

Use of Taser following arrest in Auckland

INTRODUCTION

1. On Wednesday 27 April 2016, Police were called to an address where Mr X was reportedly threatening to commit suicide. Mr X was arrested for possessing an offensive weapon and taken to Counties Manukau Police station where he was tasered twice while Police attempted to place him in a tear resistant gown.
2. The Police notified the Independent Police Conduct Authority of the incident, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

Summary of events

3. During the morning of Wednesday 27 April 2016, Mr X was drinking at his home in West Auckland when he made an attempt to harm himself with a small pocketknife. His cousin called Police and Mr X was taken away for an assessment by Mental Health Services.
4. Following the assessment, Mr X went to his mother's house in South Auckland. At 10.50pm a relative of Mr X called the Police emergency line, 111, because Mr X was holding a large kitchen knife and threatening to commit suicide.
5. The Police Northern Communications Centre (NorthComms) dispatched Officers A and B to his mother's address in South Auckland.
6. With the help of Officer C, a sergeant, the officers arrested Mr X for possessing an offensive weapon and he was transported to Counties Manukau Police station.

7. When the officers and Mr X arrived at Counties Manukau Police Station, Officer A placed Mr X in a holding cell where he could be monitored until the custody staff could process him. While Mr X was in the holding cell, Officer C approached Officer A and told him that he had been advised by Mr X's family that Mr X had been cutting himself earlier in the day with a small pocketknife and it was possible that he still had the pocketknife concealed in either his sock or underwear.
8. Mr X denied having a pocketknife in his possession. However, Officer C told Officer A that Mr X would need to be strip searched and placed in a tear resistant gown for his own protection.
9. With the help of Custody Officer D, Officer A walked Mr X to a small cubicle, located in view of the custody suite, where Mr X could get changed. Officer A told the Authority that he spent about 10 minutes explaining to Mr X what was happening. This included asking Mr X to change into a tear resistant gown, telling him why he had to do it, giving him his options, confirming Mr X understood what was required, and when he refused, asking if there was anything Police could do for him that would make him comply with their request¹.
10. However, Officer A said Mr X refused to remove his clothes and asked him if he "*was gay and wanted to see him naked*". Officer A warned Mr X that if he did not comply with his instruction then they would have to forcibly cut off his clothes. When Mr X continued to refuse his request, Officer A and Custody Officer D each grabbed one of Mr X's arms and attempted to remove his top.
11. Mr X told the Authority that while he was being processed, the officers asked him to take off his clothes. He said that when he refused, the officers told him that they would have to forcibly remove them if he did not comply. Mr X said they repeated this for about five minutes, at which point they started touching him.
12. When asked by the Authority why he refused to remove his clothes, Mr X said that he was sexually abused as a child and did not like to be touched by other males. Mr X said that the officers were aware of this fact, as he said he had told them when he had been escorted to the Police station earlier that evening.
13. Both Custody Officer D and Officer A said that as soon as they touched Mr X, he immediately began to resist them by throwing his arms about. Officer A told the Authority that Mr X "*started lashing out*" and tried to elbow him and Custody Officer D. Officer A said Mr X pushed him backwards using the momentum from his swinging arms, so that he became jammed between the bench seat and the wall at the rear of the cubicle.
14. Similarly, Custody Officer D described Mr X as "*striking out*" with his arms and legs, and said he received a bruise to his forehead as a result of Mr X's "*resistance*".
15. Mr X told the Authority that when the officers tried to remove his clothes he began to resist their efforts by, "*pulling away ... just so they couldn't get my shirt off*".

