

Complaint of excessive force following arrest in Havelock North

INTRODUCTION

1. On 20 August 2015, the Independent Police Conduct Authority ('the Authority') received a complaint from Mr U about his arrest in the early hours of 4 January 2015 in Havelock North. He complained that his arrest was unlawful and that the force used, in particular the use of a Taser, was excessive.
2. The Authority notified Police of the complaint, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

3. On the night of 3 January 2015, Mr U and his friends, Mr V, Mr W and Mr X, were at a barbeque and were drinking. At about midnight they decided to go into central Havelock North. At about 3am they left a bar on Napier Road to head home. Mr V had arranged for his partner to pick the group up so they started walking towards where they had arranged to meet her.
4. Officer A, a constable, was patrolling by himself in the Havelock North bar area when he noticed Mr U and his friends walking in one direction on Napier Road and two men walking in the opposite direction. Mr W and one of the other two men started posturing for a fight. As a result, Officer A radioed Officer B, the sergeant in charge of the nightshift in Hastings at the time, whom he had just seen driving past, for assistance. Officer B was on patrol with Mr Y.¹
5. Officer A saw Mr U pick up Mr W, carry him several metres away and put him down. Mr U then gave Mr W a push in the direction they were heading.

¹ Mr Y was accompanying Officer B on his shift because he was considering joining Police.

6. Officer A got out of his car just before Officer B and Mr Y pulled up behind him. Officers A and B had a brief discussion and then crossed the road to talk to Mr U and his friends.
7. Mr U told the Authority that he heard Officer B call out from across the road and ask where they were going. Initially he told Officer B that he did not need to know and then told him that they were going home. Officer B then asked how they were getting home.
8. Officers A and B stated that Mr U told Officer B that how the group was getting home was nothing to do with him and then poked him in the chest. In contrast, Mr U said that he pointed out the Police logo that was on Officer B's shirt and said "Police", but did not touch Officer B.
9. Mr U said that Officer B then demanded that he provide identification. Mr U objected but, as Officer B insisted, he gave him his driver licence.² Officer A said that Officer B asked Mr U for identification and said that Mr U stated, "this is all bullshit", before handing over his driver licence.
10. Officer B asked the Police Central Communications Centre to do a check on Mr U's details. When the results came back, Officer B asked Mr U for his address. Officer A stated that Mr U also questioned why the officers needed to know his address but Officer B instructed him to answer.
11. According to Officer A, Mr U did not provide a complete address initially and when Officer B asked him for a specific address, Mr U replied, "fuck off, I don't have to tell you". Officer B said that about this time Mr U was "eyeballing me straight in my face, right up to me in an aggressive manner". Officer B said he warned Mr U about not answering him and giving false details. Mr U then "shoved" Officer B and was warned by him that he could be arrested for disorderly behaviour.
12. Once Officer B was satisfied with the address Mr U eventually provided, he gave him back his driver licence and told him he could go.
13. Mr U and his friends, and Officers A and B and Mr Y have different versions of the events that followed, as set out below.

Mr U's version of events

14. Mr U told the Authority that at this point he started to walk away and looked back to see what Officer B was doing. He then heard Officer B say, "you're under arrest for looking at me". Mr U said that he did not make any physical contact with Officer B as he walked away.
15. Mr U said that Officer B then grabbed his arm and tried to bend it back and push Mr U up against the window of the bar. Mr U said that he raised his arms and held them apart and, "[Officer B] just couldn't bend my arm back". Mr U kept saying that he wanted to go home and had a sober driver but Officer B continued to say he was under arrest.

² When interviewed by the Authority, Officer B was able to provide Mr U's driver licence number from notes he had written in his Police notebook at the time of the incident.

16. Mr U said that he was then pepper sprayed³ and could not see anything. Officer A took Mr U's other arm at this point. Mr U said that, having stiffened his body, he was "*standing there in a stance position*" while the two officers tried to get his arms behind his back.
17. At about this time, one of the officers tripped and fell to the ground but was still holding onto Mr U's arm. Mr U said that he was then tasered in his side. He yelled out, "*peace! peace! stop! stop!*". He was then told to get on the ground. When he refused, he was tasered again and a prong lodged in his chest. He said, "*my whole body just froze up*" and he collapsed on the ground, landing on his left arm which was under his chest.
18. Mr U told the Authority that as soon as he was on the ground both officers jumped on his back and yelled at him to put his hands behind his back. He was unable to pull his left arm out because it was underneath him and he had the weight of the officers on his back. After he managed to get his arm free, he was handcuffed and pulled up to his feet.
19. Mr U also said that, as he was being arrested, he saw his wallet, which contained \$150, on the ground and asked the officers to pick it up but they refused.

