

Independence
trustworthiness
accountability

vigilance
integrity

Report on the Shooting of Stephen Jon Bellingham

March 2009



IPCA

Independent Police Conduct Authority
Whaia te pono, kia puawai ko te tika



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INDEPENDENT POLICE CONDUCT AUTHORITY

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Introduction

INDEPENDENT POLICE CONDUCT AUTHORITY

1. At 8.37pm on Wednesday 26 September 2007, in Christchurch, a Police officer fatally shot Stephen Jon Bellingham after Mr Bellingham had advanced on the officer with a raised hammer.
2. As required by section 13 of the Independent Police Conduct Authority Act 1988, the Commissioner of Police notified the Independent Police Conduct Authority, which began an independent investigation.
3. This report describes the events of 26 September 2007, including Mr Bellingham's actions and the Police response. It also examines the relevant Police practices, policies and procedures and considers their efficacy in respect of this incident.



Background

INDEPENDENT POLICE CONDUCT AUTHORITY

THE DAYS BEFORE THE SHOOTING

4. Mr Bellingham, aged 37, had lived in Christchurch since May 2006. He lived in a flat on the corner of Avonside Drive and Trent Street. He was popular at work, remained in regular contact with his parents, and was highly regarded by his two flatmates, a man who had known him for several months and a woman who had known him for a short period of time. He had no known psychiatric or criminal history.
5. However, a few days prior to his shooting, Mr Bellingham's behaviour suddenly deteriorated. His male flatmate said he was not sleeping or eating and was taking party pills. He was also, uncharacteristically, drinking heavily. His female flatmate said he was continually sharpening knives in the kitchen of his flat.

"In the first few days of moving into the flat I considered Steve to be an intelligent, caring, loving person but in the last couple of days, it was like he was 'possessed'. He was weird."

6. His male flatmate described him as an *"awesome guy"* with whom he got on well, but in late September 2007 he noticed that Mr Bellingham *"had gone a little bit strange"* and was *"talking gibberish"*.

"You could say that it was like he had been possessed by the devil."

7. Other friends described a clear change in Mr Bellingham's behaviour in the week leading up to the shooting and said that Mr Bellingham was known to use cannabis, although the extent of his use has not been established.

EVENTS OF 26 SEPTEMBER 2007

Events in and outside Mr Bellingham's flat in Trent Street

8. During the evening of 26 September 2007, Mr Bellingham went into his flatmate's room. The flatmate said that Mr Bellingham *"was tooled up, he was holding a hammer and a club, baton thing."*
9. Mr Bellingham asked for the key to a Mazda van which he had previously owned but had gifted to his flatmate. The flatmate said that Mr Bellingham did not threaten him with the hammer, *"but he was being very weird, he said that he wanted to go and kill some Muslims."*
10. His other flatmate reported that: *"...hours before the shooting Steve was packing, showering, sharpening knives, bashing things around."* She also reported that he said: *"I'm not of this world. I'm going to Jerusalem to kill some Muslims."*
11. At about 8.20pm Mr Bellingham was seen smashing the van, which was parked in Trent Street adjacent to the flat, with what eye witnesses variously described as a golf club/crow bar, *"stick, baton thing"*. He was heard yelling and cursing in Maori.
12. Mr Bellingham was also seen placing an LPG bottle beside the driver's door, using an aerosol can to spray the inside of the van, and then setting fire to the spray with a cigarette lighter. A witness described hearing fireworks go off beside the van, and Mr Bellingham's flatmate found a fireworks stick in the petrol intake. Later, a cardboard box containing fireworks was found on the grass verge near the van and the LPG bottle was found near the gateway to his address, close to the van.
13. Mr Bellingham was described by a witness as *"going mental"* when he was smashing up the van. Another witness said: *"His behaviour seemed to be that he was intent on smashing the vehicle and that was his sole focus."* Blood was located both inside and outside the van and it is believed that Mr Bellingham cut his hand while damaging the vehicle.
14. Witnesses report that Mr Bellingham returned home briefly after smashing up the van. As a result of his behaviour, his flatmate called the Police. The Communications log records the flatmate saying *"...he's smashing up the pad, walking round with a hammer, everything."* (Though the flatmate is clearly recorded saying this, the flatmate later said that this was not the case: Mr Bellingham did not cause any damage to the flat.)

Events at Stanmore Road

15. Mr Bellingham then walked approximately 400 metres from his flat to Stanmore Road, where his behaviour attracted the attention of various witnesses who also called the Police. He said to the occupants of two different cars: *"I need a car, do you want to swap cars?"* Mr Bellingham showed the witnesses that he had a key and offered to swap a vehicle for his, which he said was around the corner. He was described as being *"edgy like there was something up"*.
16. One witness said that when he first saw Mr Bellingham his immediate thought was to lock his car door. He said: *"The sight of him shocked me and scared me enough to lock my door as I feared for my own safety with him approaching me."* He said that it seemed that Mr Bellingham *"was not of sound mind"*.
17. Mr Bellingham was also described as *"mentally unstable"* or *"under the influence of something"*. This witness said: *"I don't know whether he was under the influence of something or just mentally unstable but it was clear to me that something was not right with this man."* Witnesses further reported that Mr Bellingham *"let out a weird noise"* and wiped his blood over a vehicle's window while there were passengers inside. One witness said Mr Bellingham appeared *"a bit agitated"* as he heard Police sirens on Avonside Drive and then saw a Police car; however, Mr Bellingham then said, *"Oh they will give me a ride!"*
18. Mr Bellingham then walked up a driveway near Trinity Lane before returning to Stanmore Road. In Stanmore Road he kicked a black Subaru car, setting off its alarm. He then pulled a claw hammer from a bag, which he wore across his chest, and smashed the driver's side window. Having reached in, he unlocked the door and sat half in the driver's seat with his legs outside. It seemed to witnesses that he was attempting to start the vehicle.

Emergency response

19. The Police Southern Communications Centre (SouthComms) received three emergency 111 telephone calls regarding Mr Bellingham's actions. Mr Bellingham's behaviour was reported to Police at:
 - 8.23pm (call regarding a male using something to smash up a van in Trent Street);
 - 8.25pm (call from Mr Bellingham's flatmate regarding Mr Bellingham smashing up van in Trent Street with a hammer); and
 - 8.31pm (call regarding male trying to break into a car on Stanmore Road).

20. Within about two minutes of the first call, two Constables (Officers B and C using the call sign CHI2) were assigned to attend the incident as a domestic dispute. At the time they were assigned, the officers were speaking with Officer A, a senior sergeant, at the Christchurch Central Police Station.
21. Less than a minute later, following the second call to SouthComms confirming that Mr Bellingham was armed with a hammer, the job was upgraded to Priority 1 (P1). Upon hearing that a weapon was involved, Officer A closely followed officers B and C as they left the station. Officer A did not advise SouthComms. This was four minutes after the initial notification.
22. A P1 classification indicates a serious threat to person or property. Police guidelines require such a job to be dispatched within two minutes and attendance, in city areas such as Christchurch, within 10 minutes.

The officers

23. Officer A has served in the New Zealand Police since 1974 and has held the rank of Senior Sergeant since June 2006.
24. As the Senior Field Supervisor on shift that night, Officer A was responsible for supervising the greater Christchurch area, and in that capacity would be advised of any serious incident requiring him to take command and control, and to manage resources and equipment necessary for dealing with such incidents. Equipment could include road spikes, protective equipment such as shields and helmets, body armour and firearms. Firearms include a Glock pistol for personal carriage by the Senior Field Supervisor.
25. Although senior officers are always on call, the Senior Field Supervisor serves as the Acting Area Commander and controls the district from 5pm-8am Monday to Friday and 24 hours a day in the weekend. He or she authorises the issuing and carriage of firearms (or may delegate that authority to another supervisor).
26. Officer A attended the incident concerning Mr Bellingham in his capacity as the Senior Field Supervisor and using the call sign 'CRN2', which is routinely assigned to the senior non-commissioned officer in a vehicle that carries firearms.
27. At the beginning of his shift, Officer A had taken a Police issue Glock pistol from the gun safe in the boot of his car and put it in the glove box. When he got into the vehicle to leave for Trent Street, he armed himself by taking the pistol from the glove box and putting it in his holster.

