

Police use of a Taser during an arrest in Christchurch

INTRODUCTION

1. At about midnight on 19 April 2016, Mr X was arrested after Police attended a domestic incident at his house in Christchurch. During the arrest, Officer A twice used a Taser on Mr X.
2. After reviewing the Taser Cam footage, 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. However, in interview with the Authority Mr X and his wife said that while they accepted that the Police had to intervene to prevent Mr X from hurting himself or somebody else, they were unhappy that Mr X was tasered twice¹.

BACKGROUND

Summary of events

4. Just before midnight on Tuesday 19 April 2016, Mr X began acting strangely in front of his wife and children at his home address in Christchurch. He had been drinking, after a long period of abstaining, and his wife said that the effects of the alcohol were making him *"talk funny"*.
5. Mr X's wife said that Mr X became very frustrated after she took his car keys off him to prevent him from driving. Mr X found the spare set of keys and over the next hour his wife tried to persuade him not to drive and to give her the spare keys. During this time, Mr X punched the rear window of his car and the fence.
6. Mr X's wife was concerned that his behaviour would get worse and that he might try and drive his car, possibly endangering himself or others. As a result, she told her daughter to ring the

¹Police have advised the Authority that Officer A and Mr X had a restorative justice meeting in June 2016 and Mr X apologised to Officer A for his actions on the night.

Police for assistance as she felt that she had done everything she could to try and calm him down.

7. Two Police officers attached to Papanui Police Station, Officer A, and a probationary Constable, Officer B, were on patrol in a marked Police vehicle and at 11.54pm were dispatched by the Police Southern Communications Centre (SouthComms) to Mr X's address. The only information that they had was that the father had *"flipped out and was uncontrollable"*.
8. While they were driving to the address, Officer B checked the NIA database² and established that Mr X had historical warnings for domestic violence and assaultive and resistant behaviour towards Police. As the officers had not seen his wife or children, they feared for their safety.
9. The officers arrived at the address and parked about 20 metres from the front entrance to the house. Officer A told the Authority that the lighting was poor and visibility was limited, as it was night time.
10. When the officers got out of the Police car, they noticed a man outside the house, near the footpath. At that time they did not know that the man was Mr X.
11. The officers told the Authority that as they approached the man (Mr X), he began to walk very fast towards them in a threatening manner.
12. Both officers believed that, under the TENR (Threat, Exposure, Necessity and Response) assessment (see paragraph 61), Mr X was 'assaultive' (showing an intent to cause harm, expressed verbally or through body language or physical action), angry and volatile. As a result, Officer B called for backup.
13. Officer A told the Authority that Mr X was also *"speaking in a funny tongue"* and the officers believed that he was suffering from mental illness. The officers had been told by the SouthComms dispatcher that Mr X had been drinking alcohol and both officers said that they could smell it on him.
14. As Mr X approached Officer A, the officer talked to him to try to calm him down. Officer A told the Authority that he also told Mr X to stop advancing and to stay where he was. This approach did not work and Mr X kicked and punched at Officers A and B. Both officers had to take evasive action to avoid being hit by Mr X.

Use of pepper spray on Mr X

15. Officer B told the Authority that Mr X continued to act in a threatening manner and walked straight towards Officer A *"with his fist up sort of ready to go"*. He said that Mr X was still speaking incomprehensibly and was not responding to anything the officers were saying to him. Officer B also told the Authority that Mr X tried to kick Officer A in a 'kung fu' type motion.

² The National Intelligence Application (NIA) is a Police database which holds information about individuals who have come into contact with Police.

Officer B said that while Officer A was able to dodge the kicks he thought, *“this guy’s trying to hurt us.”*

16. As a result, Officer A said that he decided to arrest Mr X for assault. As Mr X continued to advance on the officers, Officer A stepped back from Mr X, removed his pepper spray³ from his holster, and sprayed Mr X in the face. Officer A told the Authority that, due to the *“assaultive nature”* of Mr X, there was no time to warn him that the spray would be used.
17. The pepper spray appeared to have little, if any, effect on Mr X who continued to kick out and punch at both officers.
18. Officer A told the Authority that he went even closer to Mr X to see whether he needed to be resprayed. As he did this, Mr X managed to punch Officer A on the left side of his jaw which knocked him back two to three metres.