Mr V's, Mr W's and Mr X's versions of events

20. As Mr U started to walk off after his driver licence was given back to him, Mr V, Mr W and Mr X all said that Officer B told him that he was under arrest.
21. Mr V said he saw Officer B trip over and Officer A go to assist him. Officer A also grabbed Mr U. Mr U was then pepper sprayed in the face, tasered, forced to the ground and tasered a second time. Mr V said that Mr U "*never resisted in the first place*".
22. Mr W said, "*at no stage during the process did [Mr U] resist arrest or assault one of the officers*".
23. Mr X said that Mr U asked Officer B why he was being arrested and tried to tell him that their sober driver was waiting. Mr X saw Mr U being tasered before being taken to the ground. He said that Mr U did not "*put up a struggle or anything*".

Officers A and B's version of events

24. Officers A and B both stated that Mr U shoulder charged Officer B after his licence was returned to him. Officer B then told Mr U that he was under arrest for disorderly behaviour.
25. Officer B said that Mr U replied that he was not under arrest. Officer B placed his hand on Mr U's shoulder and told him to put his hands behind his back. Officer B then went to grab Mr U's arm but Mr U held his arms rigid and "*struggled violently and resisted hard out at the time*". Officer A went to assist Officer B by taking Mr U's other arm.

³ Pepper spray is also known as OC (Oleoresin Capsicum) spray.

26. Officer B told the Authority that in the struggle he fell backwards and hit his head on a pole. He thought he was “*dazed*” as a result and had a cut behind his ear that was bleeding. He also suffered an ankle injury.
27. Both officers say that they tried to put Mr U’s arms behind his back. However, Mr U clenched his fists and crossed his arms over in front of him. Officers A and B told the Authority that Mr U was very strong and said it was difficult to control him.
28. Officer A recalled that he tried to leg sweep Mr U but lost his balance and ended up on the ground underneath Mr U. Officer A said that Mr U then brought his right knee up, hitting him in the stomach. Officer A told the Authority that this action reinforced for him that Mr U was “*not just resisting but assaultive*” (see paragraph 72).
29. Officer A said he yelled at Mr U to stop resisting and told him at least three times that he would be tasered if he continued to resist. On the third occasion, Mr U relaxed his arms slightly and Officer A believed he was going to be compliant, but he continued to struggle with the officers.
30. Officer A said that he had hold of Mr U’s outstretched left arm and Officer B had hold of Mr U’s right arm but they were unable to handcuff him. At this point, Officer A felt that Police needed to do more to take control of the situation so he decided to use his pepper spray. He sprayed it at Mr U’s left eye, to avoid affecting Officer B. The spray hit Mr U in the left eye but also immediately deflected back into Officer A’s face. At about this time Mr Y intervened and tried to assist Officers A and B and Officer A also called for back-up.
31. Officer A said that while he was affected by the pepper spray, it appeared to have little, if any, effect on Mr U. In order to try and gain control of the situation, Officer A tried to take Mr U to the ground by flipping him backwards. Mr U ended up on all fours with Officer A on his left side and Officer B on his right side. Officer A said that Officer B then told him to taser Mr U. Officer A told the Authority that he had been thinking about the possibility of using his Taser before Officer B instructed him to use it.
32. Officer B told the Authority that he could see Officer A’s Taser and instructed him to taser Mr U. Officer B said that he believed Officer A was justified in using his Taser on Mr U because, in terms of his Perceived Cumulative Assessment (PCA) (see paragraph 71) of the situation, Mr U had become assaultive, which is a requirement before a Taser can be used.
33. Officer A said that, as he was holding onto Mr U with one hand, he had some difficulty removing his Taser from its holster with the other hand.⁴ When Officer A was in a position to discharge his Taser, he said he aimed it underneath Mr U from quite a close distance and shouted “*Taser, Taser, Taser*”. Officer A said that when he pulled the trigger, nothing happened and he realised his Taser had switched off during the struggle. He turned it back on and pulled the trigger again. Officer A believed that only one probe may have made contact with Mr U’s torso because the effect on Mr U was “*limited*”.

⁴ Officer A was carrying his Taser largely at the instruction of his supervisor, Officer C. Police policy changed on 1 August 2015 and officers are now able to routinely carry Tasers.

