

Regulation 28 Report to prevent future deaths
James Fox Inquest
Metropolitan Police Service response to Coroners matters of concern

1. During the course of the inquest touching the death of Mr James Fox, HM Senior Coroner Mr Andrew Walker indicated that the evidence revealed matters giving rise to concern. It is the coroner's opinion there is a risk that future deaths will occur unless action is taken with regard to these concerns. They are reported in the Regulation 28 Preventing Further Deaths Report. That PFD report directs seven concerns to the MPS. The MPS responds to those seven concerns in accordance with the statutory 56-day time frame.
2. The MPS desires and intends to continue to learn lessons from the events of and following 30th August 2015. The MPS recognises and encourages debate about police legitimacy and policing by consent, and is committed to continuous development and improvement at every level and every aspect of its operation, an important part of which is the response to incidents which threaten public safety and as was the case in this incident, where it is reported a person is in possession of a firearm. The MPS aspires to the very highest standards, and works within a framework of national standards and professional practice defined by the National Police Chiefs Council (NPCC). That framework is intended to support accountability, interoperability and improvement in working practices across the police service and its partners. The MPS welcomes informed comment and assistance in achieving its aspirations, including, but not limited to, that provided by the jury's determinations, the Senior Coroner's investigation and his PFD Report, dated 3rd February 2017. The MPS also acknowledges the Independent Police Complaints Commission investigation and findings detailed in its report dated 15th April 2016 (IPCC ref 2015/053653).
3. The MPS responds to approximately one third of all authorised armed operations in England and Wales and therefore the force experiences the highest number of annual incidents requiring a firearms response in UK Policing. For the year-end of March 2016 (the year of this incident), the number of firearms incidents attended by MPS armed officers was 3,974 of 14,753 total (27%).¹ In the same period there were four fatalities as a result of police officers discharging their weapons. Two of these were in London, one being James Fox.

¹ Home Office police use of firearms statistics, England and Wales: year ending 31 March 2016

4. The policing operation to locate James Fox on 30th August 2015 utilised tactics to identify, locate, and contain an armed subject. The identification of James Fox as a person armed with a firearm, and one who had threatened harm to others, had already taken place. The process of locating James Fox was the next step required in order to satisfy strategic objectives set by those in command of the incident. The overriding principle of those being that of public safety. It was an assumption that James Fox could be at his home address, but not a fact. Action was required to either confirm or discount his presence. If he were absent, the police operation to locate him would have continued. In this incident, the tactical plan was to contain James Fox (if present) at Flat 65 Picardy House, Enfield, London. Once contained by armed officers, the plan was to open a line of communication via telephone, and to encourage Mr Fox to surrender himself to police.
5. The tactic of containing a person within a building who presents a threat, and then approaching that building, is a frequently employed police tactic. If a person is capable of escaping from a building or area they are not contained. It is therefore a requirement for armed officers to be in a position where a close containment is achieved to prevent escape. Close containment often means moving up very close to the building, and often to the main entrance door. This tactic involves elements of risk to officer safety and is only therefore employed in where it is deemed to be the safest overall option in the circumstances. In this incident, when police officers were positioned in the corridor outside no 26 Picardy House, and as they were about to make the planned telephone call, James Fox opened his front door and pointed a pistol at the officers stationed directly outside. Two armed officers (identified as D29 and M27), responded to this threat by firing their weapons. James Fox died at the scene from his injuries. This was captured on the officer's body worn video recorders.

Concern 1, The accuracy of shots fired at close range. A number of shots were fired at close range, (about 1 meter), resulting in a range of injuries spread over a large area including a gunshot wound to the head.

6. The evidence presented to the court during this inquest was that two officers fired a total of five shots. Officer D29 fired three shots from a carbine or short rifle (Sig 516 5.56 mm calibre). Officer M27 fired two shots from a Pistol (Glock 17 9 mm calibre). The pistol was fired single handed as the officer was also carrying a long ballistic shield. It is clear from the evidence both officers fired instinctively and quickly. James Fox suffered gunshot wounds to the Torso, Left Forearm, and Head. No evidence was available with regard to the sequence of shots in relation to the injuries sustained, or a breakdown of which officer caused which specific injury. There is no evidence that either officer deliberately fired at the head of James Fox.

