

Police use of a Taser during an arrest in Christchurch

INTRODUCTION

1. At about 9.40pm on 1 April 2016, Mr X was arrested after Police attended a domestic incident at his house in Christchurch. During the arrest, Officer A used a Taser on Mr X three times.
2. Police notified the Authority of this incident and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.
3. Mr X did not make a complaint and did not want to be interviewed by the Authority.

BACKGROUND

Summary of events

4. On the night of Friday 1 April 2016, Mr X was arguing and fighting with his father inside the flat they shared together on Seddon Street in Christchurch.
5. At 9:42pm a witness who had heard them fighting called 111. This call was answered by the Southern Communications Centre (SouthComms). The caller reported that she could hear the sound of punches being thrown. About two minutes later, while she was still on the phone, she reported that Mr X and his father had moved on to the driveway and were continuing to fight.
6. The SouthComms dispatcher sent Officers A and B to the scene. Both officers are female and one was a probationary constable¹ at the time.
7. En route to the scene, the dispatcher advised Officers A and B that Mr X and his father had previous dealings with Police whilst under the influence of alcohol and they had a number of alerts² which raised concerns of safety. As a result of this information, the officers knew they could be attending a very volatile situation and discussed how they would deal with the matter. They decided not to carry firearms as they believed the circumstances did not require it. Officer

¹ Constables are probationary for the first two years after graduating from Police College.

² Alerts are contained on the National Intelligence Application (NIA); this is a Police database which holds information about individuals who have come into contact with Police.

A decided that she would take the X26³ Taser and both officers had pepper spray⁴ on their utility belts. It was decided that Officer A would engage in conversation with the men as she had the Taser.

8. At approximately 9.50pm, the officers arrived at Seddon Street. Both officers told the Authority that they approached the address slowly, listening for signs of a fight. They said that the address was not well lit and it was relatively dark on the street.
9. As the officers approached, they came across a man (Mr X) standing outside the front door of the house. Although neither officer recognised him, SouthComms had given them Mr X's name, so Officer A called out to him asking him if everything was alright and what was going on.
10. Officer A said that as soon as Mr X realised that they were Police officers, he became "*abusive and aggressive*" and began swearing at them.
11. Both officers saw that Mr X had blood on his chin, hands and shirt and became concerned for the safety of Mr X's father. They said that Mr X's fists were clenched at his side and he began walking towards both officers.
12. Both officers told the Authority that they believed that under the TENR (Threat, Exposure, Necessity and Response) assessment (see paragraph 74) Mr X was 'assaultive' (showing an intent to cause harm, expressed verbally or through body language or physical action).
13. Officers A and B further told the Authority that Mr X was completely uncommunicative. They said that he would not answer any questions about himself or the whereabouts of his father. Officer A described him as "*highly aggressive and abusive*".
14. Officer A told the Authority that at this point she believed Mr X was becoming more enraged. She said he was posturing in an aggressive manner and she was worried that he could assault either her or Officer B. Officer A said that Mr X "*was demonstrating an extreme level of aggression towards Police and had been in a physical altercation with his father and this was increased by the fact that he was intoxicated and possibly on drugs*".
15. Officer A told the Authority that she assessed the tactical options available to her whilst she tried to communicate with Mr X. She decided that retreating was not an option, because they had not found his father (see paragraph 99) and so told Mr X to "*get on your knees*".
16. Officer A recorded in her Tactical Options Report (TOR)⁵ that the officers were standing on either side of Mr X, approximately three metres from him in a 'V' formation. She said that his abuse and aggression towards the two officers continued and his body was tensed in a "*ready to fight*" state with his fists clenched at his sides. She said that it would have been easy for Mr X to close the gap on either officer and physically assault one of them.

³ Now replaced by the X2 Taser. The X26 Taser could only be fired once (see paragraphs 64-65).

⁴ Pepper spray is also referred to as Oleoresin Capsicum or 'OC' spray.

⁵ A report that an officer is required to complete when he or she has used force on a member of the public. The report includes each tactical option and the reasons for using it.