34. Officer A then saw some bare skin on Mr U near his left hip and administered a contact stun.⁵ Mr U immediately dropped to the ground on his front and yelled, “*peace, peace, stop it*” several times.
35. Officer A said that he turned his Taser off, believing that Mr U was going to be cooperative. He told Mr U to put his hands behind his back, however, Mr U kept his arms rigid and tried to get back on his hands and knees. Officer A then administered a second contact stun on Mr U for “*the full five seconds*”.⁶ Mr U again yelled, “*stop, peace, peace, peace*” several times.
36. After the second contact stun, Officer A said he yelled at Mr U to put his arms behind his back or he would be tasered again. Officer B handcuffed Mr U’s right arm. Mr U’s left arm was eventually brought out from underneath him and Officer A handcuffed that arm.
37. As soon as Mr U was restrained, Officer A allowed other Police staff to take over. He was still badly affected by the pepper spray and asked Mr Y to get a water bottle and counteractive spray from his car.
38. Officers A and B could not recall any discussion about Mr U’s wallet being dropped or being asked to pick it up.

Mr Y’s version of events

39. Mr Y told the Authority that, after Mr U’s driver licence was given back to him, Officer B turned to walk back to his car. Mr U started walking in the opposite direction and, as he did so, he said something that Officer B was unable to hear properly. Officer B turned to face Mr U and asked him what he had said. Mr Y told the Authority that he did not recall seeing Mr U shoulder charge or brush past Officer B. Officer B then walked towards Mr U and placed him under arrest. Mr U carried on walking, so Officer B took hold of his wrist and arm. Mr U said he was not under arrest and “*started resisting straight away*”.
40. Mr Y said that when Officer A took hold of Mr U’s other arm, Mr U was standing in a braced position. The officers were trying to wrestle him to the ground because he would not comply with their requests to get on the ground. Mr Y was standing about three to four metres away at this point.
41. Mr Y said that when Mr U was pepper sprayed, it did not seem to have much effect on him and he remained standing in a braced position. He saw Officer B behind Mr U and said that Mr U rose up suddenly and Officer B fell backwards and hit his head on a pole as he fell to the ground. Mr Y said that he could tell Officer B was “*dazed*”. Mr Y also mentioned that one of the officers was “*kneed*” at some point during the struggle.

⁵ A contact stun is described in Police policy as “[a]ctivating 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”.

⁶ Once the trigger is depressed, a Taser will cycle for five seconds. A cycle is any activation of a Taser that subsequently creates a firing record.

42. At this point Mr Y decided he needed to assist Officer A. He took the arm that Officer B had previously been holding, placed his right arm around Mr U's shoulder and told Mr U to stop resisting and get on the ground.
43. Mr Y said that a Taser warning was given, although he believed it was Officer B who gave the warning. Mr Y let go of Mr U before Officer A discharged his Taser because he thought he might also get a shock from the Taser. Mr Y said the discharge of the Taser had no effect on Mr U and a contact stun was then administered. Mr U then went to the ground and was handcuffed.
44. Mr Y could not recall any discussion about Mr U's wallet being dropped or Officers A and B being asked to pick it up.

Mr Z

45. Mr Z had been drinking at the same bar as Mr U and his friends and witnessed the incident. He told Police that Mr U was yelling things like "pig" and "give me more" and "pushed or shoved or barged" an officer. Mr U was then arrested for disorderly behaviour. Mr Z said that "[Mr U] pulled the cop to the ground after he was arrested and that's when he 'psyched' out". Mr Z saw Mr U get pepper sprayed, which did not work, and then tasered.

Taser camera footage and firing log

46. When a Taser is turned on, it takes two to three seconds before the camera begins recording. As Officer A was so close to Mr U when he used his Taser, it is difficult to determine from the Taser camera footage exactly what occurred. However, it is possible to tell that the footage of the incident starts after the first discharge of the Taser by Officer A, as the wires connecting the discharged probes to the Taser can clearly be seen at the start of the footage.
47. Most of the audio is also difficult to hear but Mr U can clearly be heard yelling out "peace bro, peace". One of the officers can be heard telling Mr U to put his hands behind his back and Mr U can be heard saying that he cannot pull his arm out.
48. In accordance with standard procedures, Officer A's Taser camera footage was reviewed by a committee within Police. (The quality of the footage meant it was difficult for that committee to assess whether Officer A had complied with Taser policy.⁷)
49. The firing log for the Taser showed that there were three five-second discharges during the incident. The first from 3.02:54am to 3.02:59am was a discharge through the probes; the second from 3.03:01am to 3.03:06am was a charge sent through the same probes; and the third from 3.03:12am to 3.03:17am was a direct application of the Taser to Mr U's skin while the probes were still attached to him (a follow-up contact stun).

⁷ Police updated their Taser policy on 1 August 2015. The references to Police policy in this report relate to policy in place at the time of the incident on 4 January 2015.