First use of the Taser

19. Officer A described Mr X as *“extremely angry and volatile”* at this point and said that his behaviour was *“threatening and alarming”*. Both officers knew that they would not be able to arrest Mr X while he was in this state, and would have to use force to handcuff him.
20. Officer A said withdrawing from the scene was not an option as the officers had not yet ascertained whether Mr X’s family were safe and uninjured. He said that he also considered using his baton to control Mr X but dismissed this course of action, as he thought it could escalate the violence or cause an unnecessary injury to Mr X.
21. Officer A decided that his Taser was the only viable option to control the situation and arrest him. Officer A pulled the Taser from his holster, pointed it at Mr X and warned him, *“Get on your knees otherwise you will be tasered”*.
22. Officer B confirmed this and said that, as Mr X was still advancing towards them and *“trying to fight”*, Officer A drew his Taser and warned Mr X to get on the ground or he would be tasered.
23. During its investigation, the Authority has analysed video footage of the incident provided by the camera in Officer A’s Taser (Taser Cam footage). On the Taser Cam footage, which is activated two or three seconds after the Taser is switched on, the Authority identified the laser beam pointed at Mr X’s chest. Officer A can be heard to say, *“Last chance, get on the ground”*. Officer A then tasered Mr X and, after a short delay, Mr X falls to the ground on his back.

Second use of the Taser

24. The Taser Cam footage shows Mr X lying on his back on the ground and Officer A telling him to *“get over”* on to his stomach. Mr X is muttering and it is difficult to understand what he is saying. He does not respond to Officer A, appears to be in a trance like state, and is clearly suffering from the effects of being tasered.

³ Pepper spray is also referred to as Oleoresin Capsicum or ‘OC’ spray.

25. The Taser Cam footage shows that about five seconds after the first use of the Taser, Officer A deploys the Taser on Mr X for a second time, giving another five second discharge through the same probes. Following this discharge, Mr X can be seen clenching his fists and rolling onto his stomach, yelling out in pain.
26. When asked why he deployed the Taser for a second time, Officer A said that he assessed how best to secure Mr X and place him in handcuffs safely. He believed that Mr X still presented an unacceptable risk to the officers, as he was still in a position to kick out and strike with his hands.
27. Officer A has recently told the Authority that he also thought Mr X was still acting in an assaultive manner and that his behaviour had not changed as a result of being tasered the first time. Officer A therefore decided that the safest way to handcuff and arrest Mr X was to deploy the Taser for a second time.
28. Officer A told the Authority that he believed, *“a second deployment was necessary, lawful and justified in the circumstances”*.
29. Officer A has also recently told the Authority that he accepts in hindsight that he could have delayed the second application of the Taser and waited to see if there was a further effect on Mr X. He said that he did not know then, but has since found out, that it can take several seconds before the true effects of the Taser can be felt.
30. After a short while, Officer B handcuffed Mr X. Officer B then radioed SouthComms to inform them that a man was under arrest after being tasered and a supervisor was required to attend. This can be heard on the audio of the Taser Cam footage.

Foot placed on Mr X's head during handcuffing

31. Mr X told the Authority that Officer A put his foot on his head while Officer B handcuffed him. When the Authority questioned Officer A about this, he said that he could not recall placing his foot on Mr X's head at any stage during the arrest procedure.
32. When Officer B was interviewed by Police, he told them that he handcuffed Mr X while Officer A *“held his head”*.
33. The Taser Cam footage establishes that Mr X said, *“don't stand on my head please”* while he was lying on the ground. Officer B can be seen handcuffing Mr X when he says this and a foot can clearly be seen on Mr X's neck area. While the Taser Cam footage does not conclusively identify whose foot was on Mr X's head, the Authority is satisfied that it was Officer A's, due to the fact that Officer B can be seen handcuffing him at a different angle.
34. Mr X appears to be complying with Police directions at the time as he is lying still and willingly puts his hands behind his back.
35. The footage appears to show Officer A using his foot to keep Mr X's head area still rather than as an application of force.