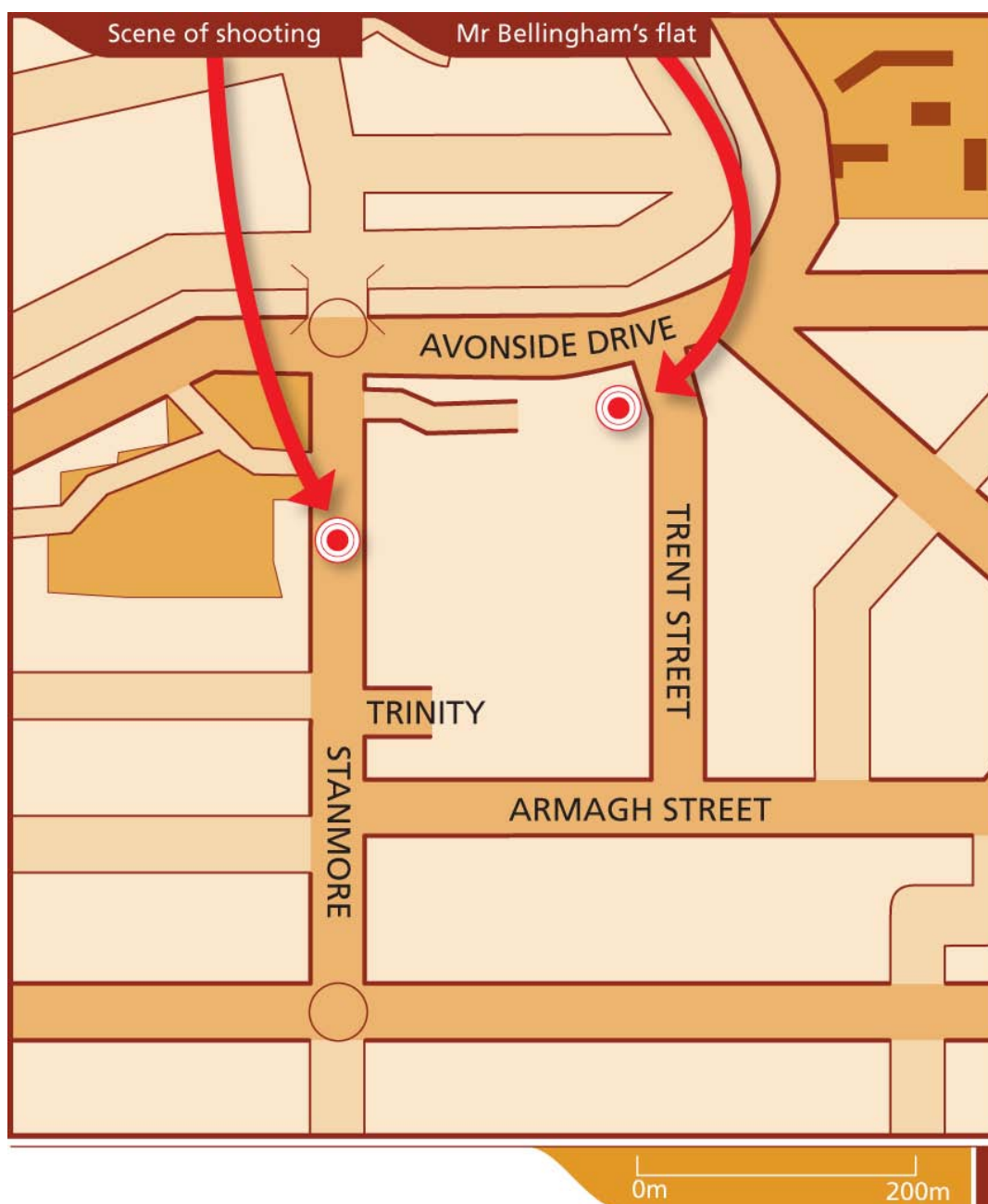
28. Officers B and C were also working the late shift that day, from 1pm to 11pm. Officer B had four years' service and Officer C two years'. They were unarmed.

Events leading up to the shooting

29. Officers B and C arrived in Trent Street at 8.34pm and Officer A arrived immediately after that. Officer B requested a dog unit be called, but was told that the only unit was deployed on another job (see paragraphs 152 to 157 and the timeline in paragraph 77). It is accepted that Officer A was aware of this.
30. At 8.35pm the SouthComms dispatcher advised Officer B that the subject (Mr Bellingham) had *"just broken a window of a car with a crowbar on Stanmore Road"* and was trying to steal the car. As a result, Officer A drove from Trent Street along Avonside Drive to Stanmore Road closely followed by Officers B and C, who arrived approximately 30 seconds behind him.
31. Officer A said that he assessed his tactical options based on his knowledge of the incident at Trent Street and the information from SouthComms. He decided to position his vehicle by the Subaru car, in which Mr Bellingham was seated, to prevent Mr Bellingham from fleeing. At the time Mr Bellingham was leaning into the car and Officer A *"could hear smashing, banging, glass breaking inside that car"*. The officer said that Mr Bellingham's body was *"sort of jerking"* and the officer was not able to determine whether anybody else was in the car at the time. He said that he was concerned that the car being attacked may have had people in it.
32. Officer A stated that as he was aware that Mr Bellingham was armed with a weapon he wanted to maintain some distance and so positioned his vehicle partially in front of and some five metres from the Subaru, with the emergency lights flashing. Officer A said that as he got out of his vehicle he became aware of a member of the public walking towards Mr Bellingham. He said that he warned that person a couple of times to keep back before the person complied.

The shooting

33. Mr Bellingham then straightened up and turned towards Officer A in what the officer described as an *"aggressive menacing type of movement"*. Officer A stated that he could see that Mr Bellingham had a hammer in his right hand.



34. In response, Officer A immediately drew his Glock, presented it at Mr Bellingham and shouted that he was armed, and yelled *"drop the hammer"* several times. Officer A said it seemed that Mr Bellingham hesitated for a second and turned towards the Subaru as if he was going to comply. At this stage, Mr Bellingham and Officer A were about 5 metres apart. Officer A said that Mr Bellingham put the hammer on the car bonnet and rummaged in his bag. Then Mr Bellingham suddenly turned towards him and started running at him with his hammer raised.

35. Officer A recalled:

"He ran front on to me and I was facing front on to him. I remember going backwards, stepping backwards, facing him. He had his right hand raised with the hammer by his head area and I thought he was going to hit my head with the hammer."

36. Officer A said that, when he had retreated about 4 metres backwards and Mr Bellingham had closed on him to a distance of only about 1-1.5 metres, fearing that he was about to be violently attacked he fired four shots at Mr Bellingham.
37. A number of eye witnesses saw various parts of the event. The area was well lit and there was a very bright moon.
38. There are varying accounts of Mr Bellingham's stance and attitude. Most are consistent although some details vary. These accounts are described in paragraphs 113 to 130.
39. Officers B and C arrived at the scene as Officer A was firing his weapon and Officer C radioed SouthComms to advise *"Shots have been fired."* Officer A reported that he immediately advised SouthComms to get an ambulance and requested staff for cordons.

POLICE INVESTIGATIONS

40. Following the shooting, the Police carried out a homicide investigation into Mr Bellingham's death and a disciplinary investigation in respect of Officer A's actions. The latter focused on whether the shooting involved any breaches of practice, policy or procedure.
41. The investigations were carried out by Christchurch staff, contrary to best practice and to a Commissioner's memorandum dated 24 November 2005 which emphasised the importance of *"the principles of independence"* in investigations into serious complaints or allegations against Police. It also appears contrary to General Instruction IA 108(2)(i) which requires district commanders to consider appointing an investigator from outside the district when the circumstances warrant such action. Notwithstanding, the investigations were thorough and the Authority has no criticism of them. Throughout, the Authority's independent investigators closely monitored the Police investigation.

Order of shots

42. The Police criminal investigation determined that, of the four shots, two hit Mr Bellingham, one on the lateral mid-right thigh and one in the central chest. Police were unable to determine which of the four shots struck Mr Bellingham.
43. The Authority sought an opinion from the pathologist, who concluded that:

"The wound to central chest disrupted the major arteries at the base of the heart and damaged heart chambers themselves. This is one of the very few situations in which the victim will inevitably and immediately collapse from hand gun bullet wounds to the chest. This wound was inevitably and very rapidly lethal. I believe that it is a reasonable deduction that this would have been the latter of the two bullets to strike him, although there is no pathological information from the wounds themselves to prove the order of impact. My deduction is based on the unequivocal fact that the chest wound would cause very precipitate collapse, whereas the superficial wound to his thigh would not necessarily cause him to collapse or even necessarily impair his forward progress to a significant degree."

44. Further:

"It is theoretically possible that the bullet causing the thigh wound was fired after the chest wound bullet, with the time interval between the two being so short that Bellingham had not yet collapsed. I say this because Bellingham appears to have been in a standing position when struck on the thigh and in central chest. In balance though, I strongly favour the chest wound being the final shot."