Cell phone footage

50. A person watching the incident filmed it on a cell phone. This footage has been received by the Authority. At the start of the footage an officer can be heard saying, *“just go down bro, just go down”*. A discharge of the Taser followed by the electrical charge can then be heard and arcing can be seen. While still holding onto Mr U’s right arm, Officer B can then be seen lying on his back on the ground before trying to get up. Mr U is standing leaned over with his arms raised and out to the side and being held by both officers.
51. Officer B then appears to lose his balance and Mr U simultaneously appears to push Officer B backwards using his right arm. Officer B can be seen hitting his head on a concrete pole. As Officer B is trying to get back on his feet, another two discharges of the Taser, each followed by an electrical charge and arcing, can be seen. Mr U is then forced down to the ground by both officers.
52. Mr U can be heard yelling *“peace, bro, peace”*, *“fuck the nation”* and *“never”* during the incident. He also says *“no more resistance please”* when Police are trying to handcuff him. Mr U’s left arm and hand can be seen sticking out underneath the right side of his torso when he is on the ground and the officers are trying to handcuff him. An officer can be heard asking Mr U to put his arm behind his back but Mr U says he cannot but that he is trying. He asks the officers to *“gimme some space”*. Officer B has his knee on Mr U’s right arm.

Mr U

53. Mr U was charged with disorderly behaviour, assaulting Police and two charges of resisting Police. On 15 May 2015 he pleaded guilty to disorderly behaviour and one charge of resisting Police and was fined \$500 on each charge. The other two charges were withdrawn by Police.

Post Taser deployment requirements

54. Given the level of force used to arrest Mr U, Officer A was required to complete a Tactical Options Report (TOR). He had to submit the TOR to his supervisor, Officer C, before the end of the shift in which he had used his Taser unless he sought Officer C’s approval to do so within three days of that shift. The incident happened in the early hours of 4 January 2015 and the TOR history shows that Officer A submitted the TOR to Officer C for review on 6 January 2015 at 10.35am. Officer C was on rostered days off on 4 and 5 January 2015 so was unable to provide Officer A with the necessary approval.⁸
55. In his TOR, Officer A described his PCA (see paragraph 71) prior to using his Taser as *“assaultive”* (see paragraph 72). Officer C reviewed the TOR and recorded in the ‘Supervisor’ section that Officer A’s actions were *“fully justified in the circumstances”*. Officer C told the Authority:

“[Officers A and B] know what the surroundings were etc so it was my assumption that seeing as [Officer B] was there, he told him to use it, that the circumstances

⁸ There is no requirement to seek or provide approval in writing and it is usually done verbally.

were okay. That's all I based my recommendation on, because I wasn't actually there."

56. Officer C received the TOR for review on 6 January 2015. She was required to review it and submit it to Officer D before the end of her shift that day unless she sought Officer D's approval to do so within three days of that shift (see paragraph 74). The TOR history shows that Officer C submitted the TOR to Officer D on 9 January at 10.16am. Due to the passage of time, Officer C was unable to recall obtaining Officer D's approval, however, she has advised that she was in consultation with Officer D about the incident during that time.
57. After reviewing the TOR, Officer D sent it back to Officer C on 9 January 2015 at 1.57pm, raising the following concerns in the 'Reviewer' section of the TOR:
 - whether the initial arrest was required;
 - why Officer A was wearing a Taser; and
 - whether Officer A used his Taser at the direction of Officer B.
58. Officer D also wrote that *"charges in this matter are currently before the court. In consultation with the Police Conduct Manager for Eastern we will monitor this matter through the courts and complete a [Policy, Practice and Procedure] review"*.
59. Officer C's roster information shows that she was either on leave or on rostered days off from 15 January to 1 February 2015 and from 5 February to 22 February 2015. The TOR history shows that weekly, system-generated reminder emails that the TOR was *"Awaiting Supervisor Review"* were sent to Officer C between 16 January and 20 February 2015. Officer C sent the TOR back to Officer A for him to address Officer D's concerns on 23 February 2015 at 10.08am. She added into the 'Supervisor' section, *"[Officer A] as per [Officer D's] comments below, can you please reply to these then re-submit the TOR back to me for forwarding"*.
60. Officer C told the Authority that she had a conversation with Officer A some days later and asked him if he had responded to Officer D's concerns. It was ultimately agreed between Officers A and C that the responses had already been detailed in the TOR. However, the TOR history shows that Officer A sent the TOR back to Officer C at 1.50pm on 23 February 2015.
61. Officer C told the Authority that she sent the TOR back to Officer D who *"okayed it"*. The TOR history shows that Officer C sent the TOR back to Officer D on 2 March 2015. Officer C has subsequently advised that she had many conversations with Officers A and D about the completion of the TOR at the time.
62. The TOR history shows that Officer D *"completed"* the matter on 3 March 2015, although Officer D told the Authority that he did not get a reply to the concerns he raised about whether the initial arrest was required.