¹ This is referred to as the 'AWAKA' process and is an approved tactic taught by Police

16. While this was happening, Officer C, who had returned to the custody suite, looked inside the cubicle and saw Mr X struggling with Officer A and Custody Officer D. Officer C said he entered the cubicle and went to Mr X's left side to try and control his left arm. As he did so, Officer C said Mr X looked down at his Taser and grabbed it with his right hand. Then for a "*matter of seconds*" Mr X tried to tug the Taser out of its holster.
17. Officer A said that when Officer C walked into the cubicle, he was still trying to get himself out of the corner and take control of Mr X's arm. While he was struggling to get up, Officer A said he saw Mr X "*lunge*" towards Officer C. He then heard Officer C say, "*he tried to grab my Taser.*"
18. Mr X told the Authority that while he did not recall trying to grab Officer C's Taser, it was "*entirely possible*" that he did. Mr X said this was because he would have done it, "*in terms of defence ... because there were three officers in this room ... with the sexual abuse ... you can understand how I would feel having my clothes forcibly removed*".
19. In his Tactical Options Report (TOR)², Officer C said that when Mr X grabbed his Taser, he considered him to be "*high end assaultive (refer to paragraph 62) ... and [believed he] intended to cause either himself or others harm*". In order to loosen Mr X's grip on his Taser, Officer C said he dropped his weight onto Mr X, pulling him to the ground where he landed on his left side, facing Custody Officer D. Officer C then leaned his weight on the right side of Mr X's upper body, while Officer A remained in the corner at Mr X's feet.
20. As soon as Mr X was on the ground, Officer C told Officer A to take Mr X's pants off. As he said this, Mr X began "*thrusting his legs out*" towards Officer A. Officer C said he still considered Mr X to be "*high end assaultive*" and he "*feared serious harm would be caused ... considering the small space.*"
21. At that point, Officer C got off Mr X, stepped back and removed his Taser from his holster. Police policy states that officers should give a verbal warning before they fire their Taser unless it is impractical or unsafe to do so to "*encourage de-escalation*" (refer to paragraph 66). In this instance, Officer C said he did not have enough time to warn Mr X before he fired his Taser.
22. Although Officer C said he did not have enough time to give a verbal warning to Mr X prior to discharging the Taser, Custody Officer D and Officer A both said that they heard Officer C warn Mr X that he would be tasered if he did not comply with Police instruction.
23. When Officer C fired the first cartridge, the two probes hit Mr X's lower back. Officer C said that because the probes were not spread wide enough apart, "*neuromuscular incapacitation (NMI)³ was not attained*", so he fired his Taser a second time. Officer C said the second set of probes hit Mr X on his buttocks, but again "*NMI*" was not achieved. As a result, Officer C said he "*arced⁴ all four probes*". Officer C said this had an immediate effect on Mr X's behaviour as he then complied with all Police instructions.

²A 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.

³Neuromuscular incapacitation is when the electric pulses from a Taser causes a person's muscles to contract uncontrollably.

⁴To 'arc' a Taser means to increase the voltage output and re-energise the cartridge probes.