Cause of death

45. A post-mortem examination of Mr Bellingham concluded that his death was *"the result of a large calibre, low velocity gunshot wound to central chest"*. The post-mortem also concluded: *"Death would have supervened very rapidly and there was no prospect of medical salvage."* The pathologist concluded that Mr Bellingham *"would have appeared dead to others present essentially immediately"*.
46. An inquest into Mr Bellingham's death has not yet taken place.

Toxicology

47. Urine and blood samples taken from Mr Bellingham as part of the post-mortem procedure returned a positive result for cannabis and Benzylpiperazine (BZP – party pills). No alcohol, amphetamines or other drugs were detected.
48. The analysis revealed that Mr Bellingham had a tetrahydrocannabinol (THC) level of 8 micrograms per litre of blood. The forensic scientist concluded that this is consistent with him smoking the equivalent of a single cannabis cigarette within about 2½ hours prior to his death. Blood THC levels can remain elevated for a longer period if cannabis is used frequently.
49. The forensic toxicology report contained the caution that:

“Blood THC levels are generally a poor indicator of cannabis intoxication. It is not usually possible to determine whether a subject was intoxicated based on blood levels alone.”

50. However:

“... the level of THC in Mr Bellingham’s blood is such that it is very likely that he was affected by the drug at the time of his death.”

51. An Environmental Science and Research (ESR) report based upon hair analysis concluded that there is evidence that Mr Bellingham used party pills within two months of his death. The intensity of use during that period cannot however be accurately established.
52. The forensic toxicology report concluded that, as BZP was detected only in Mr Bellingham’s urine it is unlikely to have been affecting him at the time of his death.

Ballistics

53. The Police Armourer found that the Glock pistol used by Officer A was mechanically sound and an ESR forensic examination confirmed that all four cartridge cases located at the scene had been fired from Officer A’s Glock.
54. The ESR report indicated that the expended cartridge cases landed in positions consistent with the reported backwards steps taken by Officer A – over 4 metres.
55. The ESR report also concluded that the absence of firing residues around the entry holes of Mr Bellingham’s jacket, pants and rucksack indicated that the

muzzle of the pistol was more than 800 millimetres from him when the shots were fired.

Consideration of Officer A's liability

56. As part of the Police investigation, Officer A said that he wished to make himself available for interview as soon as possible. He made a statement at 2pm the following day and participated in a video reconstruction of the shooting. The officer also provided diagrams to assist his explanation of the incident. He underwent a second interview on 1 July 2008 as part of the disciplinary investigation, which focused on compliance with policy and procedure.
57. An integral part of the Police investigation into Mr Bellingham's death was to determine whether Officer A should face prosecution for homicide. That issue was the subject of consideration by an independent Crown Solicitor.

Opinion of the Crown Solicitor

58. An independent Crown Solicitor from outside the Christchurch district considered:
 - i) whether the force used by Officer A was justified under sections 39 and 62 of the Crimes Act;
 - ii) if the force used was not justified under sections 39 and 62 of the Crimes Act, whether its application is excused by section 48 of the Crimes Act; and
 - iii) whether there is any potential criminal liability by Officer A for his actions during the incident.
59. Section 39 of the Crimes Act provides for law enforcement officers to use reasonable force in the execution of their duties, such as arrests and enforcement of warrants. It states:

"Where any person is justified, or protected from criminal responsibility, in executing or assisting to execute any sentence, warrant, or process, or in making or assisting to make any arrest, that justification or protection shall extend and apply to the use by him of such force as may be necessary to overcome any force used in resisting such execution or arrest, unless the sentence, warrant, or process can be executed or the arrest made by reasonable means in a less violent manner:

Provided that, except in the case of a constable or a person called upon by a constable to assist him, this section shall not apply

where the force used is intended or likely to cause death or grievous bodily harm."


60. Section 62 of the Crimes Act states:

"Every one authorised by law to use force is criminally responsible for any excess, according to the nature and quality of the act that constitutes the excess."

61. Section 48 of the Crimes Act states:

"Everyone is justified in using, in the defence of himself or another, such force as, in the circumstances as he believes them to be, it is reasonable to use."

62. In respect of sections 39 and 62, the Crown Solicitor concluded that Officer A, having placed himself in a situation of close proximity to Mr Bellingham, was in immediate danger of being attacked by Mr Bellingham with a weapon. The Crown Solicitor expressed the view that, in the circumstances as most witnesses described them, Officer A had only one option when attacked and that was to use lethal force.
63. In respect of section 48, the Crown Solicitor said that Officer A clearly expressed the view that he was acting not only in his own self defence but also in defence of members of the public in the vicinity and Officers B and C who were close by. The Crown Solicitor further stated that *"there would seem to be an insufficiency of evidence to point to a foundation being established to indicate that Officer A fired at Stephen Bellingham with any other motive than acting in self defence."*
64. The Crown Solicitor furthermore concluded that no criminal liability should attach to Officer A for his actions in causing the death of Mr Bellingham.
65. The Crown Solicitor also considered whether the public interest would be served by a prosecution. He stated that the public interest did not require prosecution unless it was more than likely that a conviction would result. In the Crown Solicitor's view, based on the evidence, the odds against Officer A being convicted were *"insurmountable"*.
66. On the basis of this advice the Police accepted that no criminal liability attached to Officer A's actions and exercised their discretion not to prosecute him.



The Authority's Investigation and Findings

INDEPENDENT POLICE CONDUCT AUTHORITY

THE AUTHORITY'S INVESTIGATION

67. Under section 13 of the Independent Police Conduct Authority Act 1988, Police are required to notify the Authority of any incident in which a Police officer acting in the execution of his or her duty causes, or appears to have caused, death or serious bodily harm. In accordance with this provision, the Police formally reported the shooting of Mr Bellingham to the Authority approximately one hour after its occurrence.
68. The Authority immediately assigned two investigators to carry out an independent investigation. The purpose of this investigation was to determine whether there had been misconduct or neglect of duty on the part of any member of the Police, and to examine Police practices, policies and procedures in the handling of an incident of this type. The investigation was separate from and independent of the Police criminal and disciplinary investigations.
69. The Authority's investigators monitored the Police investigations throughout and viewed electronically the documentation produced by the Police investigation team, attended Police investigation briefings, met with Officer A and his lawyer, inspected the scene, and met with the deceased's family.
70. Authority investigators also met with nine key witnesses to verify that their statements to Police accurately recorded their recollection of the event. With the exception of two (see paragraphs 123 to 130), the witnesses confirmed that their statements fairly reflected their recollection of the event.
71. The Authority found the Police interview of Officer A to be comprehensive.
72. The Authority obtained Officer A's authority to access his personnel and medical records.

ISSUES CONSIDERED

73. The Authority's investigation considered the following issues:

- i) Was the response by SouthComms appropriate?
- ii) Given the information they had at the time, was the initial response by Officers A, B and C appropriate?
- iii) Was Officer A justified in arming himself to respond to this incident?
- iv) Was Officer A justified in (a) shooting Mr Bellingham and (b) firing four shots?
- v) Were other tactical options available and considered?
- vi) Was all reasonable assistance given to Mr Bellingham after he was shot?
- vii) Were Standard Operating Procedures and General Instructions followed or were there breaches of Police practice, policy or procedure?

ISSUE 1: RESPONSE BY SOUTHCOMMS

Was the response by SouthComms appropriate?

- 74.** SouthComms responds to emergency calls for Police assistance in the South Island. Incoming calls to SouthComms are answered by a call taker, who transmits details of the incident through the computer system to the dispatcher responsible for the area in which the incident is occurring. The information entered by the call taker automatically appears on the dispatcher's screen.
- 75.** The dispatcher is responsible for directing patrols to respond to the incident and assumes initial responsibility for the control of the incident. Responsibility may be taken over by a communications supervisor (usually an Inspector) and may also be passed to a Police officer designated as the incident controller at the scene. For this to occur, the Communications Centre must be advised that an officer in the field is available to take command.
- 76.** The Authority's summary of Police communications directly related to the shooting of Stephen Bellingham follows. Other non-relevant communications have been omitted.

INTEGRATED TIMELINE

Type in purple refers to transmissions concerning the dog unit.

Type in brown refers to transmissions concerning the ambulance.

Type in gold refers to transmissions from CRN2 (Officer A).

