

Dog bite following Police pursuit in Paeroa

INTRODUCTION

1. On 23 April 2017, at 8.49pm, Police began pursuing a fleeing driver in Paeroa. The pursuit lasted nine minutes before the three occupants of the stolen vehicle abandoned it in an attempt to escape Police.
2. A Police dog handler arrived at the scene to track the occupants. When the Police dog located one of them, Ms X, in a nearby paddock, the dog handler deployed his dog to apprehend her. Ms X received multiple dog bite wounds and required hospitalisation.
3. Ms X did not lodge a complaint with the Independent Police Conduct Authority but Police notified the Authority of the incident. The Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

4. This section of the report provides a summary of the incident and the evidence considered by the Authority. When quoting or describing the accounts of any officer, complainant or witness, the Authority does not intend to suggest that it has accepted that particular account.
5. Analysis of the evidence and explanations of where the Authority has accepted, rejected or preferred that evidence is reserved for the 'Authority's Findings' section.

Summary of events

6. On the evening of Sunday 23 April 2017, Officers A and B were on patrol in Paeroa in a marked patrol vehicle. Officer B was driving.¹ They saw a Mitsubishi Cedia wagon at a service station. Officer A was aware a Mitsubishi Cedia had recently been reported stolen. The officers ran a vehicle registration check.

¹ Officers A and B were both Gold class drivers, authorised to engage in urgent duty driving and pursuits.

7. The licence plates belonged to a Subaru Legacy station wagon so, as the plates did not match the vehicle, they decided to speak with the driver. At 8.49pm, as the Mitsubishi pulled out of the forecourt, the officers (who were driving in the opposite direction) turned around to follow it. They activated the patrol car's red and blue flashing lights and sirens to signal the Mitsubishi to pull over but it failed to stop.
8. The Mitsubishi, driven by Mr Y, sped up, so the officers began a pursuit and advised the Northern Police Communications Centre (NorthComms) of their reason for doing so (that the vehicle failed to stop following a licence plate check). They provided NorthComms with their location, speed, and driving conditions,² as per the Police's 'Fleeing Driver' policy.
9. Mr Y drove several circuits around the Paeroa township at speeds of up to 100 kph in a 50 kph zone. He then drove onto the Hauraki Rail Trail cycle path and over a bridge heading south towards Te Aroha.
10. Officer A told the Authority that the passengers hung out the window and gestured towards the Police car; a male passenger specifically was pretending to aim at and shoot them with an imaginary pistol. The passengers then started throwing items out of the vehicle, including a bandana, a guitar, and a guitar bag. Police continued to follow the vehicle approximately 20 metres behind in order to avoid being hit by the items.
11. During this time a Police dog handler, Officer C, was making his way towards Paeroa from the Hamilton area on the basis that he may be required to assist in apprehending the vehicle's occupants.³ He was listening to the commentary on the radio between Officer A and NorthComms as he was travelling. This commentary did not mention the imitation shooting or any information about the female passenger, Ms X.
12. Meanwhile, Officers A and B pursued the Mitsubishi back through the Paeroa township and onto Thames Road. As the officers followed the Mitsubishi onto Claremont Avenue, the three occupants jumped out of the vehicle while it was slowing down but still moving and fled from the scene. The pursuit lasted nine minutes.⁴ Officer A advised NorthComms that he and Officer B had seen the occupants run from the car.
13. NorthComms confirmed to Officers A and B that Officer C was on his way but was still some distance away. Officers A and B waited approximately 20 minutes and when Officer C arrived at the scene, they told him that two males and one female had fled from the vehicle and run into residential properties on Claremont Avenue.
14. Officers A and B waited in the area while Officer C deployed his dog to track the offenders. They set off into the properties on Claremont Avenue, tracking into an adjacent garden centre.

² The patrol car's sirens can be heard in the background for the duration of the NorthComms audio recording.

³ Officer C has over 20 years' experience in the Police. His relevant qualifications were current at the time of this incident.

⁴ The Authority interviewed the officers involved in the pursuit and reviewed the NorthComms audio and Event Chronology. It is satisfied that the officers complied with Police policy. This pursuit will be included in a thematic review of fleeing driver events, which the Authority and Police are jointly undertaking. The purpose of the review is to better understand the fleeing driver environment and identify any current issues with the conduct of pursuits.