17. The officers decided to arrest Mr X for disorderly behaviour (see paragraph 69). As Mr X was so aggressive, the officers knew they would probably need to use force to handcuff him. Officer A said that she chose not to tell Mr X that he was under arrest as she thought that would further enrage him.

Taser Warning

18. Officer A decided that her Taser was the only viable option to control the situation and arrest Mr X. She told the Authority that she considered using her pepper spray but, *“to swap options in that time would have meant there was a period where I was completely unarmed and in his direct line of fire”*.
19. Officer A told the Authority that she drew her Taser from its holster thinking that if she just ‘laser painted’⁶ him it would have the desired effect and calm him down.
20. She recorded in her TOR that she said in a strong commanding tone, *“Do you see that red dot on your chest? It is a Taser, 50,000 volts. Do as I say and you will not be tasered.”*

First Use of the Taser

21. Officer A then switched her Taser onto the ‘fire position’. This triggered the Taser recorder (Taser Cam footage). Officer A can then be heard to say, *“if you make one more move that we don’t tell you to make, then you will be tasered”*.
22. The Taser Cam footage shows Mr X standing with his arms out and the palms of his hands exposed. Officer A can be heard commanding Mr X to get on his knees a couple of times. He responds by calling out: *“fuck you. You fucking cops don’t fucking care. You can fuck off and go fuck yourselves”*. He then calls the officers *“mother fuckers”*.
23. Independent witnesses confirm that Mr X was verbally abusing the officers and refusing to get on his knees. They also heard Officer A warn Mr X that she would use her Taser if he did not do what he was told.
24. Officer A recorded in her TOR that, when Mr X was threatened with the Taser, she noticed his body language change; he clenched his fists down at his sides, his body tensed and he became even more *“enraged”*. She said that he continued to be verbally abusive, saying *“fuck you”*, and appeared as though he was getting ready to attack them.
25. Officer A recorded in her TOR that she was worried that Mr X could easily physically overpower the officers, who were both much smaller than him. She said that he was clearly not going to back down and was becoming more of a threat to the officers and any member of the public who may be in the area. He was not responding to verbal commands and was blatantly ignoring the officers’ directions to get on his knees.

⁶ Overlaying the laser sighting system (red dots) of the Taser on a subject as a visual deterrent, in conjunction with a verbal warning. The laser sight must not intentionally be aimed at the eyes of the subject.

26. The Taser Cam footage shows Mr X start to get onto his knees but then stand up again. The Taser audio clearly records the officers telling Mr X to get on his knees several times and him replying, “*what the fuck for?*”. Officer A can be heard to reply, “*so we can talk to you*”.
27. When Mr X did not comply with her instructions, Officer A fired her Taser. A clicking noise can be heard on the Taser Cam footage. However, the Taser prongs did not connect properly with Mr X, as one probe lodged in his belt and the other into his jersey, and the Taser failed to work.
28. The X26 Taser could not be fired again until another cartridge had been loaded.
29. Officer B called SouthComms to report that a Taser had been fired. As soon as she had done so, Officer B realised that the Taser had not worked, so she immediately started to talk to Mr X in order to distract his attention from Officer A and hopefully de-escalate the situation.

Use of Pepper spray on Mr X

30. The Taser Cam footage shows Mr X’s aggression escalating. His voice becomes louder, and angrier, he continues to swear and his breathing becomes heavier and more rapid. He is also still standing and refusing to get on the ground.
31. Officer B said that she told Mr X again to get on his knees and also told him to lie on his stomach. He still did not respond and had his fists clenched and his chest puffed out.
32. Mr X then began walking towards Officer A. As he did so, Officer B again yelled at Mr X to get on his knees and when he turned to face her she took the opportunity to pepper spray him in the eyes.
33. Officer B recorded in her TOR that she deployed her pepper spray due to Mr X’s assaultive conduct towards both her and Officer A. She also recorded that due to the high speed at which Mr X was approaching the two officers, she did not have enough time to warn Mr X before spraying him.