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| 8.23:46pm | A witness reported Mr Bellingham's behaviour in Trent Street to SouthComms. The witness was unable to confirm what weapon was involved. |
| 8.25:18pm | Mr Bellingham's flatmate rang SouthComms to report Mr Bellingham's behaviour inside their flat. The flatmate remained on the phone while a patrol was assigned. |
| 8.25:59pm | SouthComms confirmed with Officers B and C (call sign CHI2) that they were available to attend a domestic between flatmates where one was smashing up a van in Avonside Drive. At the time, Officers B and C were at the Christchurch Central Police Station speaking with Officer A (call sign CRN2). |
| 8.26:07pm | SouthComms reconfirmed the address of Trent Street and details to CHI2 (officers B and C). |
| 8.26:09pm | The flatmate (who was still in phone contact with Comms) mentioned: "...he's smashing up the pad, walking round with a hammer, everything". |
| 8.26:30pm | SouthComms advised CHI2 (officers B and C) that the job had been upgraded to a 'P1' as a consequence of a weapon (the hammer) being involved. |
| 8.26:38pm | The sole dog unit on duty (call sign Dogs 8) advised SouthComms that he would head to Avonside Drive. At the time, he was patrolling the Sockburn area. SouthComms acknowledged his intention. |
| 8.27:52pm | CHI2 (officers B and C) left the police station followed by CRN2 (Officer A). |
| 8.29:23pm | The dog unit, which was on Riccarton Road on its way to Avonside Drive, heard a report of suspected theft of tyres and sought further details from SouthComms. He was advised that the incident was nearby and was given a description of the suspected offenders. |
| 8.30:52pm | Another patrol advised SouthComms that it and the dog unit were at the alleged tyre theft. |
| 8.30:58pm | SouthComms acknowledged. |
| 8.31:49pm | SouthComms received a call from witness in Stanmore Road advising of the subject's behaviour. |
| 8.34:07pm | The dog unit advised SouthComms that the 'theft' appeared to have an |

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| | innocent explanation. |
| 8.34:25pm | CHI2 (officers B and C) arrived in Trent Street. |
| 8.35:34pm | CHI2 asked the dog unit if he was still travelling towards Avonside Drive. |
| 8.35:37pm | The dog unit advised CHI2 that he had been “waylaid” (on the tyre job). |
| 8.35:49pm | SouthComms advised that the offender was near “Holy Trinity Driveway” (presumably Trinity Lane) and asked units if any knew where that was. SouthComms added that the offender had just broken a car window. |
| 8.36:09pm | The dog unit responded with general location details about Trinity Lane. |
| 8.36:16pm | The dog unit advised that he would head to Stanmore Road from his location in Ilam. |
| 8.36:28pm | Officer A requested details of the vehicle in which the subject was seated. SouthComms acknowledged that Officer A was in attendance. This was the first time SouthComms was aware of Officer A’s presence in Stanmore Road. |
| 8.36:38pm | Officer A advised that he could see a car parked on the side of the road. |
| 8.36:50pm | Officer A gave registration number ZB2074. |
| 8.36:56pm | SouthComms asked Officer A if that vehicle was a blue Subaru. |
| 8.37:04pm | Officer A asked SouthComms to stand by. |
| 8.37:10pm | Officer A gave the registration number ZY5171. |
| 8.37:21pm | SouthComms confirmed. |
| 8.37:38pm | SouthComms directed CHI2A (another patrol car which had just come free from another job at Christchurch Central Police Station, about three minutes away) to go to Stanmore Road to assist. At about this time, Officers B and C arrived at the scene. |
| 8.37:44pm | Officer C advised that shots had been fired. |
| 8.37:51pm | Officer A requested SouthComms call an ambulance and CIB to attend. Other units then went to the area and established cordon points to protect the scene. |
| 8.48:27pm | A cordon unit (PII2) advised that the ambulance was at the cordon point. |
| 8.48:44pm | PII2 confirmed that the ambulance had entered the scene. |

77. Officer A later said:

"I had the benefit of looking at the Communications Log and there was a lot of information supplied by various informants which we didn't receive, and with Comms knowing that I had arrived on the scene in Stanmore Road there was still a lot of radio traffic going on, prior to the shots being fired, that would have made it quite difficult for any Sitrep [situation report] or other communication to take place and once the call had been made that the shots had been fired and it's probably something I should have done, I should have called a priority and made myself the only one communicating, but certainly there was a lot of unnecessary radio communication going on which either I or Comms should have taken control of really."

78. The Police investigation concluded that Officer A's criticism of SouthComms (for allowing radio traffic to continue after he arrived at the scene) was unjustified. The investigation concluded that Officer A had the opportunity to advise SouthComms that he was on his way to the scene, and to obtain additional information while en route, but did not do so.
79. The Authority accepts the Police analysis. There was a lot of radio traffic resulting from SouthComms organising other patrols to the scene seconds before the shots were fired.
80. Officer A's responsibility for communication with SouthComms is further dealt with in paragraphs 178 to 182 (command and control) and 197 to 200 (advice to SouthComms about arming).

FINDING

Given what they knew, the Southern Communications Centre dealt with this incident appropriately and in accordance with policy.

However, as explained in paragraphs 152 to 157, SouthComms should have directed the dog handler to go directly to Stanmore Road rather than divert to a less serious incident.

ISSUE 2: APPROPRIATENESS OF THE INITIAL POLICE RESPONSE

Given the information they had at the time, was the initial response by Officers A, B and C appropriate?

81. Officers B and C were assigned to respond to the initial 111 call about Mr Bellingham, and they left the police station four minutes after the call. Officer

A separately left at the same time but without advising SouthComms that he was responding. As the officers approached Trent Street and later Stanmore Road they had the following information:

- Someone had used a hammer to smash up a vehicle on Avonside Drive.
- The job was a P1, which meant it was of the highest priority and that there was a danger of violence.
- The van was badly damaged and a witness had seen the offender swinging a golf club.
- En route, SouthComms advised there had been a second vehicle attack on Stanmore Road.

82. Based on this information, Officer A assessed the person involved as violent and armed with a weapon or weapons.

FINDING

There were grounds for the officers to believe that they were dealing with an armed and potentially dangerous person. The initial Police response was therefore appropriate and necessary.

ISSUE 3: JUSTIFICATION FOR ARMING

Was Officer A justified in arming himself to respond to this incident?

83. The use of firearms by Police is governed by Police General Instructions. In his role as Senior Field Supervisor, Officer A was authorised under General Instruction F060(3) to carry firearms in his vehicle.
84. The carriage of firearms on the person is governed by General Instruction F060 (6):

“Members may carry Police issue firearms on the person when there is clear and specific evidence that a risk of encountering any of the circumstances referred to in General Instruction F061 exists.”

85. General Instruction F061 provides for the use of firearms by members in the following situations:
- to defend themselves or others if they fear death or grievous bodily harm and cannot reasonably protect themselves in a less violent manner;

- to arrest an offender if they believe on reasonable grounds that the offender poses a threat of death or grievous bodily harm in resisting the arrest, and the arrest cannot reasonably be made in a less violent manner, and the arrest cannot be delayed without danger to other persons.
86. Against that background Officer A said that, prior to leaving the Police station: *"When I got into my car I opened the glove box and took out the Police issue Glock and put that in my holster."*
 87. Relying on General Instructions F060 and F061, he said he personally carries a Glock to incidents such as this, where knives, baseball bats and other weapons are involved.
 88. Officer A had completed the required Staff Safety Tactical Training (SSTT) for the Glock pistol on 8 August 2007 and had reinforced his understanding of the relevant law and policy at the time. When interviewed by the Police soon after the shooting, Officer A was able to relate how the relevant sections of the Crimes Act applied to possession of a firearm.
 89. Officer A said that, when he issued himself with the Glock, that evening he refreshed his memory using a Police *aide memoire* summarising General Instruction F061 which he routinely carried.
 90. Officer A's approach can be described as pragmatic. However, whether an officer is justified in arming himself depends on whether the particular circumstances meet the criteria in General Instruction F061. On this occasion the Authority's view is that they did.

FINDING

Given the threat which Mr Bellingham posed, Officer A was justified in arming himself to attend the incident as reported.

Paragraphs 183 to 185 address Officer A's compliance with Police policy over the process he used to arm himself. His responsibility for advising SouthComms that he had armed himself is addressed in paragraphs 197 to 200.

ISSUE 4: JUSTIFICATION FOR SHOOTING

Was Officer A justified in shooting Mr Bellingham?

Applicable legal principles

91. Reference has already been made to the opinion of the Crown Solicitor and the subsequent decision by Police that no criminal liability flowed from Officer A's actions in shooting Mr Bellingham.