15. Meanwhile, after running through private properties and the garden centre, Ms X and Mr Y crawled into and through a large drain pipe by the garden centre which carries a creek under Thames Road and into a paddock on the other side.⁵
16. Ms X and Mr Y hid down in the drain pipe which exited into the paddock (see Photograph 1) and waited there for approximately an hour, aware that a Police dog was tracking them.



Photograph 1: The creek where Mr Y and Ms X were hiding from Police.

17. After about 40 minutes of tracking, the Police dog had lost the scent and Officer C decided to return to his vehicle.
18. Ms X said that she had seen lights overhead and knew the Police dog was nearby. She told the Authority *"I was gonna run but, nah, I didn't know where I was"* so instead she climbed out of the creek and knelt on the top of the bank.
19. Officer C said that, as he was walking back along Thames Road, the dog began to show *"a lot of interest in his behaviour at that stage [which] made me think ... that there was possibly an offender nearby."* Officer C then saw Ms X in the paddock, about 10 metres away from him, so he continued towards her.
20. According to Ms X, she saw Officer C and the dog approach her from about 40 metres away and put her hands up, indicating that she surrendered. Officer C shone his torch in her direction as he approached the paddock. There was nothing to obstruct the view between Officer C and Ms X.

⁵ The other passenger of the vehicle had fled from the area.

21. Officer C told the Authority he was confident that this was the female passenger from the stolen car because of:

“... the initial track, yeah, her demeanour as well and what she did when she saw me [run away] and I saw her, the time of night, the location, gave me, I believe she was the offender from that stolen car.”
22. Officer C said he was about 10 metres away from Ms X when he issued a challenge to her: *“Police dog handler, stay where you are or I’ll let the dog go.”* He told the Authority that he had no doubt she would have heard his challenge as they were in close proximity.
23. Ms X said she heard Officer C say *“Get on the ground”*, but that she was already on the ground, kneeling with her hands up. When asked by the Authority, she was adamant that Officer C did not warn her that the Police dog would be deployed.
24. Mr Y, who said he witnessed the incident from inside the drain pipe approximately four metres away, told the Authority that Ms X was *“just lying down with her hands over her head”*. He also told the Authority that Officer C did not warn Ms X that he was going to deploy the dog.
25. According to Officer C, however, Ms X failed to comply with his instruction to stay where she was and ran away further into the paddock, so he released his dog to apprehend her. The dog jumped over a one metre high fence into the paddock and ran towards Ms X. It was still attached to Officer C by a 10 metre long tracking line as he too jumped the fence.
26. Ms X told the Authority: *“I never ran from the dog. I wanna make that clear. I didn't run from that dog. He brought the dog to me and it was his command that made the dog bite me.”*
27. Officer C said the dog engaged with Ms X’s right arm for *“10 seconds maybe”*. Ms X, however, reported that the dog was biting her for up to two minutes and that Officer C made no attempt to remove the dog from her. She said: *“He let it ragdoll me around for, like, I would say two minutes ... the damage says it all.”*
28. About this time, a civilian in a neighbouring property called 111 because she was concerned as to why she had heard a *“blood curdling scream”* for about two minutes.⁶
29. Ms X said that Officer C *“rung up someone saying that they had me”* while the dog was still biting her. Mr Y also said that Officer C used his radio while the dog was still engaged with Ms X. Both Ms X and Mr Y recalled Officer C saying *“Good boy”* to his dog, but said he did not call the dog off or immediately remove it from Ms X.
30. Officer C, however, disputes the accounts of Ms X and Mr Y and said he removed the Police dog from Ms X before he radioed for assistance. Officers A and B responded to his request and drove from Claremont Avenue to Thames Road to carry out the arrest of Ms X for unlawfully getting into a motor vehicle. Mr Y did not make his presence known and escaped from the area following the incident.

⁶ This person did not witness what happened in the paddock. She made the call within five minutes of Officer C radioing NorthComms for assistance with arresting Ms X.