7. The primary intention of an armed intervention by police is to prevent an immediate threat to life, if necessary by shooting to stop the subject from carrying out their intended or threatened course of action. Police officers are normally trained to discharge conventional firearms at the largest part of the subject they can see, which in most cases will be the central body mass or torso. There will be circumstances when aiming directly for the head will be necessary, as aiming to strike another part of the body would
 - Be impractical in the circumstances;
 - Present increased risk to life;
 - Be unlikely to achieve immediate incapacitation. ☒

8. Research indicates that the accuracy of shots fired under training conditions is generally greater than in operational circumstances. Evidence gathered from police shooting incidents suggest that officers often do not have the time or presence of mind to fix aim as they would do in training environment. To address this, in addition to conventional aiming techniques, officers are taught shooting techniques that assist them to maintain accuracy without aiming the weapon. These techniques are used to prepare officers for spontaneous encounters with armed subjects, and although it is unlikely to produce the same level of accuracy as conventional aiming, it does help to prepare officers for the encounters effectively. This is particularly relevant with encounters at close quarters, when reaction time is reduced.

9. It is possible one or both officers' aim was adversely affected by the requirement to act quickly and instinctively. However, based upon the evidence available, no definite conclusion can be arrived at which would suggest either of the officer's aim was poor. It is possible and plausible that the movement of James Fox's body as he was hit may account for the location of the wounds. For example, the wound to head may have been the final shot fired which was directed into the torso but actually hit the head as James Fox fell backwards. Without any detailed and evidentially reliable reconstruction providing a basis for further examination, it would not be a fair conclusion that the officer's accuracy was poor.

10. As long as police instructions are to shoot at central body mass, loss of life will always be a possible outcome. Propositions are sometimes made that officers should be taught to shoot at specific areas of the body (limbs for example), which would achieve incapacitation, and at the same time increase a person's survivability if they were to be shot by police. This particular suggestion is an inaccurate assessment of capability of the firer, and the reality of terminal ballistics and the effect on the human body.

11. The MPS continues to maintain national standards in respect of armed officers weapon handling and shooting accuracy, and additionally reviews these standards regularly to ensure officers are trained sufficiently to meet the operational requirement based on threats encountered.

Concern 2, The need for contingency planning. There was no detailed contingency plan formulated at the briefing to cover the very real prospect that Mr Fox might at the very least open his door. It was left to the officers to apply their generic training.

12. During this inquest police officers gave evidence around training received in relation to generic contingencies. Expert evidence was also attested by the Chief Firearms Instructor for the MPS around the impracticality of formulating (either verbal or written) detailed contingency plans for all possible eventualities. If this were to occur operational briefings would be overly long and lose value, as the myriad of contingencies would be confusing and unlikely to be remembered in detail.

13. Officers are taught to react to circumstances as they unfold and read visual stimulus to inform threat assessment and take appropriate action / reaction. This would be the case for a door unexpectedly opening and a person posing an immediate threat. Armed officers are trained to assess and respond to threat appropriately, and this is a constant feature in training where numerous differing scenarios are rehearsed.

14. It would be expected that if a door were to open before police are ready to receive the subject, officers would issue a challenge of armed police and talk the subject out to a safe area to secure them. If a threat were posed during such an encounter officers would be expected to respond appropriately in accordance with the law and their training. *Each AFO is individually responsible and accountable for their decisions and actions; nothing can absolve them from such responsibility and accountability. This includes decisions to refrain from using force as well as any decisive action taken, including the use of force, the use of a firearm and the use of a less lethal weapon.*²

15. A generic contingency is understood to be a police response, which is expected to follow a prearranged format with variation dependant upon the situation encountered. The individual and team responses would depend upon the immediate environment and behaviour of the subject, but would follow a general format, which is understood by all. Armed officers must be capable of responding to developing situations fluidly without the need to precisely prearrange every reaction to a potential action.

² Authorised Professional Practice – Armed Policing - The use of Force, Firearms and Less Lethal Weapons - individual responsibility and accountability 2.3.1

16. In this incident, the MPS considers that the officers who were deployed acted in accordance with their training and the law. Nevertheless, the MPS acknowledges the value of learning from any incident that may improve police responses. It is accepted that the benefits of discussing relevant contingencies can be reinforced as a learning point from this inquest. It is also accepted that where specific allowances have been made within the tactical plan in relation to a person declared emotionally or mentally distressed, a reinforcement of contingencies to unexpected deviations from the planned tactic would be desirable.

Concern 3, That there is no less lethal firearm available to disable rather than cause fatal injury. A larger calibre less lethal firearm is available for use in other circumstances.