92. The Authority has itself considered whether the force used by Officer A was justified under sections 39 and 62 of the Crimes Act (see paragraphs 60 to 61) and, if that force was not justified under those provisions, whether the force was nevertheless lawfully justified under section 48 of the Crimes Act (see paragraph 62).
93. To reiterate, section 39 gives the Police power to use force in certain circumstances. Section 62 provides that they are criminally responsible for any excessive use of force.
94. Officer A would be justified under section 48 in using force, so long as:
 - the force he used was in the defence of himself or another; and
 - the level of force was reasonable *in the circumstances as he believed them to be* (Authority's italics).
95. The starting point for consideration of self-defence is to assess what Officer A believed the circumstances to be from his subjective point of view at the time he shot Mr Bellingham. The second matter to be considered is whether, bearing in mind Officer A's belief about what was happening, he was acting in self-defence or in the defence of another, again to be considered from his point of view. The third step is to ask whether, given Officer A's belief, the force he used was reasonable. In other words, whether the degree of force was proportionate to the level of threat as Officer A perceived it. The essential balancing requirement is for both the subjective and objective elements of the test to be assessed in light of the circumstances as the person responding to the threat saw them.
96. The General Instructions reflect and reinforce the Crimes Act requirements relating to the use of force. General Instruction F061 Use of Firearms by Police provides additional guidance for officers. GI F061 (1) states:

"(1) Members must always be aware of their personal responsibilities in the use of firearms. Under section 62 of the Crimes Act 1961 a member is criminally liable for any excess force used. An overriding requirement in law is that minimum force must be applied to effect the purpose. Where practical Police should not use a firearm unless it can be done without endangering other persons."

97. GI F061 (2)(a) directs that Police shall not use a firearm except:

"... to DEFEND themselves or others (section 48 Crimes Act 1961) if they fear death or grievous bodily harm to themselves or others, and they cannot reasonably protect themselves, or others, in a less violent manner;"

98. GI F061 (3) directs:

"In any case an offender is not to be shot

(a) until he or she has first been called upon to surrender, unless in the circumstances it is impracticable and unsafe to do so;

AND

(b) it is clear that he or she cannot be disarmed or arrested without first being shot;

AND

(c) in the circumstances further delay in apprehending him or her would be dangerous or impracticable."

The facts of the shooting

99. When he arrived at the Stanmore Road scene at 8:36:28pm, Officer A was intending to apprehend Mr Bellingham. Officer A said he believed from having seen the damaged van in Trent Street that:

"... whoever had attacked the van had gone berserk because of the number of windows that had been smashed and that this person was either enraged or deranged, certainly violent and armed with some type of weapon or weapons."

100. He further said:

"I certainly thought that this offender was out of control and violent and I was concerned for the potential danger to the public."

101. On arrival in Stanmore Road, Officer A found Mr Bellingham inside a car, which he was damaging and unlawfully interfering with. Officer A's plan, once he arrived at Stanmore Road, was to:

"... communicate with the offender by voice, get him to comply by dropping any weapons he had on him and that he was then to be compliant, go to the ground and lie on the ground so he could

be safely handcuffed away from any weapons he might have on him. I considered the offender to be possibly irrational and of danger to anyone he confronted."

102. However, as earlier outlined in paragraphs 32 to 37, instead of complying with Officer A's commands, Mr Bellingham advanced on the officer with the hammer raised as if to strike him.

103. Officer A's description of events as they unfolded is as follows. He said:

"I immediately drew my Glock and presented it at him and shouted I was armed, and yelled 'drop the hammer' several times. It seemed like he hesitated for a second when I presented the Glock at him, and after having yelled I was armed and 'drop the hammer', he turned towards the subject car by the right front wheel area and it was as if he was going to comply and put the hammer on the bonnet."

104. Officer A said Mr Bellingham then started rummaging in his bag.

"I thought he was looking for a weapon. I thought he was going to pull out a knife."

105. Then:

"... after he had almost seemed as if he was going to comply, he suddenly turned towards me and started running. We were probably a good 5 metres apart from each other and he had his hammer raised with his right hand, he was crouched slightly forward, not low like in a tackle but just crouched slightly forward at the waist, with the hammer raised. The hammer hand started at about shoulder height and as he kept running the hammer got higher, like about head height."

106. When the distance between them narrowed to 1-2 metres, and fearing that he was about to be violently attacked, Officer A fired his pistol at Mr Bellingham. He described the event thus:

"He closed the distance very fast and all I could think of was that he was going to smash my head with the hammer. I discharged my Glock at him at centre mass area. I think I discharged three shots. His hammer was still raised at the time and he would have been 1 to 2 metres away."

107. Officer A's subjective assessment of the situation was:

"I feared that because of my assessment of him and having confirmed he was carrying that hammer, I was in danger of death or grievous bodily harm to myself and members of the public around me, especially knowing how quickly that five metre gap or so can be covered at a running pace."

108. Further:

"I was armed with a Police issue Glock and this was my last resort defence for the protection of myself and Police staff and members of the public."

109. After he discharged three shots at Mr Bellingham, he recalled *"the hammer flying past me"*.

110. An independent witness observed:

"The hammer was not thrown at the policeman but it was testament to how fast the man was moving towards the policeman to see the hammer continue past the officer when the man fell."

111. When asked during his first interview by Police if there was anything he would like to add to his statement of events, Officer A said: *"I am sorry he had to die but he left me no option. I'm sorry about that."*

What witnesses said

112. Of 20 civilian witnesses, eight described Mr Bellingham holding the hammer in an aggressive manner, either single-handedly or with both hands, walking towards Officer A. Those witnesses variously described Mr Bellingham as *"confrontational"*, *"agitated"*, *"aggressive"* and *"menacing"*.

113. Two witnesses said they were unsure how the hammer was held and three said it was not raised in an aggressive way. Of those three, one indicated that Mr Bellingham was on the point of raising the hammer, one made inconsistent statements on this point, and one was in a vehicle about 40 metres away.

114. Five independent witnesses and Officer C saw Mr Bellingham approaching Officer A rapidly while six said that Mr Bellingham was walking towards Officer A, although there was no consensus on the speed of the approach. Officer B used the term *"advancing aggressively"*. Another said Mr Bellingham was *"just kind of walking and his arms were moving"*.

115. Another witness said that both Mr Bellingham and Officer A were stationary at the time of shooting. Six people did not see the actual shooting and one of those was unsure who was who and did not have a good view of the incident.

116. Officer C stated that he and Officer B left Trent Street about 20-30 seconds after Officer A. He said that as they arrived in Stanmore Road he thought that he would drive past and cut off any escape route behind the Subaru. He said:

"At that point I was confident that officer A had the front covered and we would take the back. At about 15 metres away I noticed officer A was backing away. About ½ a second later I saw a large, solid looking person in front of officer A advancing towards the officer. This person had his right hand raised. He was gripping something."

117. He also stated:

"From my view, this person was advancing on officer A to strike him with what he had in his hand."

118. Officer B reported seeing a male *"with his right hand up"* and *"advancing towards Officer A"*. Officer B stated that she and Officer C were still driving when the shots were fired.

119. Twelve witnesses (excluding Police) said that despite appeals to drop the hammer Mr Bellingham continued to advance on the officer. When he was about 1 to 1.5 metres from the officer, and it appeared as though the officer was going to be attacked, the officer fired his pistol four times and Mr Bellingham fell to the ground. Several witnesses said that it became clear that Mr Bellingham was not going to stop and that it looked like one or other of them was going to die. One said:

"He then moved very fast towards the policeman with the hammer raised over his head. He charged towards him in this fashion."

120. One stated that she heard the officer say *"stop"* and *"warn the guy"*. She said that, despite several warnings, Mr Bellingham kept walking towards the officer and would not put the weapon down.

121. Most witnesses said that Mr Bellingham was shot at a distance estimated to be between one to two metres from Officer A.

122. The majority of witnesses considered that the officer had done the right thing, and had protected innocent bystanders. However, one witness, who had been

about 40 metres away in his vehicle at the time of the shooting, said that Mr Bellingham *"wasn't appearing to be any threat or threatening anybody"* and that *"there was no need to shoot him, he was unarmed"*.

123. One witness, who was a friend of Mr Bellingham and was the person Officer A prevented from approaching Mr Bellingham, was recorded in an initial statement to Police investigators on the night of the shooting as saying: *"If the cop didn't shoot him he would have got hit with that hammer."*

124. This witness also said:

"I think the Cop had to shoot Steve. It was either him or the cop. The cop wasn't doing anything wrong. Steve was just a different person, on a different planet."

125. In an interview with the Authority's investigator about six months later, this witness denied making these comments. The witness and his sons, aged 13 and 5, who also saw the shooting, told the Authority's investigator that Officer A should have backed off and found an alternative to shooting.

126. This witness attributed the inconsistency between his statements to tiredness and the fact that his children were also at the police station when he was first being interviewed. He made three statements to the Police.

127. Another witness told the Authority's investigator that her first written statement to Police could be disregarded because the officer who took it could not keep up with her and incorrectly paraphrased what she was saying. She said that where her statement recorded *"and he suddenly launched himself (at the Policeman)"* this was not accurate and what she had wanted to say was *"he walked quickly towards the Policeman"*.