Taser Aftercare/Back at the Police station

36. As a result of Officer B's radio call to SouthComms, Officer C, who was Officer A's supervisory sergeant, attended the scene, as required by policy (see paragraph 74). Officer C collected the Taser cartridge identification tags, probes, wire and Taser. Officer A removed one of the probes from Mr X, after receiving his permission to do so. The other probe had fallen out.
37. The officers took Mr X back to Christchurch Police Station for processing where he was seen by a doctor, as is required after being tasered (see paragraph 75).
38. Officer C went to Christchurch Police station to confirm that Mr X had been examined by a doctor and to get a copy of the medical report. The doctor's report described a puncture wound to Mr X's chest and a superficial graze to his left temple. Otherwise there were no other concerns. A mental health nurse also came to assess Mr X and he was frequently monitored⁴ while in Police custody.
39. When Officer C got back to Papanui Police Station he downloaded the Taser Cam footage on to the Police database. However he was not able to view the footage at that time due to a technical glitch (see paragraph 74).

Supervision of Tactical Options Report

First TOR

40. Given the level of force used to arrest Mr X, Police policy required Officer A to complete a Tactical Options Report (TOR)⁵. Officer A completed his TOR before he finished his nightshift on 20 April 2016, and it was forwarded to Officer C his supervisor, at 5:09am.
41. After the Taser Cam footage was downloaded it was unable to be viewed, due to a technical issue, so Officer C completed his supervisory review of Officer A's TOR without viewing it as is required by policy.
42. Officer C recorded on the TOR that he was unable to view the footage but that he had discussed the incident with both Officer A and Officer B and supported Officer A's actions. Officer C chose to send the TOR to the reviewing inspector that day, without waiting for the technical issue to be resolved, as he was off duty for the following six days and would therefore otherwise not be able to complete it within the required 72 hours.

Revised TOR

43. On 26 April 2016 the Taser Cam footage was viewed for the first time by the reviewing inspector, Officer D.
44. Officer D recorded on the TOR that he had concerns about the second Taser discharge which he concluded, on the face of it, "*was used to gain compliance rather than because the offender was*

⁴ Checked on five times an hour.

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 a description of the force used and the reasons for using it.

assaultive. This needs to be covered". Officer D sent the TOR back to Officer C noting, *"Please have Officer A view the footage before supplying extra text"*.

45. Officer C forwarded the TOR on to Officer A so he could add to the description of why he fired his Taser a second time.
46. Officer A added to the TOR, that despite being on his back, Mr X's hands were free to strike and his legs were free to kick. He stated that less than a minute earlier, Mr X had done both and had assaulted him. He recorded: *"My assessment was he remained in the assaultive range as he was not responding to my communication"*.
47. Officer A added that he felt the risk to any officer approaching Mr X was still high and a tactical option that could be used from a standoff distance was required. He wrote, *"due to the fact that pepper spray had no effect on the subject, I deployed the Taser for a second time in order to achieve control and mitigate risk"*. Officer A then resubmitted the TOR to Officer C.
48. In the supervisor's comments box on the TOR, Officer C recorded, *"I am satisfied that on both occasions the male subject was in the assaultive range. Any other tactical option was likely to result in further harm to the attending officers or the subject"*.
49. The TOR was then returned to Officer D. On 28 April 2016 Officer D noted that he still had concerns over the second use of the Taser and referred the matter to Police Professional Conduct for further consideration.

Mr X

50. Mr X was 41 years old at the time of this incident. He is tall and of solid build. At the time of this incident he had not had dealings with Police or drunk alcohol for 15 years.
51. Following this incident, Mr X was arrested and charged with assaulting Police. He pleaded guilty to the charge and received a one year sentence of supervision on 1 July 2016 at Christchurch District Court.

Police officers involved

52. At the time of this incident, Officer A had served about 9 years in the Police. His Taser certification was current.
53. As Officer A had been punched by Mr X, he was examined by a doctor at Christchurch hospital. His jaw was scanned and he was found to have mild swelling.
54. At the time of this incident, Officer B (a probationary constable) had served only a few months in the Police.

Police investigation

55. Following this incident, Police began a criminal investigation into Officer A's use of a Taser on Mr X. At the conclusion of the investigation, Police determined that there was insufficient evidence to prosecute Officer A.
56. Subsequently, Police found that Officer A's second use of the Taser was for compliance. Police have addressed this matter directly with Officer A.

LAWS AND POLICIES

Law on the use of force

Use of force by Police officers

57. 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

58. 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."*
59. 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

60. 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.
61. 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.
62. 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).

63. 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.
64. 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.

