant on the NPCC and/or CAST to disseminate to local forces any guidance they produce on the evaluation of ammunition, and making clear whether any recommendations supersede or are to be read in conjunction with previous recommendations. All national circulars are now kept on the "POLKA" system, which is accessible to firearms departments throughout the country.
46. The BCH APU has amended its system of record-keeping to ensure that all decisions relating to the selection of ammunition, and documents relevant to those decisions including ACPO/NPCC circulars and any correspondence with CAST, are recorded on a single electronic system: the STRA. An updated copy of the STRA has recently been circulated to ensure officers are aware of the relevant changes.
47. All national circulars are discussed in quarterly FSG meetings and the discussions recorded in the meeting minutes. If a decision were to be taken for the APU to use ammunition which is not recommended by the NPCC or CAST, the BCH APU will consult the NPCC and/or CAST. The rationale for the decision will be recorded in the minutes of the FSG meetings and the STRA.