128. She also said that Mr Bellingham was holding the hammer at about shoulder height and not above his head and that, contrary to her first statement, she did not say that Mr Bellingham was holding the hammer like he was going to strike the officer with it. What she wanted to convey was that he could have thrown the hammer at the Policeman but did not as far as she was aware.

129. She told the Authority's investigator that her second statement to the Police, recorded on video, was the more accurate account of what she saw.

Conclusion

130. On the basis of all the witness statements, the reasonable possibility that Officer A genuinely believed he faced an imminent threat of death or grievous bodily harm when Mr Bellingham came at him with the hammer raised cannot

be excluded. On this assessment, no reasonable jury properly directed could convict Officer A if he were charged with a criminal offence arising from Mr Bellingham's death.

131. While other tactical options did exist as to how Mr Bellingham might have initially been approached and contained by the Police (paragraphs 147 to 173), once Officer A decided to position himself in front of the Subaru to prevent Mr Bellingham from leaving the area, he had limited his tactical options and thus had also limited the manner in which he could effectively respond to Mr Bellingham's sudden aggression towards him.
132. The timeframe in which Officer A's responsive action must be assessed are those very few seconds when Mr Bellingham failed to comply with the commands to "*drop the hammer*" and turned aggressively on the officer. The total timeframe between Officer A's arrival at the scene and the fatal shooting was only 34 seconds (as can be seen from the timeline in paragraph 77). Within that, Officer A had only a few seconds to respond to Mr Bellingham's aggression, and the proportionality of his response is to be assessed within that very brief time.
133. Officer A's knowledge of the immediately preceding events is relevant also to assessing the reasonableness of his response.
134. In that context, Officer A knew Mr Bellingham was in a violent mood. He had heard the SouthComms reports and had seen first-hand the considerable damage caused by him in Trent Street. He subsequently came upon Mr Bellingham in Stanmore Road smashing up the Subaru with a hammer. Those events would certainly have coloured Officer A's subjective perception of Mr Bellingham's likely intentions towards him at the moment Mr Bellingham suddenly came at him. That context supports Officer A's statement that he genuinely feared for his safety at the point at which Mr Bellingham rushed at him with the hammer raised.
135. For reasons that will be discussed shortly, the Authority is further satisfied that, in the circumstances as he believed them to be, Officer A could not feasibly have used any other defensive means in such a close encounter and in such a short timeframe. The responsive use of his firearm, in the circumstances, cannot be viewed as excessive.
136. Taken altogether, the above supports the ultimate conclusion that the defence of self-defence, or defence of others in the vicinity by Officer A, cannot reasonably be excluded.

FINDING

The evidence supports the conclusion that Officer A was lawfully justified (under sections 39 and 48 of the Crimes Act) in using lethal force to defend himself from Mr Bellingham, in the circumstances as he perceived them to be. Further, the nature of the force he used was not excessive in the circumstances.

Was there justification for four shots being fired?

137. Police officers are taught to use a 'multiple shot drill', which means that officers fire multiple shots at an offender's central body mass until the offender no longer poses a threat. The Police Firearms Instructors' Manual states that multiple shot techniques best lend themselves to close confrontational situations where the primary concern is immediately stopping any adversary.

138. The closer the adversary is, the more important his *"immediate stoppage"* is. The manual states:

"The shooter must be taught to judge the severity of each threat faced, based on a number of factors (we feel distance is the key) and to fire as many rounds as is necessary until the threat is negated."

139. It also states that the number of rounds fired is up to the shooter based on the need to remove the threat, but four to five seems to be the norm.

140. When interviewed, Officer A said that officers using a Glock are trained to retreat, walking backwards from an advancing offender. He said: *"We are trained to fire until the threat is no longer present or our magazine is empty."* He also said: *"We are trained to fire at centre mass and a very rapid trigger action."*

141. One witness said:

"The male didn't drop when I heard the first pop. If anything he seemed to move towards the Policeman even quicker."

142. The witness also said:

"I heard three shots and it was after the third one that the male dropped to the ground."

143. Another witness said that there was a very brief delay between the first and second shot, and shots 2, 3 and 4 were in closer succession.

144. Officer C said that he heard four shots fired in quick succession. *“The person was still advancing towards Officer A during these shots.”*
145. As noted in paragraphs 43 to 45, the pathologist concluded that the chest wound from which Mr Bellingham died was most likely caused by the latter of the two bullets to strike him, and that the wound to Mr Bellingham’s thigh, likely to have been caused by the first bullet to strike him, would not necessarily have stopped him from moving forwards.

FINDING

Officer A fired multiple shots at Mr Bellingham in accordance with his training. The evidence suggests that it was one of the later shots that stopped Mr Bellingham from advancing towards and threatening Officer A; it was therefore in accordance with his training and justified for Officer A to have fired multiple shots.

ISSUE 5: OTHER TACTICAL OPTIONS

Were other tactical options available and considered?

146. Officer A said that, during this brief and fast-moving confrontation with Mr Bellingham, he carried out a rapid risk assessment considering what other tactical options were available to him. He said that, when confronted by Mr Bellingham with the hammer, he discounted the possibility of using unarmed combat, oleoresin capsicum (OC) spray, or a baton. He said that *“backing off”* was not an option due to Mr Bellingham’s aggression and his proximity and the threat to members of the public in the vicinity. This left him only with the options of voice appeal (which he used) or the firearm.

Cordon and containment

147. A ‘best practice’ approach would have been to contain and stay back from Mr Bellingham (that is, not approach or confront him) while SouthComms organised additional resources. However, Officer A ruled out cordon and containment as an option, explaining that:

“...the incident required immediate response to protect the public and to try and set up cordons in that situation would have put members of the public gravely at risk and I think a different form of tragedy would have happened...”

148. It is the Authority’s view that once Officer A reached Stanmore Road ahead of Officers B and C and then chose to confront Mr Bellingham, he effectively ruled out a cordon and containment option as viable.

149. It is the Authority's further view that had Officer A taken control of, and given instructions to, Officers B and C before leaving Trent Street, the potential existed for the three of them to have 'contained' Mr Bellingham on their arrival in Stanmore Road as a group, or, should an opportunity have arisen, possibly to have overpowered him.
150. In making that observation, the Authority accepts that Mr Bellingham did pose an immediate threat and that any attempt to contain him was likely to have been hazardous.

FINDING

Having made a decision to approach Mr Bellingham at close quarters without support, Officer A limited his options and effectively negated the opportunity to tactically deploy Officers B and C to contain the situation and await assistance.

Police dog

151. The use of a police dog clearly would have been a viable option in the circumstances.
152. One dog handler was on duty the night of the incident. He was patrolling in the Sockburn area when he heard radio communications regarding a domestic incident involving a male thought to have a hammer. He was heading to the scene when there was a report of a male stealing tyres from a vehicle in Ilam. As he was in that area he responded to that job. He was again heading towards Avonside Drive when he heard that an ambulance was urgently required and that shots had been fired.
153. Officer A said that he was told by Officer B that the dog unit was unable to attend for some reason. Officer A said in interview:

"I was also aware that Dogs had stood down and were certainly not handy but because I was concerned for the safety of other members of the public in Stanmore Road I felt I needed to get there quickly."

154. The Dog Unit diverted to the alleged tyre theft from about 8.29:30pm to 8.36:16pm, a duration of about 6 minutes and 46 seconds. The distance from Ilam, where the dog unit diverted, to Stanmore Road, is about 9.6km. At the time that Officer C advised that shots had been fired (8.37:44pm), the dog unit was about 2.5km from the scene.
155. Had the dog handler not diverted to the alleged tyre theft, he could have arrived at the Stanmore Road scene in time to deploy. In the Authority's view,

the dog handler should have continued to the more serious job rather than diverting. Upon learning that the dog handler was diverting, SouthComms acknowledged his intention to do so when it should have directed that he continue to the more serious job.

156. It is acknowledged, however, that the type of operational flexibility shown in diverting to the reported tyre theft is not unusual.

FINDING

The dog unit should have continued to the more serious job, and SouthComms should have directed it to. However, neither the dog handler nor SouthComms could have predicted the outcome at Stanmore Road.

ASP and PR24 Baton

157. The ASP is an extendable baton and the PR24 baton a side-handled baton. Officer A was carrying an ASP baton on his belt. He said:

"Because it [the ASP baton] was a close- quarter weapon I did not consider this to be an option. I also carry a PR24 baton in my patrol car and this affords slightly longer range but because I thought there was a possibility of getting into a foot chase with the offender, whom I expected to take off as soon as I arrived, the PR24 was going to get in my way and if I had dropped it or had it taken off me the offender could use it against me. I was unclear as to whether there were any people in the second car in Stanmore Road and I was concerned that there were and that I needed to get to the scene quickly."