31. Officer A realised Ms X was in “*significant pain*” so he assisted her into the Police car and called an ambulance. Officer C recalled her shouting: “*You’ve broken my fucking arm.*”
32. Officers A and B took Ms X to Paeroa Police Station where an ambulance met them to complete an assessment. She was then taken to hospital where she received pain relief and treatment for her injuries.
33. The medical report stated that Ms X received 11 deep lacerations to her right arm as a result of the dog bites. She was admitted to hospital for three days and required surgical repair to her arm. She was required to wear a cast for four weeks as well as attend ongoing hand therapy.
34. The injuries Ms X received have left her with significant scarring and she reports ongoing nerve and muscle tissue damage to her right arm.
35. Ms X pleaded guilty to unlawfully getting into a motor vehicle. Mr Y was later arrested and pleaded guilty to unlawfully taking a motor vehicle.

Police investigation

36. The Police investigation found that Officer C was justified in arresting Ms X, and that deploying the Police dog was an appropriate tactical option to affect the arrest.

THE AUTHORITY'S INVESTIGATION

37. As part of its investigation the Authority interviewed Officers A, B and C, Ms X, and Mr Y. The Authority also monitored the Police investigation throughout and reviewed all the documentation produced by the Police investigation team.

THE AUTHORITY'S FINDINGS

38. The Authority identified and considered the following issues:

- 1) Did Officer C use excessive force to apprehend Ms X by deploying the Police dog?
- 2) Did Police provide Ms X with appropriate aftercare?

Issue 1: Did Officer C use excessive force to apprehend Ms X by deploying the Police dog?

39. Officer C deployed his Police dog in a tracking capacity with the intention of apprehending three offenders (two males and one female) who had fled from the vehicle on foot to evade Police.
40. When Officer C located Ms X, he said he instructed her to stay where she was, but Ms X ran away. Officer C then deployed the dog as *"she failed to comply with my directions."*
41. Sections 39 and 40 of the Crimes Act 1961 provide for Police officers to use reasonable force to carry out an arrest, and to prevent the escape of a person who *"takes flight in order to avoid arrest"*.⁷
42. Officer C's justifications for his actions, as set out in his Tactical Options Report (which was completed six days after the incident) and as discussed in his interviews with the Authority, are as follows:⁸
- He suspected Ms X was a passenger in a stolen vehicle and may have had a weapon on her.
 - He was unsure as to whether the other two offenders were close by and he would be outnumbered.
 - There were no other suitable tactical options immediately available to apprehend her. He could not use an 'empty hand' manoeuvre or oleoresin capsicum (pepper) spray because of the distance between them (10 metres).⁹
 - Officer C felt he was too far away to run after her and did not *"particularly want to get into a physical confrontation or something similar [with Ms X]"*.
 - It was wet and muddy underfoot and he was waylaid by his policing equipment, which made it difficult to climb over the one metre fence and chase her.

⁷ See paragraphs 62-63.

⁸ Police policy requires officers who use force to complete a Tactical Options Report (TOR) before the end of their shift to explain their decision-making process.

⁹ 'Empty hand' refers to a weaponless use of force, such as grabbing hold of, pushing, or punching an offender.