24. When asked by the Authority whether he could have controlled Mr X in any other way, Officer C replied that he had considered a number of other tactics before using the Taser and said that there were “*no less violent means*”. The tactics he considered included:
- a) Pepper spray. However, Officer C said this was not a viable option as they were in a custody unit with lots of other people who could get affected from the spray.
 - b) Soft empty-hand tactics, such as holding and restraining Mr X. However, Officer C said that this was “*obviously not working*” and he did not want to roll around on the ground and injure himself.
 - c) Hard empty hand tactics, such as punching, striking or using an arm bar technique. However, Officer C was facing Mr X’s back and he did not want to hit his spine as this could cause “*serious damage*”. He also rejected the arm bar technique as this could result in a torn rotator cuff.
 - d) Calling for assistance. However, Officer C believed that due to the cubicle size there was not enough room for any more officers.
 - e) Baton. However, Officer C believed that due to the close proximity to the other officers there was a risk they could get injured.
25. Officer C reiterated that his perceived cumulative assessment (refer to paragraph 61) of Mr X’s behaviour was that he was assaultive, and as a result, “*the Taser was the least violent means available to [him] at the time*”.
26. While the struggle with Mr X was happening, Officer E, a Counties Manukau custody sergeant, was standing behind a desk in the custody suite. Officer E told the Authority that from his position, he could see into the cubicle and saw Mr X “*scuffle*” with the three officers. However, due to the size of the room, he did not go into the cubicle to assist them.
27. Officer E said the “*scuffle*” lasted for a matter of seconds and when Officer C stepped back from Mr X, he saw Mr X, who was lying on the ground, roll over and “*lash out*” with his right arm. At that point, he heard two small pops from the Taser being fired and Officer C yelling, “*Taser Taser Taser*”.
28. Officer E, who was not Taser trained, told the Authority that he did not expect the officer to use a Taser. He said it would not have entered his mind to use it in that situation and he was startled by the noise the Taser made when it was fired. He said that, although the Taser was effective in that Mr X was “*fully compliant*” afterwards, he believed that the required threshold to use the Taser had not been met, as Mr X was not assaultive. From what he saw, Officer E said Mr X was only resisting the officers. Although Mr X lashed out with his arm, which he said could be classed as assaultive, from his perspective the “*general melee ... appeared to be more active resistance*”.
29. Mr X told the Authority that using the Taser was “*unnecessary*”, especially because he was in a Police station and the officers could have physically restrained him.

30. In contrast, Officer A told the Authority that he believed that Officer C's use of the Taser "*prevented any further assault*" on himself and the other officers. He said there was "*justification for using the Taser*", as Mr X was "*in the assaultive range, he potentially had a knife ... and his arms were free*".

Aftercare

31. After Mr X was tasered, Officer C removed the Taser probes from Mr X's lower back and buttocks. The remainder of Mr X's clothes were removed and he was placed in a tear resistant gown.
32. At 12.10am on 28 April 2016, Mr X was assessed by a doctor, as required by Police policy following the use of a Taser (see paragraph 69). The doctor determined that Mr X had no long lasting effects from the Taser.
33. At 1.28am, Officer C completed a TOR, outlining what actions he had taken and the reasons for them (see paragraph 19).
34. At 4.06am on 28 April 2016, Officer F reviewed Officer C's TOR and viewed the Taser Cam footage. He recorded in the supervisor's section of the TOR that Officer C's actions were "*reasonable in the circumstances, and necessary to prevent harm*". At 4.50am, Officer F then referred the matter to Officer G, the TOR Reviewer⁵.
35. After reviewing the TOR and Taser Cam footage Officer G raised a concern around the reason for the use of the Taser in a District Custody Unit. Officer G referred the matter to Police Professional Conduct and requested that the matter be independently investigated.

CCTV footage

36. During its investigation, the Authority analysed the video footage provided by the CCTV camera in the custody suite, which shows into the doorway of the cubicle where the incident took place. The video footage has no audio component.
37. The footage begins by showing Mr X standing in the middle of the cubicle speaking to Custody Officer D and Officer A. They are seen speaking for about four minutes and during this exchange, Mr X shows no outward signs of aggression. At this point, Custody Officer D grabs Mr X's right arm and Officer A, although hidden from sight, appears to be holding Mr X's left arm.
38. Mr X reacts to the officers' actions by planting his feet on the ground, hip width apart, and bending slightly at the waist. At the same time, he begins moving his upper body from side to side.
39. The video footage does not show Mr X kicking and it does not appear that Mr X is striking out at Custody Officer D or Officer A with either his elbow or fist. Instead, Mr X is moving from side to

⁵A senior officer, who is an inspector or above, must view the Taser Cam footage and decide whether the use of the Taser was justified in accordance with policy. They enter their comments on the TOR after the first supervisor has done so.

side, with his feet spread wide. Although Mr X is of solid build and appears able to move about, both officers maintain their grip on Mr X's arms.