158. The Authority accepts that batons are of limited use when officers are faced with a determined opponent armed with a weapon. Officer A made a quick decision not to carry his PR24 and, once faced by Mr Bellingham, the ASP was not a viable option.

FINDING

Mr Bellingham's aggressive approach with a raised hammer made it unsafe to engage him with an ASP baton.

Retreat

159. When asked by Police investigators why he did not consider retreating, Officer A said:

"The offender hesitated slightly and it seemed as if he was going to comply. He turned towards the bonnet of his car and it seemed

as if he was going to put the hammer on the bonnet of the car. It seemed to me that by presenting the Glock that he began to comply, that the matter was being defused."

160. Officer A went on to explain that, because it had seemed that Mr Bellingham was going to comply, he felt he did not need to retreat and thought the arrest could soon be made. But then Mr Bellingham *"just turned and ran at me, like someone had flicked a switch"*.

161. Officer A said that, once Mr Bellingham started to move towards him, *"if I turned to run I would have been struck"*.

162. He further said that:

"I was also aware of the other members of the public somewhere behind me and I thought [Officer C] and [Officer B] were behind me."

163. Officer A said that in firearms training he had simulated such an incident:

"In our training we remain front on to the offender so you've always got contact with them, to retreat backwards and to discharge your firearm while doing so and that's what I did."

FINDING

Once Mr Bellingham had been confronted and he had engaged Officer A in an aggressive manner, retreat was not a realistic option. Retreat at that point would have exposed Officer A, and probably the other officers and even members of the public, to danger.

Verbal commands

164. Officer A issued several commands to Mr Bellingham to drop the weapon.

165. Twelve witnesses confirmed that Officer A commanded Mr Bellingham to put the hammer down about four times, that he gave Mr Bellingham plenty of opportunities to put the hammer down, that his instructions were loud and clear, and that there was no doubt that Mr Bellingham would have heard and understood the officer's commands.

FINDING

Officer A gave clear verbal commands, but Mr Bellingham did not comply.

OC spray

166. General Instruction A270 (1) states that Police members may only use oleoresin capsicum (OC) spray:

“... to defend themselves or others if they fear physical injury to themselves or others, and they cannot reasonably protect themselves, or others less forcefully.”

167. General Instruction A271 (1) states that:

“... caution should be exercised where a subject is armed with a blunt edged weapon, or knife, to ensure a safe distance is maintained.”

168. Officer A said that, because he was aware that Mr Bellingham was carrying a weapon or weapons, possibly a golf club, he decided that he was going to stay away from any swinging weapons and not get into close range with Mr Bellingham. This, and the fact that Mr Bellingham moved quickly, effectively ruled out OC spray.

169. The type of OC canister carried by Officer A has an effective range of 1-3.5 metres in ideal weather conditions. The spray may not be effective when used against highly agitated people.

FINDING

The use of OC spray was not a viable option.

Warning shot

170. General Instruction F064 discourages the firing of warning shots except in the particular circumstances outlined in General Instruction F061.

171. When a warning shot is contemplated, extreme caution is required. The offender must have been called upon to surrender and have failed to do so; and the shot must be able to be safely fired vertically in the air, in the open, and in such a way that it is clear to the offender he is not being shot at, but is receiving a warning.

172. Officer A stated that warning shots are not generally fired unless it is absolutely clear that it is aimed as a warning shot and that it is safe to do so.

FINDING

Given the distance between him and Mr Bellingham, and the speed with which the situation changed, there was no realistic opportunity for Officer A to meet the criteria required for a warning shot.

OVERALL FINDING

Officer A stated that he did consider less violent alternatives but, once he had confronted Mr Bellingham, these alternatives were not viable.

Given the circumstances and the speed at which the threat escalated, Officer A could effectively resort only to his firearm.

ISSUE 6: FIRST AID TO MR BELLINGHAM

Was all reasonable assistance given to Mr Bellingham after he was shot?

173. Officer A said that he immediately advised Comms to send an ambulance and to inform the Criminal Investigation Branch (CIB). He also requested staff for cordons to secure the scene. He stated that he then approached Mr Bellingham and knelt down and asked if he was all right. He said he started to reach for Mr Bellingham's neck to check his pulse but it was clear that he was deceased.
174. One witness expressed concern that it was 10 minutes after the shooting before Mr Bellingham was approached and checked. Another (the one who was about 40 metres away) said that it took 15 to 20 minutes for the ambulance to arrive and he did not see any officer check Mr Bellingham prior to that.
175. Against that there is overwhelming evidence from Police and other sources that Mr Bellingham was checked immediately and an ambulance called.
176. Records establish that Mr Bellingham was attended to by ambulance staff within 12 minutes of being shot.

FINDING

All reasonable assistance was rendered to Mr Bellingham.

ISSUE 7: POLICE PRACTICE, POLICY AND PROCEDURE

Were Standard Operating Procedures and General Instructions followed or were there breaches of Police practice, policy or procedure?

1. Command and control

177. Protocols for the interaction between Communications Centres and field staff place the initial responsibility for command and control of incidents on Communications Centres. A handover occurs when a *"suitable member of Police in the District"* is willing and able to take over as incident controller.
178. Officer A had not advised SouthComms of his departure from Christchurch Central to the incident in Trent Street. When SouthComms advised that the reported offender was now in Stanmore Road, Officer A drove off from Trent Street, again without advising SouthComms, and without briefing Officers B

and C or checking that they were en route to assist him. He gave no situation reports and there was no handover to him as incident controller. He did not call for any additional resources. When Officer A was questioned about this he acknowledged that he could have communicated better with his staff.

179. While Officer A said he formulated a plan in his mind, he did not advise Officers B and C of this or give them any instructions as to what they were to do. Officer A said: *"...my plan was to get them to triangulate themselves in a safe position around the offender and that I would communicate with him by voice"*. Officers B and C arrived at the scene as Officer A was discharging his firearm.
180. Officer A conceded in a later statement that, while he considered the incident in Stanmore Road required immediate action, he could have communicated to Officers B and C *"a very quick plan, a couple of seconds worth"*. He said however *"there was very little time to do any planning"*.
181. Officer A did not take control by formulating a plan and giving directions. He chose to act in a primary role and, once he did so, given Mr Bellingham's speed and aggressiveness, it was too late to use Officers B and C.

FINDING

Officer A should have briefed Officers B and C and advised SouthComms that he was on his way to the scene.

Officer A failed to take command and control of the available resources.

Technically, SouthComms was still in control as there was no formal handover.

2. Gun safe

182. General Instructions F059 (3) and F060 require firearms to be locked in a specifically designed gun safe inside the patrol car.
183. The Senior Field Supervisor's car would normally have a locked gun safe in the footwell on the passenger's side. However, during Officer A's shift, a reserve vehicle was being used, as the usual patrol vehicle was being repaired. The reserve vehicle had a gun safe in the boot containing firearms for issue to other officers but no gun safe in the cabin in which the senior sergeant would normally secure a pistol. At the beginning of his shift, Officer A took a pistol from the gun safe of the vehicle, issued it to himself, and locked it in the glove compartment. Police have since issued a directive that firearms are not to be locked in the glove box of patrol cars as an alternative to an approved gun safe.

184. General Instruction F059(9) states that, whenever a firearm or ammunition is issued or returned, details must be recorded in a Firearms Register. However, there is no record of Officer A doing this when he removed the Glock from the gunsafe in the boot of his car.

FINDING

A locked glove compartment is not an adequately secure place to store a gun, and storing a gun in the glove compartment is a breach of General Instructions. However, this breach did not affect the outcome of the incident.

Not completing the Firearms Register was a technical breach of General Instructions.

3. Action following discharge of firearm

185. General Instruction F066 (3) (Discharge of Firearms by Police) stipulates the requirements following the discharge of a Police firearm.
186. On each occasion when a member discharges a Police firearm, the following immediate action shall be taken as soon as it is safe to do so:

“(a) MARK the position of the member, empty cartridge case, bullet fragments, injured or deceased persons, or any other items or persons associated with the discharge.

(b) PRESERVE the cartridge case and where possible the bullet or bullet fragments.

(c) SECURE the firearm and remaining rounds.

(d) ADVISE the member’s immediate supervisor who shall promptly advise the District Commander.”

187. The intention of paragraph (c) is that the firearm should be secured at the scene as an exhibit.
188. Officer A was taken back to the Police station where he cleared his weapon and handed the magazine and round from the chamber to an officer, along with the gloves he had been wearing. Officer A said he knew that the weapon was going to be seized as an exhibit but a decision was made to unload it at the Christchurch Police Station.

