

## Water Cannon Project – Consultation Response

### 1.0 Introduction

- 1.1 The IPCC welcomes the consultation that the Mayor’s Office for Policing and Crime (MOPAC) is conducting on the proposal to purchase water cannon. Water cannon have never been deployed on the British mainland before and consequently represent a new tactic for use by police in England and Wales. As the body that oversees complaints about the police, the IPCC could be called upon to consider appeals of complaints regarding use of water cannon, or to independently investigate complaints or conduct matters where these are serious and it would be in the public interest to do so.
- 1.2 The IPCC does not have any direct experience of overseeing complaints in relation to its use. However, we do have extensive experience of considering appeals and overseeing or carrying out investigations arising from the policing of protests which we consider to be relevant.

### 2.0 Rationale for the water cannon and strategy for use

- 2.1 The catalyst for the water cannon project was the wide-spread rioting and disturbances of 2011. The Association of Chief Police Officers (ACPO) has also stated that there is a threat of continued protests “from ongoing and potential future austerity measures”.
- 2.2 The disturbances of 2011 are frequently cited as the rationale for water cannon in the MOPAC consultation documents and one paragraph states:
- “Although the disorder within the Metropolitan Police area in 2011 provided the catalyst for the debate around the requirement for water cannon, serious disorder was experienced in many major cities and towns of an intensity and scale where water cannon potentially could have offered an operational advantage to public order commanders.”*
- 2.3 However, the IPCC has noted that the consultation documents also state:
- “Water cannon have limited use in relation to ‘agile’ disorder such as the dynamic looting that was witnessed in August 2011”*
- 2.4 The consultation documents state that the presence of water cannon can have a powerful deterrent effect. It notes that over a six month period in 2012 the Police Service of Northern Ireland deployed water cannon on 53 occasions but that they were only used four times. However, the documents also state that the presence of water cannon at public order disturbances can have an inflammatory effect on the situation.
- 2.5 The limitations of water cannon are well known, particularly in the context of fast-moving spontaneous disorder. Their large size and limited manoeuvrability mean they are ill-suited for use in narrow streets and city/town centres that do not have large open spaces. They are most effective when dealing with large, static crowds at pre-planned events. Their

deployment requires sufficient time to put in place supporting arrangements e.g. a means of re-filling and a forward holding area close to the front-line.

- 2.6 If water cannon are to be deployed in England and Wales then it is important that police have absolute clarity over the types of protests and disorder that they are suitable for. If this is not clearly set out then there is the possibility of 'mission creep' whereby water cannon are deployed at events or protests for which they are neither suitable nor required. This could potentially conflict with the police's obligation to facilitate peaceful protest.

### **3.0 Ethics Panel**

- 3.1 The Mayor of London states in his letter to the Home Secretary about water cannon dated 6 January 2014:

*"I would be keen for my ethics panel, which will be established in the New Year to undertake a study on the best engagement and use strategy in the event of deployment so that the best ethical framework is in place"*

- 3.2 This strategy will be very important in setting out how water cannon will be deployed and used. We would welcome details of the individuals and organisations who will make up the Ethics Panel together with details of how the panel will engage with communities and also when it is envisaged that work on the strategy will commence.

### **4.0 Level of Force**

- 4.1 The MOPAC consultation documents state that water cannon represent a lower form of force than baton rounds. The documents also appear to suggest that water cannon is a lower level of force than batons, shields, dogs, vehicle tactics and mounted officers. Also, the Mayor for London in his letter to the Home Secretary of 6 January 2014 called water cannon 'non-lethal'.
- 4.2 The rationale for water cannon being a lower form of force has not been set out in the MOPAC consultation documents. Any form of force is potentially lethal and must be seen as part of a suite of tactical options. There is evidence from other countries of people suffering life-changing injuries from water cannon jets. Also, there are a number of incidents from around the world where people have died from being struck by the water cannon vehicle itself.
- 4.3 The test for any use of force is that it is necessary and proportionate to the particular situation (see below). If water cannon are seen as a low-risk or lower form of force then there is a risk that they will be used in situations and protests which could have been peacefully diffused. In any protest or public disorder situation, use of force should only be used as a last resort.
- 4.4 The current ACPO/NPIA manual of guidance on 'Keeping the Peace' is clear that:

*“The use of force must be necessary for a purpose permitted by law, such as self-defence, defence of another, to prevent crime or to effect a lawful arrest. Force should be the last resort.”*

4.5 This guiding principle must be a fundamental part of any decision to deploy and ultimately use water cannon.

## **5.0 Clear Warning**

5.1 Both the IPCC and Her Majesty’s Inspectorate of Constabulary have recommended in recent years that protestors should be made aware of likely imminent police action. The IPCC also notes that the operating model for water cannon in Northern Ireland sets out that loud, clear warnings should be given prior to any use of water cannon. This model should be followed in England and Wales in order to give members of the public clear warning of police intentions.

## **6.0 Containment or ‘Kettling’**

6.1 In its 2012 judgement the European Court of Human Rights stated that containment or as it is known ‘kettling’ of protestors by police was justified in certain legally prescribed circumstances.

6.2 Great care would need to be taken when deploying water cannon near static crowds who are contained. The mental stress of being unable to leave an area when near to this large and intimidating vehicle could be considerable. Any decision to deploy one near a contained group would potentially have to have regard to Article 3 of the ECHR (prohibition on inhuman and degrading treatment).

6.3 Furthermore, there are considerable dangers and potential legal ramifications of actually using water cannon on a crowd of people who are unable to move away from an area.

## **7.0 Guidance and Legal Framework**

7.1 Use of water cannon in England and Wales could arguably engage the following European Convention on Human Rights articles that are incorporated into domestic law:

- Article 2 – right to life
- Article 3 – prohibition on inhuman and degrading treatment
- Article 5 – the right to liberty and security
- Article 9 – freedom of thought
- Article 10 – freedom of expression
- Article 11 – freedom of association

7.2 Article 11 sets out that people have the right to peaceful assembly. This is a qualified right which means that it can be interfered with in certain circumstances. However, the starting point must always be the presumption in favour of police facilitating peaceful assembly.

- 7.3 Any deployment or use of water cannon will need to take account of these factors every time they are deployed.
- 7.4 In addition, public authorities need to evidence how they meet duties contained within the Equality Act 2010 and must have due regard to the need to eliminate unlawful discrimination, harassment and victimisation; advance equality of opportunity between different groups and foster good relations between different groups.
- 7.5 These duties will need to be addressed in relation to each decision to deploy water cannon.
- 7.6 Furthermore, police officers are subject to the legal principles pertaining to the use of reasonable and proportionate force i.e. those provided for under the Human Rights Act 1998, common law rules of self-defence, Section 3 of the Criminal Law Act 1967 and Section 117 of the Police and Criminal Evidence Act (PACE) 1984.
- 7.7 Section 3 of the Criminal Law Act 1967 does not specifically refer to police officers or their equipment but provides that any force used must be proportionate and reasonable in the circumstances as perceived by the individual officer. They may be required to justify their actions as a result of the force they have used.
- 7.8 The IPCC notes that Her Majesty's Inspectorate of Constabulary has recommended in its review of the disorder of 2011 that a new National Framework for Resolving Public Disorder be produced together with clear Rules of Engagement for use in the future. If water cannon are to be available then how, when and why they are to be used should be explicitly set out in this framework.
- 7.9 Also, the current ACPO manual of guidance on 'Keeping the Peace' will need to be updated to include how water cannon will fit into the current model.

## **8.0 Conclusion**

- 8.1 The IPCC is an independent body responsible for overseeing the police complaints system in England and Wales. Water cannon have not been used before in England and Wales and we therefore hold no complaints data on them. If the decision is taken to purchase and use water cannon then the IPCC will use the principles set out above to monitor, oversee and, where necessary, independently investigate complaints and conduct matters relating to their use. The findings of those activities will inform any recommendations and guidance which we may issue in the future on the use of water cannon.

**Independent Police Complaints Commission**  
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