Second Use of the Taser

34. Meanwhile, Officer A had reloaded her Taser with another cartridge and continued to yell instructions to Mr X to get on his knees. Officer A said that when Mr X continued to ignore her commands and clenched his fists, she switched the Taser trigger to ‘on’.
35. Officer A recorded in her TOR that this further angered Mr X. She said that he was yelling at the officers “*non-stop*”, swearing and threatening them.
36. Officer A decided it was necessary to incapacitate Mr X in order to prevent an assault on either officer. She said that as she was on her last Taser cartridge, she tried to engage with Mr X to make him turn towards her to get a clear and accurate shot. She wrote in her TOR that she did not want to take a risk of missing a second time and having to get into a physical altercation with him. She said that Mr X had shown that he was not going to back down and had no fear of the Taser.

37. Officer A fired the Taser just after Officer B pepper sprayed him. The two Taser prongs made contact with Mr X in the torso and he immediately fell to the ground. As he fell forward he struck his face on the ground which left him with a bleeding nose and a mark on his forehead.
38. Officer B radioed SouthComms to advise them that Mr X had been pepper sprayed and tasered for a second time. She requested backup.

Third Use of the Taser

39. Eight seconds after the end of the second Taser discharge, Officer A fired her Taser for the third time through the same Taser probes as the second use. This gave Mr X another five second burst.
40. Officer A only recalled the third Taser use after viewing the Taser Cam footage, on 9 June 2016, and being asked about it as part of the Authority's investigation. In her TOR, Officer A recorded that she fired the Taser twice.
41. Officer A recorded in her TOR that after the second use of the Taser, she drew Mr X's attention to the red laser light which she displayed in front of his face and advised him that the Taser was still connected to him and he needed to do as he was told. Officer A can be heard saying to Mr X that the Taser probes were still attached and warning him not to "*do anything silly*".
42. When questioned by the Authority about her third use of the Taser, Officer A told the Authority that she fired her Taser for a third time as she believed that Mr X was reaching behind his back in an attempt to remove the Taser probe. She told the Authority that she was concerned that if Mr X was able to remove the probe the officers would be left with no other tactical options than physically fighting with him.
43. She recorded in her TOR that Mr X reached with one hand towards the probes in his back, which can be seen on the Taser Cam footage, and she commanded him to put his arms out to his side. This can be heard on the Taser Cam footage.
44. Officer B told the Authority that she thought that Officer A only discharged the Taser twice. On the Taser Cam audio, she can be heard notifying SouthComms that Mr X had been tasered twice.
45. Officer B then arrested Mr X for disorderly behaviour and handcuffed him.

Taser Aftercare/Back at the Police station

46. Once Mr X was handcuffed, he was rolled over and given water and bio shield⁷ for the effects of the pepper spray. He was told that a doctor would be called to check him back at the Police station.
47. As a result of Officer B's radio call to SouthComms, Officer C attended at the scene as a supervisor, as required by Police Taser policy (see paragraph 89). He asked Mr X whether he could remove the Taser barbs or whether Mr X preferred a doctor to do it. Mr X was happy for Officer C to remove them and they were given to Officer D who had also gone to the scene.

⁷ The after care treatment for a person who has been pepper sprayed.

48. Officer D collected the Taser cartridge identification tags, probes, wire and Taser as is required by policy (see paragraph 89).
49. The officers took Mr X back to the Police station where he was seen by a doctor. The doctor found a small laceration to Mr X's lower lip, a graze to his forehead and one Taser barb entry wound on the right side of his back.

Tactical Options Report

50. As Officers A and B both used force on Mr X, they were required to complete TORs before the end of their shift. Officer A was also required to download the Taser Cam footage from her Taser (see paragraph 89).
51. Before completing their TORs, Officers A and B could not find the Taser Cam footage on the computer and therefore decided to complete their TORs without viewing it. They did this so that they could meet the required time frame of 72 hours for submitting TORS, as set out in policy.
52. Officer A told the Authority that she did not know how to download the footage from her Taser and had to get another officer to help her. She told the Authority that Officers B and E also tried to find the footage without success.
53. Officer B completed her TOR because she used pepper spray on Mr X. She stated that her reason for using the spray was because Mr X was assaultive.
54. Officer A recorded in her TOR that she discharged the Taser twice, not three times.