40. After 10 seconds of struggling, Officer C appears on screen and immediately goes to the cubicle doorway. Officer C then walks into the cubicle and attempts to grab hold of Mr X's left arm. At the same time, another custody officer walks into the custody suite and observes what is happening in the cubicle.
41. When Officer C enters the cubicle, Mr X is obscured from the CCTV camera and as a result, the Authority cannot see the "*lunging*" action as described by Officers A and C. Instead, the footage shows Mr X struggling in the middle of Officers A and C and Custody Officer D. Within five seconds, the three officers overpower Mr X and take him to the ground, with Mr X's back towards Officer C.
42. The custody officer, who is watching the struggle from the custody suite, does not attempt to assist the officers and walks away once Mr X is taken to the ground.
43. Once Mr X is on the ground facing Custody Officer D, Officer C is seen holding Mr X's upper body down, while Officer A, who had been holding onto Mr X's legs, takes off Mr X's pants. From the camera angle, the footage does not show Mr X "*thrusting*" his feet out at Officer A, as described by Officer C.
44. Mr X remains on the ground for approximately 20 seconds. During that time a number of Police staff walk in and out of the custody suite, including Officer E, who remains at the processing counter.
45. As Mr X's pants are removed, Officer C is seen getting up from his position on top of Mr X and steps back, out of view of the camera. Mr X, who remains lying on his side with his back to Officer C, rolls over and swings out with his right arm in a backward motion, before rolling back onto his left side. As Mr X brings his arm back to his left side, Officer C fires his Taser.
46. When the Taser is fired, Officer B is seen running through the custody suite and entering the cubicle to assist the officers and Mr X. While this is happening, Officer E, who remained in the custody suite watching the events, starts to talk to another custody officer.
47. About 50 seconds after Mr X is tasered, he is helped up off the ground and stripped of the remainder of his clothes. Officer C then removes the Taser probes and Mr X is placed in a tear resistant gown. The four officers and Mr X then leave the cubicle.
48. The total duration, from when Officer A and Custody Officer D initially struggle with Mr X, to the time when Officer C fired his Taser, is approximately 50 seconds.

Taser Cam footage and event log

49. During its investigation, the Authority has also analysed the video footage of the incident provided by the camera in Officer C's Taser (Taser Cam footage). The Taser Cam began recording

after Officer C fired the Taser the second time⁶. The recording lasted for 1.30 minutes from 11:28:47pm.

50. The Taser Cam footage shows the Taser sighted on Mr X's naked lower back as he is lying down on the ground, with two probes visible in his right buttock, and another probe in his lower back. The Taser discharge noise (electric pulses) can be heard in the background, while simultaneously, Mr X is yelling, "I'm sorry", and Officer C is yelling, "Taser Taser Taser".
51. Officer C instructs Mr X to put his hands behind his back and warns him to do as he is told. As Mr X complies with the instruction, Officer C advises Mr X that he will be removing the probes from his body and that he will be required to take his clothes off. The footage does not show Mr X being aggressive or assaultive towards the officers.
52. The event log shows that the Taser was armed at 11:28:46pm and that the trigger was fired twice almost simultaneously. In both instances, an electric shock was emitted. As a result, Mr X received a total electric shock of 63 micro coulombs⁷ over two areas for a period of five to six seconds. It is also evident from the event log and the Taser Cam footage that Officer C did not arc the Taser, as he stated (see paragraph 23).

Mr X

53. Mr X was 21 years old at the time of this incident. He is 174cms tall and of solid build. He has a history of mental illness and is known to Police.

LAWS AND POLICIES

Use of force by Police

Legal provisions

54. Section 39 of the Crimes Act 1961 provides for a Police officer 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.*"
55. Section 48 of the Crimes Act 1961 states: "*Everyone is justified in using, in 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.*"
56. Section 62 of the Crimes Act 1961 makes a Police officer criminally responsible for excessive use of force.

⁶ The Taser Camera takes 2-3 seconds to activate once the Taser is turned on.