Officer A

63. Officer A had the appropriate certification and training for pepper spray and Taser at the time of the incident.

Police investigation

64. The Police investigation found that neither Officer A nor Officer B committed any unlawful acts and the arrest of Mr U was in accordance with Police policy and legislation.

LAWS AND POLICIES AS AT 4 JANUARY 2015

Use of force

Crimes Act 1961

65. Section 39 of the Crimes Act 1961 provides for Police 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”*.
66. Section 40 of the Crimes Act 1961 provides that Police officers may use necessary force in order to prevent a person from fleeing to avoid arrest, unless the escape can be prevented by reasonable means in a less violent manner.
67. Section 48 of the Crimes Act 1961 states *“Everyone is justified in using, in the defence of himself or another, such force as, in the circumstances as he believes them to be, it is reasonable to use”*.
68. Section 62 of the Crimes Act 1961 makes Police officers criminally responsible for excessive use of force.

Police guidance on the use of force

69. 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), pepper spray, batons, Police dogs, Tasers and firearms.
70. 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.

71. 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).
72. 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.
73. 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.
74. Officers are required to submit TORs to their supervisors before the end of the shift in which force was used, or with a supervisor's approval, within three days of this shift. The supervisor who reviews the TOR is the officer's immediate supervisor (sergeant or acting sergeant). Supervisors are required to complete their review before the end of the shift in which they receive a TOR, or with their supervisor's approval, within three days of this shift. Inspectors are required to complete their reviews within seven days of receipt of TORs from supervisors.
75. Policy states that "*[e]ach review provides accountability for the use and reporting of force. Effective supervisor and Inspector review is key to enhancing TOR data quality*".
76. If, following review by a supervisor or Inspector, a TOR is sent back to the reporting officer for amendment, the officer is required to re-submit the form to their supervisor before the end of the shift in which they receive it back, or with their supervisor's approval, within three days of this shift.

Pepper spray

77. Police policy states that an officer may use pepper spray when:
 - a person is actively resisting a Police officer; or
 - a person is behaving in a way that causes the Police officer to believe he or she will be assaulted; or
 - the situation cannot be resolved by less forceful means.

78. For example, pepper spray may be used by officers to defend themselves or another person if no other less serious tactical options are available.
79. A Police officer must warn a person before using pepper spray if practicable, and give that person a reasonable opportunity to comply.

Use of Taser

80. 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.
81. Police policy expressly states that a Taser should never be used against an uncooperative but non-aggressive person to induce compliance.
82. 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”*.
83. 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”*.
84. 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.
85. 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
 - inform the District Taser coordinator of the incident.
86. 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.
87. When reviewing a TOR for an incident in which a Taser had been used, Police policy required incident supervisors and reviewers to view the Taser camera footage. The TOR also stated at the start of the sections to be completed by incident supervisors and incident reviewers “*(note, if this is a TASER TOR event, you must view the TASERcam footage and firing log, and note that you have done so in your comments):*”.

ISSUES CONSIDERED

88. The Authority’s investigation considered the following issues:
- 1) Was Officer B justified in asking Mr U for identification?
 - 2) Was the arrest of Mr U for disorderly behaviour lawful?
 - 3) Was Officer A justified in using pepper spray?
 - 4) Was Officer A justified in deploying his Taser the first time?
 - 5) Was Officer A justified in deploying his Taser the second time?
 - 6) Was Officer A justified in deploying his Taser the third time?
 - 7) Was the aftercare of Mr U appropriate?
 - 8) Did Officer A’s supervisors follow proper procedure in relation to the use of the Taser and completion of the TOR and did they correctly determine whether Officer A’s use of the Taser was in accordance with policy?
 - 9) Did Officers A or B refuse to pick up Mr U’s wallet?

The Authority’s findings

Issue 1: Was Officer B justified in asking Mr U for identification?

89. Mr U stated that Officer B demanded he provide identification. He challenged Officer B about having to do so but, because Officer B insisted, he ultimately provided his driver licence.

90. Officer A said that Officer B asked Mr U for identification but added that Mr U stated “*this is all bullshit*”.
91. Officer B said that Mr U was uncooperative and aggressive when asked for his details. He said that he asked Mr U for identification and that Mr U provided his driver licence.
92. The Authority is satisfied that Mr U objected to providing identification. Therefore Officer B needed to have some legal justification to continue to ask that he provide it. There is no information to suggest that Mr U was suspected of an offence at the time he was asked to provide identification, nor was there a warrant for his arrest. In addition, there was no relevant legislation requiring Mr U to provide identification, such as a suspected breach of the liquor ban.
93. The Authority notes that this is an incident that would not have ended in the manner it did if Officer B had not continued to ask Mr U to provide identification after Mr U objected to doing so. Officer B’s handling of the situation contributed to the unnecessary escalation of a minor incident, and resulted in serious consequences for Mr U.