Supervision of Tactical Options Report

55. As required by policy, Officers A and B forwarded their TORs to their supervisor, Officer E.
56. On 4 April 2016, Officer E recorded in the supervisor's comments section of the TOR that he was happy with the force used by Officers A and B. He found that the deployment of a second Taser cartridge was justified, as the first deployment was unsuccessful in subduing Mr X. Officer E had also not seen the Taser Cam footage as it had not been downloaded into the correct place on the computer and he therefore could not find it.
57. Officer E then forwarded the TOR to Officer F, the TOR Reviewer⁸. Officer F was also unable to locate the Taser Cam footage. On 4 April 2016, based on the TOR, he concluded that use of the Taser was justified and the policy requirements were met.
58. Officer G, an Inspector and manager of Tactical Groups for the Canterbury District, found the footage in a different folder on 24 May 2016. Once he and Officer F had seen the footage they considered that the third Taser discharge looked like it was used to gain compliance rather than because Mr X was assaultive. They then escalated the matter to Police Professional Conduct who assigned an investigator.

⁸ A senior officer, who is an inspector or above, must view the Taser cam footage and decide whether the use of the Taser was justified in accordance with policy. They enter their comments on the TOR after the first supervisor has done so.

59. On 24 May 2016 Officer E viewed the footage. He did not identify the three separate Taser deployments and he justified the first two discharges under section 48 of the Crimes Act.
60. Officer E said that the footage shows that Mr X was verbally aggressive as well as “*pulling hostile facial expressions*” and that Officers A and B attempted to communicate with him unsuccessfully. He recorded that the initial deployment of the Taser was unsuccessful and Mr X remained hostile and non-compliant. He noted the successful deployment of pepper spray by Officer B, followed quickly by a successful re-deployment of the Taser by Officer A.

The X26 Taser

61. The X26 is a rechargeable single shot electric muscular incapacitation device. It discharges 50,000 volts into a person if a connection is made.
62. The history of Officer A’s X26 Taser shows that she used the Taser three times on 1 April 2016 as follows:
 - 21:52:32 - 2 seconds
 - 21:53:27 - 5 seconds
 - 21:53:40 - 5 seconds
63. Attached to the X26 Taser is a Taser Cam (camera) which records when the Taser is in the fire position.
64. The X26 is discharged by pulling the trigger with a five second cycle⁹.
65. The Taser used in this incident was examined on 15 June 2016 and found to have no faults.

Mr X

66. Mr X was 26 years old at the time of this incident. He is well known to Police. He is of medium build and quite fit and muscular. Following this incident, Mr X was given a pre-charge warning for disorderly behaviour.

Police officers involved

67. At the time of this incident, Officer A (a probationary constable) had served just over one year in the Police. Officer A was fully trained in the use of Taser and her Taser certification was current.
68. Officer B had served over four years in the Police.

⁹A standard discharge is five seconds and it is automatic once fired.

Offence of Disorderly Behaviour

69. Section 3 of the Summary Offences Act 1981 states: *“Every person is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000 who, in or within view of any public place, behaves, or incites or encourages any person to behave, in a riotous, offensive, threatening, insulting, or disorderly manner that is likely in the circumstances to cause violence against persons or property to start or continue”*.

Law on the use of force

Use of force by Police officers

70. Section 39 of the Crimes Act 1961 provides for law enforcement officers to use reasonable force in the execution of their duties such as arrests and enforcement of warrants. Specifically, it provides that officers may use *“such force as may be necessary”* to overcome any force used in resisting the law enforcement process unless the process *“can be carried out by reasonable means in a less violent manner.”*

Use of force for self-defence or defence of others

71. Section 48 of the Crimes Act states: *“Everyone is justified in using, in the defence of himself or herself or another, such force as, in the circumstances as he believes them to be, it is reasonable to use.”*
72. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

Policy on the use of force

Police guidance on use of force

73. The Police’s *Use of Force* policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, Tasers and firearms.
74. Police policy provides a framework for officers to assess, reassess, manage and respond to use of force situations, ensuring the response (use of force) is necessary and proportionate given the level of threat and risk to themselves and the public. Police refer to this as the TENR (Threat, Exposure, Necessity and Response) assessment.