17. Less lethal weapons will, where appropriate, be deployed alongside conventional firearms and other less lethal technologies and options available to firearms officers. There are two less lethal weapons available to the Police service in the UK. They are the Attenuating Energy Projectile (AEP) or the “Baton Gun”, and the Conductive Energy Device (CED) currently the “Taser”. These weapons could “disable” or incapacitate, but neither are guaranteed to do so, and many instances of failure to incapacitate have been recorded.

18. It is understood that the Coroner is referring to a Baton Gun or AEP when he uses the term larger calibre less lethal firearm. The AEP is a large calibre (37mm) projectile that is fired from breech-loaded weapon. The approved launcher is the Heckler and Koch L104A2, equipped with an approved L18A2 optical sight. The projectile has been designed with a nose cap that encloses a void. This design feature is intended to attenuate the delivery of the impact energy by extending the duration of the impact and minimising the peak forces. It thereby delivers a high amount of energy to maximise its effectiveness, while reducing the potential for life-threatening injury.

19. *Less lethal weapons should not be regarded as a substitute for firearms. Officers armed only with less lethal weapons should not, therefore, expose themselves or be exposed to unnecessary risks by confronting subjects who may be armed with a firearm. The availability or deployment of the AEP should not be considered as a replacement for conventional firearms in situations where the deployment of conventional firearms has been authorised. Less Lethal weapons are to be used where the threat posed would not justify the recourse to lethal force either in terms of the capability of the person posing the threat.*³

³ Authorised Professional Practice – Armed Policing – Use of Force, Firearms and Less Lethal weapons 3.1

20. *The AEP should be aimed to strike directly the lower part of the subject's body (i.e., below the rib cage). Officers are trained to use the belt-buckle area as the point of aim, at all ranges, thus mitigating upper body hits. Unless there is a serious and immediate risk to life, which cannot otherwise be countered, it is prohibited to use the AEP at less than one metre, or to aim the weapon to strike a higher part of the body at any range. In these circumstances the risk of serious and fatal injuries is increased and the firer must be able to justify the increased use of force.*⁴
21. AEP was not taken to the incident involving James Fox due to the current deployment criteria around this weapon and restrictions around its use at close quarters. Several officers carried Taser, but there was no appropriate opportunity for officers to use this device.
22. In terms of development of technologies, UK police cannot use less lethal weapons unless approved by the Secretary of State. Chief Police officers have a responsibility to ensure that police weaponry is fit for purpose and *...where appropriate adopt effective less lethal weapon systems where they might reduce reliance on conventional firearms or ammunition without compromising the safety of police officers or others who might be affected. For this purpose, Chief Officers co-operating with each other (normally through ACPO) should monitor the availability of new weapon systems. The police service should maintain the capability centrally to assess, evaluate and where ACPO regard new weapon systems as suitable for further evaluation and testing they should consult the Secretary of State.*⁵
23. As technology advances it may be possible to revisit the policy with regard to deploying less lethal weapons during certain firearms incidents. However, currently there is no less lethal weapon approved for police use which is guaranteed to incapacitate, and could therefore be considered for use as a primary response against a person believed to be in possession of a firearm. The MPS will continue to in work within the UK policing structure and in conjunction with the Home Office Centre for applied Science and Technology (CAST), to research and develop all less lethal technologies that are suitable for police use.

Concern 4, That there is no currently available shield with enhanced ballistic protection and a visible section that officer's might use to safely shelter behind.

24. At the time of the police operation that resulted in the death of Mr Fox, the MPS did not possess enhanced ballistic shields that contained a ballistic rated observation window.

⁴ Authorised Professional Practice – Armed Policing – Attenuating Energy Projectiles – Point of Aim 6.3

⁵ The Home Office (2003) Code of Practice on the Police Use of Firearms and Less Lethal Weapons.