FINDING

The process used to secure Officer A’s weapon as an exhibit was not strictly in accordance with General Instructions, but this did not materially affect the investigation.

4. Body armour

189. General Instruction F059 (6) states that:

“When a firearm is issued, authorised ballistic body armour shall also be issued when available and shall be worn by the staff member carrying the firearm when attending, or expecting to attend, an armed incident.”

190. Technically, Officer A should have issued himself with body armour at the time he issued himself with a pistol. Officer A explained that he did not consider the circumstances warranted it.

191. Officer A’s quick response precluded him donning body armour.

192. Anecdotally, when officers attend emergency situations, it has been common for them to carry firearms without wearing body armour. This practice raises a question about the efficacy of this General Instruction.

193. The Police are introducing new body armour which is easier for staff to put on; this should enable easier compliance with the General Instruction.

FINDING

Officer A’s failure to wear body armour was in breach of General Instructions but had no impact on the outcome of the incident.

5. Display of firearms

194. General Instruction F067 (1) Exposure or presentation of firearms says:

“Firearms are not to be unnecessarily displayed or exposed. Members are to carry handguns in one of the authorised issue holsters. Empty holsters are not to be worn as a matter of course.”

195. Prior to receiving information about this incident, Officer A was wearing a Glock holster on his duty belt. Again anecdotally, this is common practice as it allows quick personal arming in emergency situations. The Authority is aware that Police are reviewing this General Instruction.

FINDING

By wearing an empty holster, Officer A was in breach of General Instructions. However, this had no bearing on the outcome of the incident.

6. Advice to SouthComms about arming

196. General Instruction F060(7) stipulates that whenever a commissioned officer or non-commissioned officer arms himself or herself, the nearest Communications Centre must be advised.
197. Officer A did not notify SouthComms that he had armed himself. Officer A was asked whether he was aware of the requirement to advise the Communications Supervisor that he had armed himself. He said he was *“not aware of any policy that I have to advise Comms”* and that he believed that the decision to advise the Communications Centre was at the Senior Field Supervisor’s discretion. He also said that, as far as he knew, no other senior sergeants were aware of the requirement to inform the Communications Supervisor.
198. In some situations, it may be critically important for Communications Centres to be aware when officers have armed themselves or have issued firearms.
199. On this occasion, had the Communications Supervisor been advised that Officer A had armed himself, he could, potentially, have instructed Officer A to take another approach, there having been no handover to Officer A as incident controller.

FINDING

Officer A breached General Instructions by not advising SouthComms that he was arming himself.

7. First aid

200. Officer A’s First Aid certification expired on 21 September 2007, just days prior to the incident. He has since completed and renewed his First Aid Certificate.

FINDING

The expiry of Officer A’s certification in first aid had no bearing on the outcome of this incident.

OTHER MATTERS

Prior complaints

201. Officer A has been the subject of previous complaints, and has also received a commendation for bravery (see paragraph 206). The Authority has considered the complaints in detail as part of its investigation and is of the view that the number of complaints against officer A may reflect both his long service in front line duties, and be an indicator of a somewhat uncompromising style of

policing. However, the Authority does not find those complaints of any direct relevance to the events of 26 September 2007.

202. Officer A has had no complaints made against him since he was promoted to Senior Sergeant.

Comment attributed to Officer A

203. According to a report in the Christchurch *Press* newspaper, Officer A allegedly said to a witness's five-year-old son: "*I don't get paid enough to go home in a box.*" Officer A denies making this comment, and Officers B and C say that they did not hear Officer A make it.

204. The differing accounts provided by the five-year-old witness and the officers cannot be reconciled.

Post-trauma return to duty

205. In 1999, Officer A was involved in an incident in which he shot at a person who was armed with a sawn-off shotgun (another officer shot and wounded the person). Officer A's actions on that occasion resulted in him receiving a Commissioner's Gold Merit Award for bravery.

206. The Authority has considered the relevance of Officer A's 1999 experience to the manner in which he responded to the threat posed by Mr Bellingham in 2007. In particular, the Authority has considered whether Officer A showed any sign of post traumatic stress disorder (PTSD) or any other stress reaction arising from the 1999 incident that might have influenced his judgement in responding to Mr Bellingham.

207. PTSD is an emotional illness that develops as a result of a frightening, life-threatening, or otherwise highly unsafe experience. PTSD sufferers re-experience the traumatic event or events in some way, tend to avoid things that remind them of the event, and can be sensitive to normal life experiences. PTSD can cause, among other reactions, hypervigilance to threat.

208. Based on the opinion of an expert in post traumatic stress disorder who was consulted by the Authority there is no evidence that Officer A was suffering from the disorder or any other stress reaction that might have impaired his judgement as he responded to Mr Bellingham's actions. On the contrary, it appears that Officer A was clear in his decision-making throughout the incident.

209. The Police Trauma Policy sets out the process by which officers involved in critical incidents may be referred to health professionals. This process, no

doubt because of the need to consider the member's privacy, does not readily allow confirmation that the member has been approved to resume full Police duties. What appears to be missing is a definitive statement from an appropriate manager that the member does not pose a risk to him or herself, the public, or Police, and can safely resume duties with or without restrictions.

- 210. The policy is under review and the Police have advised the Authority that the review is well advanced. In the Authority's view such a review is timely and appropriate.
- 211. Following the shooting of Stephen Bellingham, Officer A was stood down from duties while the Police criminal investigation took place, and has subsequently returned in a non-street role. He has had a trauma debrief and has received trauma counselling.
- 212. The Police also considered that Officer A would benefit from further mentoring and training in command and control before any return to front line duties, and this process is in place.

FINDING

The Authority supports the Police view that Officer A could benefit from further mentoring and training in command and control before he is approved for any return to front line duties.

Breath testing/blood samples

- 213. Officer A consented to providing blood and urine samples which produced a negative result for the presence of drugs or alcohol.
- 214. His blood was also analysed for the presence of the majority of medicinal drugs that affect the mind, alter mood, or cause sleep. No such drugs were detected.
- 215. The issue of mandatory alcohol and drug testing of officers involved in 'critical incidents' such as shootings has been the subject of comment by the Authority and Coroners, and has been considered by Police. Police do not have a policy that requires testing following a critical incident except breath testing when there is a vehicle crash involving the Police.
- 216. In the Authority's view, mandatory testing following critical incidents would be of considerable benefit to Police and should be introduced. It would indicate a willingness on the part of Police to ensure accountability within its own ranks. And it would protect individual officers from false allegations that they were or may have been impaired by alcohol and/or drugs. The

Authority's view is that Police should urgently develop policy and procedures for compulsory alcohol and drug testing (see recommendation iv, page 43). The Police accept this and have advised the Authority that the policy is under review, and that the review is well advanced.



Conclusions

INDEPENDENT POLICE CONDUCT AUTHORITY

217. In responding to the incident concerning Mr Bellingham, Officer A should have communicated his intentions, and the fact that he was armed, to SouthComms, so that a decision could have been made on whether to formally transfer incident control to him. He did not utilise available resources and failed to communicate any plan of action (such as containment) to Officers B and C, or to coordinate a response by them to the situation.
218. Instead, Officer A made a decision that placed him in a confrontational position with a man who was on a violent rampage and had damaged property with a weapon. In doing so he reduced the options available to him and found himself in a position of having to immediately protect himself and possibly members of the public.
219. Once confronted, Mr Bellingham's action in aggressively approaching Officer A with a weapon after failing to respond to voice commands placed Officer A in the position of having to use his firearm.
220. In shooting Mr Bellingham in self-defence, Officer A acted lawfully in the execution of his duty. The force he used was not excessive in the circumstances.
221. Although there were a number of breaches of best practice and General Instructions, these did not amount to misconduct or neglect of duty. They nonetheless do raise questions about Officer A's approach to frontline policing and support the view that he will benefit from mentoring and training in command and control before any return to front line duties.
222. The Authority expresses its deepest sympathy to the family and friends of Mr Bellingham.

Recommendations

INDEPENDENT POLICE CONDUCT AUTHORITY

223. The Authority recommends:

- i) That all supervisors' reserve vehicles should have a gun box installed in the footwell.
- ii) That, as part of its review of the Trauma Policy, Police consider developing an appropriate process for confirming that a member who has been directly involved in a 'critical incident' is approved to resume normal duties with or without conditions.
- iii) That Police reinforce the requirement to advise the Communications Supervisor on each occasion that the Senior Field Supervisor arms himself or others.
- iv) That Police develop, as a matter of urgency, policy and procedures for compulsory drug and alcohol testing of officers involved in critical incidents, including Police shootings.



Hon Justice L P Goddard
Chair
Independent Police Conduct Authority
March 2009