75. An officer must also constantly assess an incident based on information they know about the situation and the behaviour of the people involved; and the potential for de-escalation or escalation. The officer must choose the most reasonable option (use of force), given all the circumstances known to them at the time. This may include information on: the incident type, location and time; the officer and subject's abilities; emotional state, the influence of drugs and alcohol, and the presence or proximity of weapons; similar previous experiences; and environmental conditions. Police refer to this assessment as an officer's Perceived Cumulative Assessment (PCA).
76. A key part of an officer's decision to decide when, how, and at what level to use force depends on the actions of, or potential actions of, the people involved, and depends on whether they are: cooperative; passively resisting (refuses verbally or with physical inactivity); actively resisting (pulls, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or presenting a threat of grievous bodily harm or death to any person. Ultimately, the legal authority to use force is derived from the law and not from police policy.
77. Police policy states that any force must be considered, timely, proportionate and appropriate given the circumstances known at the time. Victim, public and Police safety always take precedence, and every effort must be taken to minimise harm and maximise safety.
78. Officers are required to submit TORs to their supervisors before the end of the shift in which force was used, or with a supervisor's approval, within three days of this shift. The supervisor who reviews the TOR is the officer's immediate supervisor (sergeant or acting sergeant). Supervisors are required to complete their review before the end of the shift in which they received a TOR, or with their supervisor's approval, within three days of this shift. Inspectors are required to complete their reviews within seven days of receipt of TORs from supervisors.

Oleoresin Capsicum (Pepper) spray

79. Pepper spray is used by Police to subdue people; it causes a stinging sensation and generally makes people very compliant so as to avoid further aggressive behaviour.
80. The Police Manual states that an officer only use OC spray when it is *"lawful and reasonable i.e. necessary, proportionate to the situation, and with minimum risk to the public, police and the subject."*
81. The policy states that OC spray may only be used on someone who is actively resisting and then only when the situation cannot be resolved by less forceful means. Active resistance includes physical actions such as pulling, pushing or running away – that is, *"more than verbal defiance"*.
82. The policy requires that, before OC spray is used on a person, the person is warned that non-compliance will result in them being sprayed, the person is given a reasonable opportunity to comply, and other people nearby are warned that spray will be used.

83. The policy requires that, after OC spray is used, the person must be given proper after care and medical attention, if necessary.

Use of Taser

84. Police policy states that a Taser may only be used to arrest an offender if the officer believes the offender poses a risk of physical injury and the arrest cannot be effected less forcefully. A Taser must only be used on a person who is assaultive (defined as *“actively hostile behaviour accompanied by physical actions or intent, expressed either verbally and/or through body language, to cause physical harm”*) and cannot be used on a person who uses passive or active resistance in relation to Police.
85. Police policy expressly states that a Taser should never be used against an uncooperative but non-aggressive person to induce compliance.
86. To encourage de-escalation and to warn others nearby, officers must give a verbal warning in conjunction with the deployment of a Taser unless it is impractical or unsafe to do so. The warning relevant to the presentation of a Taser is *“Taser 50 000 volts”*. The warning relevant to a discharge or contact stun is *“Taser, Taser, Taser”*.
87. A ‘discharge’ is an *“application by firing two probes over a distance from an air cartridge attached to the Taser, or subsequent applications of electrical current via the probes, which are in contact with the subject after firing, in conjunction with a verbal warning”*. A ‘contact stun’ is *“activating the Taser with or without the air cartridge attached while the device is applied to the body of the subject, in conjunction with a verbal warning”*.
88. Police policy also states that subsequent applications and extended cycles of the Taser should be avoided, but where they are unavoidable must be reasonable, necessary and proportionate in the circumstances.
89. The Taser policy further provides that supervisors must:
- attend the scene as soon as possible and ensure proper aftercare and any appropriate medical attention has been provided;
 - preserve and photograph the scene;
 - ensure that all evidence, including discharged cartridges, wires, probes and sufficient (4-5) cartridge identification tags (CIT) are recovered from the scene and secured appropriately;
 - determine whether the use of the Taser was in accordance with policy;
 - ensure the operator fills out the Taser register;
 - ensure the operator submits a Tactical Options Report;