FINDING

When Mr U objected to providing Officer B with identification, Officer B had no legal justification to continue to ask that he do so.

Issue 2: Was the arrest of Mr U for disorderly behaviour lawful?

94. Mr U complained that he had been unlawfully arrested.
95. There are conflicting accounts about the behaviour that resulted in Mr U being arrested for disorderly behaviour (see paragraphs 14, 24 and 39).
96. However, Mr U pleaded guilty to disorderly behaviour and was convicted of that offence (see paragraph 53 for detail about the other charges that Mr U faced as a result of this incident). If Mr U wanted to challenge the legality of his arrest or conviction, the appropriate avenue for him to do so was through the courts.

FINDING

Given that Mr U pleaded guilty to the disorderly behaviour charge and was convicted of that offence, the Authority has no jurisdiction to review the circumstances of his arrest or his conviction.

Issue 3: Was Officer A justified in using pepper spray?

97. Officer A sprayed Mr U in the left eye in an attempt to gain control of the situation (see paragraphs 28 to 30). The evidence suggests that he did not give Mr U a warning before doing so.
98. Sections 39 and 48 of the Crimes Act 1961 authorise Police to use reasonable force in the execution of their duties and for the purposes of self-defence or defence of someone else.
99. Police policy is that pepper spray can be used if a person is actively resisting⁹ or an officer believes he or she will be assaulted (see paragraph 77). The policy also states that an officer should warn a person before using pepper spray if practicable, and give them a reasonable opportunity to comply (see paragraph 79).
100. The Authority accepts that, when Officer A made the decision to use pepper spray, Mr U had just kned him in the stomach and he believed Mr U had become assaultive. He was therefore justified under Police policy in spraying Mr U.
101. As Officer B had lost his balance and hit his head by this stage and Officer A felt he needed to do more to immediately gain control of the situation, the Authority accepts that it was not practicable for Officer A to give Mr U a warning at the time.

FINDING

Officer A was justified in using pepper spray in the circumstances.

Issue 4: Was Officer A justified in deploying his Taser the first time?

102. Mr U complained that the use of the Taser on him was “excessive”.
103. Sections 39 and 48 of the Crimes Act 1961 authorise Police to use reasonable force in the execution of their duties and for the purposes of self-defence or defence of someone else.
104. However, 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. Police policy also provides for a Taser to be used where an officer has assessed a person as being within or beyond the “assaultive” range (see paragraph 72).
105. Officers A and B told the Authority that Mr U was too strong for them to control using just their hands, and that other tactical options were required.
106. Officer A recalled that he tried to leg sweep Mr U but lost his balance and ended up on the ground underneath Mr U. He stated that:

⁹ According to Police policy, “a person is actively resisting when they are using non-assault physical actions such as pulling, pushing or running away in an attempt to prevent control by Police, i.e. more than mere verbal defiance”.

"[Mr U] brought his right knee up into my left stomach area but it was a just a glancing blow so I didn't have any injuries or anything like that and but (sic) that just cemented to me that he was very assaultive not just resisting but assaultive."

107. Officer A said that he told Mr U at least three times that he would be tasered if he did not stop resisting.
108. Officer B told the Authority that he instructed Officer A to taser Mr U. In his interview with the Authority, Officer A said that he was in the "thought process" of using his Taser at the time Officer B told him to taser Mr U.
109. Officer B said that he believed Officer A was justified in using his Taser on Mr U because, in terms of his Perceived Cumulative Assessment (PCA) (see paragraph 71) of the situation, Mr U had become assaultive.
110. Police policy also requires officers to give a verbal presentation warning ("Taser 50 000 volts") and a verbal discharge warning ("Taser, Taser, Taser") when deploying a Taser unless it is impractical or unsafe to do so.
111. Officer A told the Authority that he yelled "Taser, Taser, Taser". While Officer A may not have given the precise verbal presentation warning stated in policy, the Authority is satisfied that Mr U already understood that he would be tasered if he did not stop resisting.
112. The Authority accepts that Officer A believed Mr U was assaultive.
113. As the Taser camera footage starts after the first deployment has occurred, no verbal presentation warning or verbal discharge warning by Officer A is recorded.
114. Footage from the Taser camera and the firing log confirm that the first deployment of the Taser was a discharge with probes lasting for five seconds. However, it is not possible to determine from the footage or the log whether this deployment was successful.
115. Officer A believed he was about two feet away from Mr U at the time he deployed his Taser the first time. He thought that it was possible that only one of the probes connected¹⁰ as the effect on Mr U was limited.