25. The MPS acknowledges the value of portable ballistic protection (shields), and the ability to see through such protection. As this inquest commenced the MPS had already taken delivery of recently purchased shields of this design, and continues to make them available to armed officers in London. The purchase of these particular shields came about as a result of a general capability review for the MPS in light of the recent global terrorist incidents.
26. The relevance of portable ballistic protection (shields) in relation to this particular incident, is specific to the suggestion that if officers have adequate protection it may give them more time to consider the necessity to resort to lethal force, and in this incident may have given James Fox more time to reverse his course of action and surrender.
27. This is a point that is worthy of consideration but also one which should be considered with caution. It may be the case that an officer feels sufficiently protected to delay the firing of their weapon, when without such equipment they are more likely to fire immediately in response to a threat. However, it is relevant to address both the legal position, and the current advice provided to officers and commanders in relation to the use of ballistic protective equipment.
28. In terms of the legal position it is clearly not the case that an officer has to wait to be fired upon before resorting to using lethal force. The fact that an officer may be wearing or carrying ballistic protection does not change this position. Officers are informed of the following:- *The right of self-defence is recognised in common law. This includes the right for a person to use force to use reasonable force to protect themselves or another where necessary. The law does not require persons (including police officers) to wait until there has been an assault before they take action. As confirmed by Lord Griffiths in Beckford v The Queen [1988] AC 130: 'A man about to be attacked does not have to wait for his assailant to strike the first blow, or fire the first shot, circumstances may justify a pre-emptive strike'. They also have a duty to protect others from harm. If police officers do not take appropriate and proportionate action to protect others from harm, they may be violating the human rights of those involved. Therefore, it is important that police officers give high regard to the rights of individuals, in how they exercise their discretion.*⁶
29. Ballistic shields vary in size and weight. Some are big enough to cover the officer's torso, and larger shields are designed to cover the body from the knee to the neck. A shield is designed to provide additional protection, and some very large shields provide the best protection. These very large shields can be impractical due to their size and weight and

⁶ Authorised Professional Practice – Armed Policing – Legal Framework – Common Law 3.1

present additional risks due to lack of manoeuvrability. A ballistic shield reduces, but does not negate the risk to officers faced with a lethal threat as no personal protective equipment can guarantee safety of officers. The specific purpose of the shield is to reduce the likelihood of the officer receiving a fatal injury, not to reduce the likelihood of an officer firing their weapons.

30. The provision of more advanced personal protective equipment is clearly desirable and may provide officers with additional reaction time prior to discharging their weapons. There should not however be an expectation for officers to delay a response to a perceived threat to life on the basis that a ballistic shield protects them from harm. It is believed this would introduce additional and unnecessary risk to police officers and to the public.

Concern 5, A concern that if the presumption is that every firearm has the potential to kill or cause serious injury to officers, and members of the public, who attend or are present, at a firearms incident then the response to each incident does not utilise that maximum available protection i.e., two officer team one with a full length shield and the other carrying a short carbine.

31. The full-length enhanced ballistic shield referred to has a weight of more than 30Kg. This prevents most police officers from being able to easily manoeuvre or indeed even hold this equipment for more than a few minutes at a time. This equipment therefore has limitations despite its enhanced protective capabilities. The advantages of greater degrees of ballistic protective equipment have to be balanced with the practicalities of wearing and moving in such equipment. Armed Response officers must also be capable of carrying such equipment in vehicles, and responding to incidents quickly and effectively.
32. It is not accepted that the maximum protective configuration for all circumstances would be one of an officer carrying a full-length shield with an officer in support carrying a carbine. It would be unsound to provide armed officers with such a tactical parameter, which in effect tied them to one particular method of deployment. Armed officers in the UK have to be prepared to face a range of threats, in varied environments, weather conditions, lighting etc. A balance has to be struck between preparing for a particular scenario, and having general capabilities to deploy effectively in a variety of circumstances.
33. The development of firearms tactics, purchase of weapons and equipment, and improvements in training of officers are continuous. The aim is to provide the best possible methods of deployment in order to maximise safety of officers, and minimise risk

to the public from harm. There are a number of police firearms tactics that would appear to place officers at immediate risk. However, tactics that require police officers to locate and contain a person (who is or may be armed), and then take some kind of decisive action, are accompanied by an element of personal risk to the officers. Police Commanders are responsible for identifying measures that maximise the safety of officers. Although safety can be maximised, risk cannot be completely negated as the very act of deploying officers into armed incidents involves some personal risk to those officers.

34. It is acknowledged that in certain circumstances, the deployment model of an officer carrying a long ballistic shield, plus a support officer with a carbine, provides an effective solution and would be a favoured option. However, there are numerous scenarios and environments where such a deployment may not be the preferred option.

Concern 6, The differences between, and apparent contradictions within the curriculum used for the training of police officers.