Oleoresin Capsicum (Pepper) spray

65. 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.
66. 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."*
67. 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"*.
68. 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.

Use of Taser

69. 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 resistance in relation to Police.
70. Police policy expressly states that a Taser should never be used against an uncooperative but non-aggressive person to induce compliance.

71. 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"*.
72. 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"*.
73. 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.
74. 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.
75. 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. It also states that mentally impaired people are among those at greatest risk from any harmful effects of a Taser.

Tactical Options Report

76. 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

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

- 1) Was Officer A's use of pepper spray on Mr X justified?
- 2) Was Officer A's first use of the Taser justified?
- 3) Was Officer A's second use of the Taser justified?
- 4) Was Officer A's use of force during the handcuffing of Mr X excessive?
- 5) Was the appropriate medical care given to Mr X after he was tasered?
- 6) Did Officer A's supervisors correctly determine whether his use of the Taser was in accordance with policy?

THE AUTHORITY'S FINDINGS

Issue 1: Was Officer A's use of pepper spray on Mr X justified?

78. Sections 39 and 48 of the Crimes Act 1961 provide legal justification for Police to use reasonable force to arrest an offender and in defence of themselves or another.
79. Police policy (see paragraph 67) 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.
80. The Authority accepts that Mr X was assaultive the minute Police turned up at his house. Officer A told the Authority that Mr X did not respond to his attempts to communicate with him. Instead Mr X continued to advance towards the officers and attempted to kick and punch both him and Officer B. The officers also knew that he was drunk and had been violent and that his wife feared that he would harm someone.
81. Officer A said that he decided to arrest Mr X for assault. He chose to use his pepper spray to try to stop Mr X attacking them so they could safely handcuff and arrest him.
82. The Authority considers that Officer A was entitled to use pepper spray on Mr X in these circumstances.
83. Officer A told the Authority that due to the high speed at which Mr X approached the two officers, he did not have time to warn Mr X before spraying him. The Authority accepts this explanation.

FINDING

Officer A was justified in using pepper spray to arrest Mr X and to defend himself and Officer B from Mr X's attack.

Issue 2: Was Officer A's first use of the Taser justified?

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 resistance in relation to Police (see paragraph 69).
85. When the pepper spray had no visible effect on Mr X, and he punched Officer A in the jaw, both officers felt that the situation had escalated (see paragraphs 18 and 19). Mr X was clearly

assaultive. Officer A considered other tactical options (see paragraph 20) and reasonably decided that the Taser was his only viable option.

86. Officer A told the Authority that he drew his Taser and said to Mr X, *“get on your knees otherwise you will be tasered”*. The Taser Cam footage verified that Officer A gave this command.
87. When Mr X did not comply, and continued approaching the officers, Officer A was justified in tasing him so that Mr X would fall to the ground.

FINDING

As Mr X was clearly assaultive, Officer A’s first use of the Taser was justified and complied with policy.

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

88. Police policy expressly states that a Taser should never be used against an uncooperative but non-aggressive person to induce compliance (see paragraph 70).
89. 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 (see paragraph 73).
90. After the first Taser deployment, Taser Cam footage shows that Mr X moans in an unidentifiable language, while lying on his back, and appears to be in a trance like state. He continues to lie on his back while the officers both ask him to get on to his stomach. Mr X does not respond to these requests and is tasered again five seconds later.
91. Officer A told the Authority that he did not believe Mr X had changed his behaviour as a result of being tasered the first time and assessed that the safest way for the officers to handcuff and arrest Mr X was to deploy the Taser for a second time. Officer A said that he was mindful of the risk Mr X continued to pose to the officers until he was handcuffed. Officer A also said that Mr X did not respond to any of his instructions, as had been the case throughout the incident.
92. Officer A said that, for these reasons, he assessed that Mr X remained in the assaultive range and he believed a second deployment was necessary, lawful and justified in the circumstances.
93. After considering the evidence, the Authority does not consider that the second deployment of the Taser was justified. While Mr X did not immediately comply with the officers direction to roll over, the Taser Cam footage shows that, contrary to Officer A’s view, Mr X had calmed down and was not being assaultive or threatening in any way at the time. The second deployment was used for compliance which is a breach of policy. It was not necessary and amounted to excessive force.