FINDING

Officer A was justified in deploying his Taser the first time and the deployment was in accordance with Police policy.

¹⁰ For a discharge to be successful, both probes must make sufficient contact with the person being tasered.

Issue 5: Was Officer A justified in deploying his Taser the second time?

116. The Taser's firing log confirms that the second deployment of the Taser was a discharge through the same probes that had been fired during the first deployment and that it also lasted for five seconds. The log also confirms that the second deployment started two seconds after the first deployment ended.
117. Officer A told Police that he discharged the Taser a second time through the same probes because he did not think the probes had properly embedded in Mr U's skin during the first discharge, due to the limited effect on Mr U. The second discharge also had no, or limited, effect on Mr U. Officer A later told the Authority that his second deployment of the Taser was a contact stun. However, the firing log shows that the second discharge was through the same probes and not a contact stun.
118. Police policy states that multiple deployments of a Taser against a person should be avoided. Each deployment must be "*reasonable, proportionate, and necessary in the circumstances*". Every effort must be made to gain control of a person while he or she is incapacitated by the initial deployment of the device. If the initial deployment fails to incapacitate the person, an officer must consider alternative tactical options and considerations.
119. While the second use of the Taser on Mr U occurred only two seconds after the first, it is clear that the first deployment had no discernible effect on Mr U and the officers believed he remained assaultive. Both officers believed they needed to urgently arrest Mr U and regain control of the situation. Therefore, the Authority is of the view that the second deployment of the Taser was justified in the circumstances.

FINDING

Officer A's second deployment of his Taser was justified in the circumstances and the force used was reasonable.

Issue 6: Was Officer A justified in deploying his Taser the third time?

120. The Taser's firing log confirms that the third deployment of the Taser was a contact stun and that it lasted for five seconds. The log also confirms that the third deployment started six seconds after the second deployment ended.
121. Officer A stated that he administered a second contact stun (the third deployment) during the struggle to arrest Mr U for the "*full five seconds*". He says he did this because he believed that neither of the previous two deployments had had any discernible effect on Mr U, and Mr U continued to be assaultive. Officer A was also aware that both he and Officer B were injured (see paragraphs 26 to 30), and believed they urgently needed to gain control of the situation.

122. The cell phone footage shows that Mr U was still standing before being tasered a third time. While he can be heard saying “*peace*” and “*never*” while being tasered, he does not comply with the officers’ instructions. He was then taken to the ground and handcuffed.
123. While Mr U only had six seconds to comply with Police requests before he was tasered a third time, the Authority is of the view that the third deployment of the Taser was justified in the circumstances and amounted to reasonable force.

FINDING

Officer A’s third deployment of his Taser was justified in the circumstances and the force used was reasonable.

Issue 7: Was the aftercare of Mr U appropriate?

124. Mr U was arrested at about 3.15am on 4 January 2015. Aftercare was given to him at the scene to minimise the effects of the pepper spray that had been sprayed into his left eye.
125. As Mr U had been tasered, he was seen by a doctor at Hastings Police Station at 4.15am in accordance with Police policy. The doctor noted that Mr U had no respiratory difficulties and only minor abrasions.

FINDING

The after care provided to Mr U in relation to the pepper spray and the use of the Taser was timely and appropriate.

Issue 8: Did Officer A’s supervisors follow proper procedure in relation to the use of the Taser and completion of the TOR and did they correctly determine whether Officer A’s use of the Taser was in accordance with policy?

Officer B

126. In terms of the supervisory requirements detailed in paragraph 85, Officer B was the on-duty supervisor. Given his involvement in the incident and his instruction to Officer A to use the Taser, Officer B should have declared his conflict and arranged for the on-duty supervisor from Napier to attend. The Authority has been unable to establish whether or not this happened.

Officer C

127. Police policy required incident supervisors to view the Taser camera footage and firing log when reviewing a TOR and note they had done so in their comments (see paragraph 87). Officer C did not make any such noting. She told the Authority that while, due to the passage of time, she cannot specifically recall viewing the footage when reviewing Officer A’s TOR, she probably did do so as that is her standard practice.