- ensure the operator uploads the incident into Evidence.Com; and
 - informs the District Taser coordinator of the incident.
90. The Police policy on Taser aftercare states that a registered medical doctor must examine anyone who is exposed to the application of a Taser as soon as is practicable.

Tactical Options Report

91. On the TOR form there is a requirement that the supervisor and inspector reviewing the use of the Taser must view the Taser Cam footage and firing log and note that they have done so in their comments.

ISSUES CONSIDERED

92. The Authority's investigation considered the following issues:
- 1) Was Officer A's first use of the Taser justified?
 - 2) Was Officer B's use of pepper spray on Mr X justified?
 - 3) Was Officer A's second use of the Taser justified?
 - 4) Was Officer A's third use of the Taser justified?
 - 5) Was the appropriate medical care given to Mr X after he was he was pepper sprayed and tasered?
 - 6) Did Officer A's supervisors correctly determine whether her use of the Taser was in accordance with policy?

THE AUTHORITY'S FINDINGS

Issue 1: Was Officer A's first use of the Taser justified?

93. As outlined in paragraph 22, Officer A warned Mr X to get on his knees or he would be tasered. The officers told the Authority that they believed Mr X's behaviour had reached the point where he could be arrested for disorderly behaviour.
94. Sections 39 and 48 (see paragraphs 70 and 71) of the Crimes Act 1961 authorised Officer A to use reasonable force necessary to effect Mr X's arrest and in defence of herself and Officer B.
95. Police policy states that a Taser may only be used to arrest an offender if the officer believes the offender poses a risk of physical injury and the arrest cannot be effected less forcefully. A Taser must only be used on a person who is 'assaultive' (defined as "*actively hostile behaviour accompanied by physical actions or intent, expressed either verbally and/or through body language, to cause physical harm*") and cannot be used on a person who uses passive or active resistance in relation to Police (see paragraph 84).

96. Officer A told the Authority that Mr X refused to do what she instructed and get on his knees. She said he continued to walk towards the officers with his fists clenched, chest puffed out and swearing at them. This is supported by independent witnesses and the Taser Cam footage.
97. The Taser Cam footage only shows the few seconds before Mr X was tasered. Mr X clearly fails to comply with Officer A's instructions and swears at both officers.
98. Officer A's perceived cumulative assessment (see paragraph 75) at the time was therefore that Mr X was 'assaultive'.
99. Officer A said that she considered withdrawing but could not do so without first determining whether Mr X's father was safe. Officer A assessed that her best tactical option, for arresting Mr X and protecting the officers from harm, was to use the Taser.
100. Officer A drew her Taser from its holster thinking that if she just laser pointed Mr X it would calm him down. She said that she drew his attention to the red dot on his chest and gave him the Taser warning (see paragraph 86).
101. When Mr X still did not comply with her instructions, she fired her Taser.
102. The Authority accepts that Mr X was assaultive as soon as the Police turned up at his house and that Officer A gave the appropriate warning before deploying her Taser.

FINDING

As Mr X was assaultive, Officer A's first use of the Taser was justified.

Issue 2: Was Officer B's use of pepper spray on Mr X justified?