⁷ Micro coulomb is a measure of electrical quantity.

Police guidance on use of force

57. 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.
58. 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) operational threat assessment.
59. Police define TENR as:
- 'Threat' is about how serious the situation is (or could be), and the present or potential danger the situation, environment, or suspect presents to themselves, other members of the public or Police. Police must assess the threat posed by the suspect, based on all available information including what they see and hear, and what is known about the suspect.
 - 'Exposure' is about the potential harm to Police employees, Police operations, Police reputation and to others. Exposure can be mitigated through assessment and planning.
 - 'Necessity' is the assessment to determine if there is a need for the operation or intervention to proceed now, later or not at all.
 - 'Response' means the proportionate and timely execution of Police duties aided by the appropriate use of tactics and tactical options.
60. The overriding principle when applying TENR is 'safety is success'. 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.
61. 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).
62. 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.

63. 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.

Use of Taser

64. 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.
65. Police policy expressly states that a Taser should never be used against an uncooperative but non-aggressive person to induce compliance.
66. 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”*.
67. 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”*.
68. 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. 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 TOR;
- ensure the operator involved uploads the incident into Evidence.Com; and
- informs the district Taser coordinator of the incident.

69. 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 Mental Health patients are among those at greatest risk from any harmful effects of a Taser.

Tactical Options Report

70. On the TOR form there is a requirement that the senior officer/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

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

- 1) Was Officer C's use of the Taser justified?
- 2) Was the appropriate medical care given to Mr X after he was tasered?
- 3) Did Officer C's supervisors correctly determine whether his use of the Taser was in accordance with policy?

THE AUTHORITY'S FINDINGS

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

72. 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.

73. The overriding principle when using a Taser is that it can only be used in situations within and beyond the 'assaultive' range (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. Police policy also expressly states that a Taser should never be used against an uncooperative but non-aggressive person to induce compliance.

74. As discussed in paragraphs 57 - 63, all officers receive training about the appropriate use of force when responding to an incident. The TENR operational threat assessment is a tool designed to help officers make better decisions by having officers assess the threat, manage the exposure, consider the necessity of intervention and ensure any response is proportionate and based on a risk assessment of threat, exposure and necessity.

75. Mr X accepts that he did not comply with Officer A's instructions to remove his clothes. He also accepts that he resisted the officer's efforts to strip search him and put him in a tear resistant gown by "*pulling away*" (refer to paragraphs 11, 12 and 15). This contrasts with the officers accounts who described Mr X as resisting by "*lashing out*" (refer to paragraphs 13-14).
76. Mr X's account of his actions is supported by the CCTV video footage, which shows Mr X resisting the officers by planting his feet on the ground and moving his body from side to side. He does not strike or kick out with his hands or feet and both officers are seen maintaining their hold on Mr X's arms during the struggle.
77. When Officer C entered the cubicle to assist the officers, he said Mr X "*lunged*" for his Taser and tried to pull it out of its holster. Officer C believed that Mr X was "*high end assaultive*" and he feared Mr X "*intended to cause either himself or others harm*". Later, when Mr X began "*thrusting his legs out*", both Officers A and C considered Mr X's behaviour to be in the assaultive range (refer to paragraphs 20 and 30).
78. Based on his threat assessment, Officer C said he determined that it was necessary to deploy his Taser. Officer C's belief was supported by the fact that (i) the officers were concerned Mr X had a concealed pocketknife, (ii) Mr X had been physically fighting Officer A and Custody Officer D, and (iii) Mr X had lunged and pulled at Officer C's Taser. When making his decision to use his Taser, Officer C said he ruled out other tactical options (which included pepper spray, soft empty-hand tactics, punching or striking, calling for backup and using a baton) and as a result, he believed, "*the Taser was the least violent means available to [him] at the time*".
79. Officer E, who arrived in the custody suite after Mr X was taken to the ground, did not view Mr X as a threat. He said that while Mr X's arm movement could be described as assaultive, the overall struggle "*appeared to be more active resistance.*"
80. In the Authority's view, Officer C did not appropriately consider the 'threat' of the situation when determining his response. The overarching principle of the TENR tool is to minimise harm and maximise safety. It is evident from the video footage that when Officer C entered the room to assist Officer A and Custody Officer D, they continued to struggle with Mr X for upwards of ten seconds. The video footage does not show Mr X punching, kicking or lunging at any officer. Instead, Mr X's behaviour is primarily 'passive resistant' (defined as "*refusing verbally or with physical inactivity*"). Once on the ground, all three officers have control of him. Although Mr X does bring his arm up in a backward motion toward Officer C, he is lying prone on the ground as he does so, facing away from Officer C and the action appears non-deliberate.
81. After examining all the available evidence, the Authority considers that Officer C's use of the Taser was excessive and unjustified. Police policy clearly states that a Taser must only be used on a person who is 'assaultive'. Mr X was being held down by two officers and presenting his back to Officer C when he was tasered. In the Authority's view, Mr X was not being assaultive at the time he was tasered and consequently, Officer C's use of the Taser twice was a breach of Police policy. In addition, there were other, less violent, options available to the officers. For example, they could have continued communicating with Mr X or could have asked officers outside the cubicle for assistance.