- He did not want to risk falling into the creek while trying to apprehend Ms X, risking his safety, the dog's safety, and Ms X's safety.
 - He also told the Authority: *"You have to be conscious that females are just as dangerous as males."*
43. Based on the above assessment, Officer C *"considered the safest tactical option ... [was] to deploy the Police dog"*. He believed this was the most appropriate way to affect her arrest and prevent her escape, in accordance with sections 39 and 40 of the Crimes Act 1961.
44. Contrary to Officer C's account, Ms X told the Authority:
- "He could've just approached me instead. Like, there was no need for a dog and he knew that. Like, he had the torch on me. He seen that I wasn't running and he seen who I was, where I was, but still he let the dog go, yeah, instead of trying to pull it back in."*
45. Ms X firmly denies that she ran away from Police. She said Officer C told her to get on the ground, which she was already, and that she had made herself visible on the top of the bank with her hands up, indicating surrender. While Mr Y's version differs from that of Ms X in relation to how she was surrendering, his account is consistent with her statement that she was not running away. Officer C also acknowledges that when he first saw her, she was crouched down on the bank.
46. Ms X saw the dog coming towards her. She later said: *"There was nowhere I could've ran to be honest, unless I just stayed in the creek."*
47. Officer C and Ms X clearly provide differing accounts of the incident. During the course of its investigation, the Authority established the following:
- Ms X is 5 feet 6 inches tall and has a petite build. Officer C is 6 feet and 1 inch tall with a large, muscular build.
 - Ms X had successfully hidden in the creek for about an hour before she climbed out and went to the top of the bank. During this time night had fallen, the temperature had dropped, she would have been wet and likely cold.
 - Officer C had control of the Police dog on a 10 metre long tracking line when it engaged with Ms X, meaning this was the maximum distance Officer C could have been from Ms X. Although he did not mention it in his Tactical Options Report or at interview, Officer C later said he had let go of the tracking line.
 - There was a fence and a manhole cover in the field, but otherwise a clear path with no obstacles between Ms X and Officer C. Officer C was in close proximity to Ms X, and he had sufficient light from his torch. It would have taken a matter of seconds to jump the fence and reach her on foot.

- There is no evidence to corroborate Officer C’s suggestion that Ms X was uncooperative with Police immediately before the dog engaged her. Furthermore, notwithstanding Officer C’s suspicions, Ms X was not carrying a weapon and there is no indication that she was a threat to Officer C.
 - Once at the top of the bank, Ms X’s options to escape included stepping back down a steep bank into the creek behind her or running further into a dark paddock, unable to see where she was going. Therefore her opportunities to attempt escape were limited.
48. The Authority considers that these factors make the accounts provided by Ms X and Mr Y – that Ms X deliberately made herself visible to Officer C in order to surrender rather than attempt to escape, more likely. If Ms X had intended to continue avoiding Officer C and the Police dog she could have stayed hidden in the creek. Therefore, on the balance of probabilities, the Authority is satisfied that Ms X did not attempt to run away from Police.
49. Prior to deploying their dogs, Police dog handlers are required to issue a warning that they will use the dog to bite someone if they do not surrender.¹⁰ Officer C advised the Authority that he did warn Ms X that he would “*let the dog go*” if she tried to escape. However, while Ms X recalls Officer C telling her to get on the ground, neither Ms X nor Mr Y heard Officer C warn her about the dog, and they believed the dog engaged without appropriate warning.
50. As Ms X recalls Officer C saying something, the Authority is satisfied that he communicated with her and that on the balance of probabilities this likely constituted a warning.
51. Police policy requires officers to consider whether a lesser, more appropriate use of force is available before deploying a Police dog.¹¹
52. Officer C has provided his rationale for using the Police dog (detailed in paragraph 42). The Authority has considered his reasoning, but is of the view that the preferred tactical option available to Officer C would have been to continue to communicate with Ms X while approaching her with the dog on the lead and under direct control. If he was concerned about his safety, he could have called for assistance from Officers A and B who were close by, which would have provided him with additional support as required.
53. He could have manually restrained Ms X, or used pepper spray if she gave him reason to be concerned about physically engaging with her. Due to their difference in stature, it is unlikely that it would have been difficult for Officer C to overpower Ms X.
54. Police dog handlers are required to ensure that the extent of the force used by the dog is kept to a minimum possible in the circumstances.¹² According to Officer C: “*We can’t really determine how hard our dogs bite. The dog was only on her for a matter of seconds.*”