103. Police policy (see paragraph 81) states that an officer may only draw and deploy pepper spray against a person that is actively resisting an officer (defined as physical actions such as pulling, pushing or running away – that is, "*more than verbal defiance*"), and where the situation may not be resolved by less forceful means. The officer must also verbally warn an offender that the pepper spray will be used.
104. Officer B recorded in her TOR that she deployed her pepper spray due to Mr X's assaultive conduct towards both her and Officer A. Officer B told the Authority that she needed to deflect Mr X's attention while Officer A reloaded her Taser. She said that she tried to communicate with him but he continued to disregard her instructions and still had his fists clenched and his chest puffed out. Officer B said that an immediate response was necessary to protect Officer A and herself under section 48 of the Crimes Act (see paragraph 71).
105. Officer B recorded in her TOR that due to the high speed at which Mr X was approaching the two officers, she did not have enough time to warn Mr X before spraying him (see paragraph 82). The Authority accepts this explanation.

106. The Authority considers that Officer B was entitled to use pepper spray on Mr X in order to try to control him and protect the two officers.

FINDING

Officer B was justified in using pepper spray on Mr X when he was advancing towards the officers with his chest puffed out and fists clenched.

Issue 3: Was Officer A's second use of the Taser justified?

107. Police policy states that subsequent applications and extended cycles of the Taser should be avoided, but where they are unavoidable must be reasonable, necessary and proportionate in the circumstances (see paragraph 88).

108. After the first unsuccessful Taser discharge, Officer A said that she continued with the tactic of communication while she reloaded her Taser. She said that Mr X did not respond to any of her instructions, as had been the case throughout the incident, and continued to move forward making threatening gestures. Officer A said that, for these reasons, she believed it was necessary to fire her Taser again.

109. After considering the evidence, the Authority considers that the second use of the Taser was justified, as Mr X was still assaultive at this time.

110. The Authority is satisfied that the Taser Cam footage shows that the officers gave Mr X ample time to comply with Police instructions, to get on his knees, before deploying the Taser for a second time.

FINDING

Officer A's second use of the Taser was a proportionate and justified use of force.

Issue 4: Was Officer A's third use of the Taser justified?

111. Police policy expressly states that a Taser should never be used against an uncooperative but non-aggressive person to induce compliance (see paragraph 85).

112. Officer A did not record or recall the third Taser deployment until she was shown the Taser Cam footage prior to the Authority interview. After viewing the Taser Cam footage with her lawyer, Officer A told the Authority that she deployed her Taser for a third time as she believed that Mr X was reaching behind his back for the Taser probe in an attempt to remove it.

113. The Taser Cam footage shows Mr X reaching around his back with one hand. However, it also shows him lying on his stomach and under control. While the officers both told the Authority that they still judged Mr X to be assaultive at this time, and said that neither of them felt safe to

approach him and handcuff him, the footage shows that Mr X is not being assaultive or threatening in any way at this time.

114. After considering the evidence, the Authority does not consider that Officer A's third discharge of the Taser was justified. It was used for compliance which is a breach of policy. It was not necessary and amounted to excessive force.

FINDING

Officer A's third use of the Taser was a disproportionate and unjustified use of force.

Issue 5: Was the appropriate medical care given to Mr X after he was pepper sprayed and tasered?

Pepper spray

115. The Police policy on pepper spray requires that, after pepper spray is used, the person must be given proper aftercare and medical attention, if necessary (see paragraph 83).

116. Mr X was given the appropriate aftercare treatment and a witness was asked to go and get him a glass of water.

Taser

117. The Police policy on Taser aftercare states that a registered medical doctor must examine anyone who is exposed to the application of a Taser as soon as is practicable (see paragraph 90).

118. A doctor examined Mr X at the Police station, in accordance with policy.

FINDING

The officers complied with the pepper spray and Taser aftercare requirements of Police policy.

Issue 6: Did Officer D's supervisors correctly determine whether her use of the Taser was in accordance with policy?

119. The Taser policy requires a supervisor and an inspector to determine whether the use of the Taser was in accordance with policy (see paragraphs 89 and 91).

Officer E

First Assessment

120. Due to a technical issue, Officer E was unable to view the Taser Cam footage, as part of his supervisory review, when Officer A submitted her TOR.