FINDING

Officer C's use of the Taser was contrary to policy and unjustified.

Issue 2: Was the appropriate medical care given to Mr X after he was tasered?

82. The Police policy on Taser aftercare states that a registered medical doctor must examine anyone who is exposed to the application of a Taser as soon as is practicable (see paragraph 69).
83. Officer C removed the Taser probes from Mr X shortly after he was tasered.
84. Police custody records show that Mr X was assessed by a doctor approximately 40 minutes after he was tasered. No injury from the use of the Taser was identified.

FINDING

Mr X received appropriate medical care after he was tasered.

Issue 3: Did Officer C's supervisors correctly determine whether his use of the Taser was in accordance with policy?

85. The Taser policy requires a supervisor and an Inspector to determine whether the use of the Taser was in accordance with policy (see paragraph 68).

Officer F

86. As required by policy, Officer F reviewed Officer C's TOR and the Taser Cam footage. He also ensured that all the supervisory requirements detailed in paragraph 68 were completed.
87. Officer F approved of Officer C's Taser deployment, recording in the TOR that it was "*reasonable in the circumstances, and necessary to prevent harm*".
88. The CCTV video footage, which captured the event and raises doubts about the information included in Officer C's TOR, was not made available to Officer F at the time of his decision. The only video footage available was from the Taser Cam, which is approximately 1.30 minutes long and does not show any of the events leading up to Officer C's deployment of his Taser. Although the Authority disagrees with Officer C's use of the Taser as Mr X was not assaultive, the Authority accepts that Officer F's review was based on limited information that did not give an accurate account of the events.

Officer G

89. Officer G, the TOR Reviewer, viewed the Taser Cam footage as required (see paragraph 70) and reviewed and signed Officer C's TOR in accordance with policy. Although he also did not see the CCTV footage, he was concerned about the use of the Taser in a District Custody Unit and referred the matter to Police Professional Conduct for an independent investigation.

FINDINGS

Based on the information available to him, Officer F complied with the supervisory requirements of the Taser policy. Officer G complied with the reviewer requirements of the Taser policy. He correctly determined Officer C's use of the Taser should be further investigated.

CONCLUSIONS

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

- 90.1 Officer C's use of the Taser was contrary to policy and unjustified;
- 90.2 Mr X received appropriate medical care after he was tasered; and
- 90.3 Based on the information available to him, Officer F complied with the supervisory requirements of the Taser policy.
- 90.4 Officer G complied with the reviewer requirements of the Taser policy. He correctly determined Officer C's use of the Taser should be further investigated.



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

9 March 2017

IPCA: 15-2113

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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