¹⁰ See paragraph 73 for policy

¹¹ See paragraph 71 for relevant Police policy

¹² See paragraph 72 for relevant Police policy

55. Ms X believed the Police dog bit her continuously for up to two minutes. An independent witness called 111 at the time of this event and reported hearing a female scream for about two minutes, but this does not prove that the dog was biting Ms X for that length of time as she could have continued screaming in pain after the dog was removed. A review of the recording of Officer C's communication at the time of Ms X's apprehension does not disclose any background screaming. The Authority is unable to find any compelling motive for Officer C to have allowed his dog to continue biting Ms X for such a period.
56. The Authority sought Ms X's medical records and a medical opinion of her injuries but the consultant was also unable to determine the duration of the bite from that information. Accordingly, the Authority is unable to determine the exact period of time the dog was biting Ms X. Specifically, while it accepts the injuries suffered by Ms X were significant and likely to have been very painful and traumatic for Ms X, whatever the duration of the bite, the Authority is unable to conclude that Officer C let the dog bite her for two minutes or for any longer than it took for him to reach her and retrieve the dog.
57. However, the Authority does not accept Officer C's risk assessment and justification for deploying a Police dog to apprehend Ms X, as it is satisfied that less forceful tactical options were available such as communication, empty hand manoeuvre, or pepper spray. The Authority is of the view that Officer C should have approached Ms X to arrest her rather than deploy the dog.
58. At the time, all Officer C knew was that Ms X was likely to have been a passenger in a stolen vehicle. As such the use of force was not proportionate to the circumstances or the offence she had committed. Ms X's injuries were substantial enough to require admission to hospital for three days and surgical repair to her arm. Based on the available evidence, the Authority determines that, on the balance of probabilities, the force used by Officer C to apprehend Ms X was excessive.

FINDING

On the balance of probabilities the Authority finds that Officer C's deployment of the Police dog to apprehend Ms X was excessive in the circumstances.

Issue 2: Did Police provide Ms X with appropriate and timely medical assistance?

59. Once Officer C had apprehended Ms X, he called for assistance to carry out the arrest. Officers A and B had been waiting a short distance away on Claremont Avenue, so they drove around to assist and arrived within a couple of minutes.

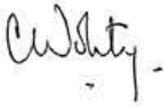
60. Officer A arrested Ms X and then assisted her into the Police car. Police called for an ambulance to meet them at Paeroa Police Station, a five minute drive away. Officers A and B drove Ms X back to the station where she received medical treatment from the ambulance staff and was then taken to hospital for further examination and treatment.

FINDING

Police provided appropriate medical assistance for Ms X.

CONCLUSIONS

61. The Authority is of the view that there were lesser tactical options available to Officer C to apprehend Ms X, such as communication and empty hand techniques. Ms X sustained severe damage to her arm from the dog bite she received. The Authority has therefore determined that Officer C used excessive force to apprehend Ms X by deploying the Police dog. Police did however provide appropriate medical assistance to Ms X following the incident.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

1 November 2018

IPCA: 16-2172

Legislation

62. 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.”*
63. Section 40(1) of the Crimes Act 1961 provides for Police officers to use reasonable force to *“prevent the escape of that other person if he takes flight in order to avoid arrest.”*
64. 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 or she believes them to be, it is reasonable to use.”*
65. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

Use of force policy

66. The Police 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, affect 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.
67. 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.
68. Police officers 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)).

69. 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.
70. The 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.

Use of a Police dog

71. Police dog handlers must consider all tactical options in situations that require use of force. They must consider whether a lesser, more appropriate use of force is available before deploying a Police dog. The law sees little difference between dogs, when used as a means of force, and other methods and implements used by Police, such as firearms, Taser and batons.
72. Police officers operating a Police dog are personally responsible for the use of force by the dog. They must be satisfied, before releasing the dog, that the use of force is justified in the circumstances and must ensure that the extent of the force used by the dog is kept to a minimum possible in the circumstances.
73. Policy provides that dog handlers must issue a warning:

“Before a Police dog is deployed to bite a person, the person must be warned or challenged to surrender, unless it is unsafe or impracticable to do so. The challenge must:

- *identify you as a Police employee*
- *identify that you have a Police dog*
- *identify that a dog will be used to bite the suspect if s/he does not surrender to Police*
- *be of such a volume that it is reasonable to expect the person to hear it.*

Note: *In AOS or other critical situations a challenge may not be given if it is not practicable or would be dangerous to do so.*

... Once challenged the person must be given reasonable time to comply, taking the particular circumstances into account.”

74. Police dog handlers must have control of their dog at all times during deployment. Control means that the dog is under immediate physical or voice control and the dog responds to that control.

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 Colin Doherty.

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.

This report

This report is the result of the work of a multi-disciplinary team of investigators, report writers and managers. At significant points in the investigation itself and in the preparation of the report, the Authority conducted audits of both process and content.



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