94. The footage also shows that Mr X was still suffering from the effects of the first tasing at the time of the second deployment. The second cycle occurred five seconds after the end of the first cycle, which did not give Mr X enough time to comply with Police instructions to roll over.

FINDING

Officer A's second use of the Taser breached Police policy and was a disproportionate and unjustified use of force.

Issue 4: Was Officer A's use of force during the handcuffing of Mr X excessive?

95. Mr X told the Authority that Officer A put his foot on his head when Officer B handcuffed him.
96. Despite Officer A saying that he could not recall placing his foot on Mr X's head at any stage during the arrest procedure, Taser Cam footage clearly shows Officer A's foot on Mr X's neck. The footage also establishes that Mr X said, "don't stand on my head please" at the time.
97. The Authority accepts that the footage appears to show Officer A's foot being used to keep Mr X's head still rather than as an application of force. However, the footage also shows that Mr X is lying still and willingly puts his hands behind his back when asked.
98. After considering all the evidence, the Authority is satisfied that the actions of Officer A were unnecessary in the circumstances, as Mr X was compliant at the time.

FINDING

Officer A's use of force on Mr X's neck while he was being handcuffed was unnecessary in the circumstances.

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

99. 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. It also states that mentally impaired persons are among those at greatest risk from any harmful effects of a Taser (see paragraph 75).
100. Officer C ensured that Mr X was given water at the Police station, for the side effects of the pepper spray, and that a doctor was called to examine him after being tasered, in accordance with policy.
101. Officer C also requested that a mental health nurse assess Mr X and he was frequently checked while in Police custody.

FINDING

Officer C complied with the Taser aftercare requirement of the policy.

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

102. The Taser policy requires a supervisor and an inspector to determine whether the use of the Taser was in accordance with policy (see paragraph 74). The TOR states that both the supervisor and the reviewer must view the Taser Cam footage before reviewing the use of the Taser (see paragraph 76).

Officer C

103. As stated in paragraph 41, there was a technical problem with downloading the Taser Cam footage. As Officer C was going off duty for six days, he completed his supervisory review of Officer A's TOR without viewing the Taser Cam footage as is required. However, Officer C recorded that he had discussed the incident with both Officer A and Officer B and supported Officer A's actions.

104. After later reviewing Officer A's revised TOR (see paragraph 46) and the Taser Cam footage, Officer C concluded that he was satisfied that on both occasions Mr X was in the assaultive range and any other tactical option was likely to result in further harm to the attending officer or Mr X.

105. The Authority does not agree with the determination of Officer C in the revised TOR. Based on the information available to him, Officer C should have recognised that Officer A breached policy in his second use of the Taser, as Mr X was not 'assaultive' when he was lying on the ground.

Officer D

106. After viewing the Taser Cam footage, Officer D, the reviewing inspector, recorded that he had concerns about the second Taser discharge which looked like it was used to gain compliance rather than because Mr X was assaultive.

107. On 28 April 2016 Officer D reviewed the revised TOR, after Officer A had expanded on his explanation. Officer D concluded that he still had concerns over the second use of the Taser and referred the matter to Police Professional Conduct.

FINDINGS

Due to a technical issue, Officer C was unable to view the Taser Cam footage within the required time frame for submitting his supervisory review of Officer A's TOR. However, he did review the footage when the TOR was revised.

Officer C incorrectly determined in the revised TOR that Officer A's second use of the Taser complied with policy.

Officer D complied with the reviewing requirements of the Taser policy and correctly determined that its second use was in breach of policy.

CONCLUSIONS

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

- 108.1 Officer A was justified in using pepper spray to arrest Mr X and to defend himself and Officer B from Mr X's attack;
- 108.2 As Mr X was clearly assaultive, Officer A's first use of the Taser was justified and complied with policy;
- 108.3 Officer A's second use of the Taser breached Police policy and was a disproportionate and unjustified use of force;
- 108.4 Officer A's use of force on Mr X's neck while he was being handcuffed was unnecessary in the circumstances.
- 108.5 Officer C complied with the Taser aftercare requirement of the policy;
- 108.6 Officer C incorrectly determined in the revised TOR that Officer A's second use of the Taser complied with policy; and
- 108.7 Officer D correctly determined that the second use of the Taser was in breach of policy and referred the matter to Police Professional Conduct.



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

13 April 2017

IPCA: 15-2038

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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