128. Taser policy required supervisors to determine whether the use of the Taser was in accordance with policy (see paragraph 85). Officer C stated in her comments on the TOR that Officer A's actions were "*fully justified in the circumstances*". When interviewed, she said that her opinion was based on the fact that Officer B was present and therefore the circumstances of the use of the Taser were "*okay*". Officer C has subsequently advised the Authority that, due to numerous conversations she had with Officers A and B, and because Officer B was more qualified than her regarding the use of Tasers, she stated Officer A's actions were justified "*in the circumstances*".
129. Police policy required Officer C to conduct an independent review of whether the use of the Taser by Officer A was in accordance with policy. Regardless of Officer B's experience or status, Officer C should not have simply taken the word of Officer B. The fact that Officer C did not conduct a truly independent review compromised the legitimacy of the review process.

Officer D

130. Policy also required incident reviewers to view the Taser camera footage and firing log before reviewing a TOR and note they had done so in their comments. Officer D did not make any such noting. He told the Authority that he viewed the Taser camera footage but did not view the firing log before reviewing the TOR.
131. Officer D reviewed and sent the TOR back to Officer C, outlining his concerns, before the end of the shift in which he received the TOR. As outlined at paragraph 57, Officer D reviewed Officer A's use of force and expressed a number of concerns. Officer D told the Authority that he did not get a reply to the concern he raised about whether the initial arrest was required.
132. When interviewed by the Authority, Officer D accepted that he did not follow up on the court outcome for Mr U or the PPP review (see paragraph 58) and that ultimately the responsibility for that rested with him.

FINDINGS

Officer C

Officer C breached Police policy by not noting in her comments in the TOR that she had viewed the Taser camera footage and the firing log.

Officer C's review of whether Officer A's use of his Taser complied with policy was inadequate.

Officer D

Officer D breached Police policy by not noting in his comments in the TOR that he had viewed the Taser camera footage and the firing log. In addition, he told the Authority that he viewed the footage but not the log.

Officer D adequately reviewed whether Officer A's use of force complied with policy. However, he failed to follow up when he did not get a response to his query about whether the initial arrest was required.

Officer D failed to follow up on the outcome of Mr U's charges or the PPP review.

Issue 9: Did Officers A or B refuse to pick up Mr U's wallet?

133. When interviewed by the Authority's investigator, Mr U said that when he was being handcuffed he saw his wallet lying on the ground. He asked the officers to pick it up but they refused. Mr U did not recover his wallet which contained \$150.
134. Officers A and B and Mr Y advised that they could not recall any discussion about Mr U's wallet being dropped or being asked to pick it up.
135. The property sheet completed at the time Mr U was processed at Hastings Police Station does not list a wallet but does list Mr U's driver licence. As Mr U had been at the bar that evening, it is highly likely that he had a wallet with him and quite possible that it fell out of a pocket during the struggle with Police.

FINDING

Due to conflicting evidence, the Authority is unable to determine whether Mr U asked Officers A and B to pick up his wallet and whether they refused to do so.

CONCLUSIONS

136. The Authority has concluded on the balance of probabilities that:
 - 136.1 Once Mr U objected to providing identification, Officer B had no legal justification to continue to ask that he do so.
 - 136.2 Mr U pleaded guilty to disorderly behaviour and was convicted of that offence. Therefore the Authority has no jurisdiction to review the circumstances of Mr U's arrest or his conviction. The appropriate avenue for him to challenge that would have been to appeal through the courts.
 - 136.3 Officer A was justified in using pepper spray in the circumstances. The first deployment of Officer A's Taser was justified and in accordance with Police policy, and the second and third deployments were justified in the circumstances and the force used was reasonable.
 - 136.4 The aftercare Mr U received for the pepper spray and the use of the Taser was timely and appropriate.
 - 136.5 Officers C and D breached Police policy in relation to not viewing the Taser camera footage and/or the firing log and not noting in their comments in the TOR that they had done so. In addition, Officer C's review of whether Officer A's use of his Taser complied with policy was inadequate. Officer D also failed to follow up on getting a response to whether the initial arrest was required, the outcome of Mr U's charges or the PPP review.

136.6 There is conflicting evidence about whether Mr U asked Officers A or B to pick up his wallet and that they refused to do so. The Authority is therefore unable to make a finding on this aspect of the complaint.

137. The Authority believes it is important to note that this is an incident that would not have ended in the manner that it did if Officer B had not continued to ask Mr U to provide identification after Mr U objected to doing so. Officer B's handling of the situation contributed to the escalation of a minor incident, and resulted in serious consequences for Mr U.

A handwritten signature in black ink, appearing to read 'David Carruthers', written in a cursive style.

Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

24 May 2017

15-0369

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.



Whaia te pono, kia puawai ko te tika

PO Box 25221, Wellington 6146

Freephone 0800 503 728

www.ipca.govt.nz