35. The National Police Firearms Training Curriculum (NPFTC) has been developed within a framework of integrated modules and units that together represent a whole programme of skills to be incorporated into armed officer training. The NPFTC is owned and managed by the College of Policing. It determines the training content for all firearms officer and Firearms Commander role profiles. The NPFTC is a reference document that is used to deliver a consistent standard of training, and a nationally understood catalogue of tactical deployments and capabilities for armed policing. The NPFTC is not a training manual for armed police. It is utilised as a guide to provision of common National standards, method of standardised assessment, and performance criteria.
36. The MPS understands the coroner is referring to differences between MPS training material and that contained within the NPFTC. A theory was advanced during the inquest that officers did not act in accordance with nationally prescribed training and additionally the Metropolitan Police training was contrary to National training. The main area of contention being the way officers are instructed to organise themselves outside a door prior to entry. This was an issue due to interpretations relating to the content of the NPFTC verses the MPS training material, and a comment from an independent expert instructed by the Family of James Fox.
37. It is not the case that only content found within the NPFTC can be trained to officers. There are a number of tactical considerations and techniques currently forming part of MPS training that does not yet feature in the NPFTC. This is recognised by the college as a necessity as it is not practical to amend the National Curriculum immediately in response

to operational learning. It is also impractical to expect a training curriculum to document the tactical profile in respect of every single structural configuration.

38. In respect of this particular incident the MPS does not accept there is training delivered to officers contrary to that required or permitted by the NPFTC. It is true to say that some MPS content in respect of a particular formation around a door as a point of entry no longer appears in the relevant section of the NPFTC. The MPS believes this will be rectified when the module in question is reviewed, and is currently working with the College of Policing to ensure this review is completed in a timely fashion. The MPS is also reviewing its own training material to ensure the wording contained is explicit and can be better understood during judicial processes. This is done with the aim to avoid future misinterpretation.
39. The MPS seeks to reassure the coroner that the current system of national policy and training governance is a major advance in police training and accountability which was not present even ten years ago. The current NPFTC is not yet complete as it is a large and evolving body of work. The MPS is committed to working in partnership with the College of Policing to ensure it becomes the comprehensive reference document it has ambitions to be.

Concern 7, That there is no standard central training provided on a national basis.

40. There are 51 separate police forces and law enforcement organisations (E.g. The National Crime Agency) in the UK. These organisations all have differing levels of armed capability. Whilst some Forces operate within a training collaboration, some Forces deliver training independently. The link is provided by the College of Policing who licence training centres, and training delivery is completed with the NPFTC as a guide to ensure common national standards and interoperability.
41. There are regional and organisational variations across the country in respect of detailed content of training, weaponry, and in general capacity and capability. These variations are seen across the world between different law enforcement agencies within the same country. The provision of central training to all organisations requiring it would at present not be logistically possible, and would not allow for regional or organisations variations based upon strategic threat and risk assessments.
42. The MPS is confident that led by the College of Policing the current system of training governance, good practice, and organisational learning, and the ability to provide a

flexible response to regional and organisation requirements, represents the best model of firearms training delivery for the UK.

Summary

43. This incident and the actions of all officers involved has been scrutinised through the coronial process, and the IPCC investigation. The coronial process concluded with the jury finding that both officers honestly believed that they needed to use force to defend themselves or each other, and a verdict of lawful killing was recorded.
44. The Independent Police Complaints Commission investigation concluded: *"In my opinion the tactics and strategy used by the police were appropriate in the circumstances. It is clear from the evidence that various options were being considered in relation to Mr Fox and officers were aware of his potential vulnerabilities. Accordingly there is no indication of misconduct by any officer in planning the tactics and strategy...Officers M27 and D29 discharged 5 rounds fatally wounding Mr Fox. I am of the opinion that the evidence indicates the use of force in discharging their firearms was necessary and reasonable due to the perceived threat to their lives caused by Mr Fox. Accordingly, there is no indication of any misconduct by any of the officers arising from the discharge of weapons."*⁷
45. The IPCC investigation reported no matters of organisational learning other than a positive comment with regard to the use of body worn video. *...I am of the opinion that the use of body worn video resulted in a number of positive outcomes during the investigation process. In particular:*
- *The body worn footage captured the moment Mr. Fox was shot. As more than one camera was running, the incident was captured from two perspectives giving a comprehensive view of what happened.*
 - *The officers kept their body worn footage running following the shooting of Mr Fox, capturing the attempts to save his life and illustrating that they did not confer prior to giving their accounts after the incident.*
 - *As there were no independent witnesses to this incident, the footage was critical in providing a truly impartial account of what happened when the police shot Mr Fox.*⁸

⁷ IPCC Investigation into the fatal shooting of James Fox by Police (2015/053653) Page 22/23 Overall findings

⁸ IPCC Investigation into the fatal shooting of James Fox by Police (2015/053653) Page 23/24 Organisational Learning

46. The MPS recognises that there will be lessons learnt from each and every occasion an officer discharges their weapon. The MPS is committed to continually reviewing and developing tactics to ensure the safety of subjects and officers is of the highest priority.