121. After reviewing Officer A's and Officer B's TORs, Officer E concluded that he was satisfied that Mr X was in the assaultive range. He found that the second use of the Taser was justified as the first use was unsuccessful in subduing Mr X.

122. Officer E chose to complete his review of the TOR and submit it to Officer F, without being able to view the footage, to meet the time requirements contained in Police policy (see paragraph 78).

Second Assessment post Taser Cam footage

123. The Taser Cam footage was not found until 24 May 2016. When Officer E viewed the Taser Cam, he did not identify that Officer A had used her Taser three times. Officer E found that Officer A's actions were justified under section 48 of the Crimes Act.

124. The Authority has concluded that, as Mr X was not assaultive on the third occasion when Officer A used her Taser, Officer E incorrectly determined that all of her Taser deployments complied with policy.

FINDINGS

Due to a technical issue, Officer E was unable to view the Taser Cam footage when Officer A first submitted her TOR. However, he did view the footage when it was found.

When he viewed the footage, Officer E did not identify that Officer A had used her Taser three times.

He incorrectly determined that the final use complied with policy.

Officers F and G

125. As required by policy, Officer E forwarded the TORs to Officer F, the reviewing officer. Officer F also could not locate the Taser Cam footage and chose to complete his review of the TOR, on 4 April, without it.

126. Initially, Officer F found that the use of the Taser was justified and that the policy requirements were met. His decision was based on the record of events on Officer A's and Officer B's TORs as well as Officer E's review.

127. On 24 May 2016, Officer G found the footage in a different folder. Once he and Officer F had seen the footage, the matter was escalated to Police Professional Conduct as they considered that the third Taser discharge looked like it was used to gain compliance rather than because Mr X was assaultive.

FINDING

Once the Taser Cam footage was located, Officer F complied with the reviewing requirements of the Taser policy and, together with Officer G, correctly determined that its third use was in breach of policy.

CONCLUSIONS

128. The Authority has reached the following conclusions on the balance of probabilities:

128.1 As Mr X was assaultive, Officer A's first use of the Taser was justified;

128.2 Officer B was justified in using pepper spray on Mr X when he was advancing towards the officers with his chest puffed out and fists clenched;

128.3 Officer A's second use of the Taser was a proportionate and justified use of force;

128.4 Officer A's third use of the Taser was a disproportionate and unjustified use of force;

128.5 The officers complied with the pepper spray and Taser aftercare requirements of Police policy;

128.6 Due to a technical issue, Officer E was unable to view the Taser Cam footage when Officer A first submitted her TOR. However, he did view the footage when it was found.

128.7 When he viewed the footage, Officer E did not identify that Officer A had used her Taser three times. He incorrectly determined that the final use complied with policy; and

128.8 Once the Taser Cam footage was located, Officer F complied with the reviewing requirements of the Taser policy and, together with Officer G, correctly determined that its third use was in breach of policy.

SUBSEQUENT ACTION

129. Police report that there is now a new system for downloading Taser Cam footage (cloud based evidence.com) which is more accessible and user friendly and will prevent the issues that arose in this matter.



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

31 May 2017

IPCA: 15-2203

ABOUT THE AUTHORITY

Who is the Independent Police Conduct Authority?

The Independent Police Conduct Authority is an independent body set up by Parliament to provide civilian oversight of Police conduct.

It is not part of the Police – the law requires it to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Sir David J. Carruthers.

Being independent means that the Authority makes its own findings based on the facts and the law. It does not answer to the Police, the Government or anyone else over those findings. In this way, its independence is similar to that of a Court.

The Authority employs highly experienced staff who have worked in a range of law enforcement and related roles in New Zealand and overseas.

WHAT ARE THE AUTHORITY'S FUNCTIONS?

Under the Independent Police Conduct Authority Act 1988, the Authority:

- receives complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- investigates, where there are reasonable grounds in the public interest, incidents in which Police actions have caused or appear to have caused death or serious bodily harm.

On completion of an investigation, the Authority must form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.



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