

Allegations of favourable treatment towards off-duty officers in Central Otago

INTRODUCTION

1. On the evening of Thursday 21 January 2016, four people (including two off-duty Police officers) were caught shining a spotlight into Mr W's paddock, situated near Omakau in Central Otago. Local Police were called to investigate.
2. Between 21 July 2016 and 4 October 2016, the Authority received four separate complaints about the Police's delay in deciding whether to lay charges against the two off-duty officers, and alleging that Police were treating them more favourably than ordinary members of the public.
3. The Authority notified Police of these complaints and conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

Unlawful hunting

4. The Authority's investigation into the Police handling of this matter is set in the context of 'unlawful hunting' or 'poaching' on private and public land in Central Otago. Poaching of wild animals is extremely dangerous for land-owners and other hunters. It can also be very disruptive for stock. For these reasons, poaching generates strong feelings in rural communities.

5. Hunting on privately owned land is regulated by the Wild Animal Control Act 1977. Section 8(2) of the Wild Animal Control Act provides that it is an offence to hunt (or search for)¹ any wild animal on any land without the express authority of the owner or occupier of that land.
6. Section 38 of the same Act states that a court will presume, until the contrary is proved, that a person was hunting if:
 - they are found in a place where wild animals are usually present; and
 - they have hunting equipment with them (for example firearms, dogs and spotlights).
7. This is referred to as a 'reverse presumption' or a 'reverse onus', because the defendant is presumed to have committed the offence of unlawful hunting due to the circumstances that he or she is found in, and must prove to the court that he or she was acting lawfully.

Events of 21 and 22 January 2016

8. At about 10.40pm on the evening of 21 January 2016, Mr W received a call from his neighbour, Mr X, to say he had caught some people driving slowly along the public road that runs through Mr W's land, shining a spotlight into Mr W's paddock.
9. Mr W told the Authority that wild deer, goats and rabbits come to graze in the paddock after dark and the area was "*known for poachers*". He said that he had caught a poacher on his land prior to this incident, but Police did not prosecute him within the six month time limit. *However*, two weeks after this incident, he caught someone shooting a wild goat on his land, and in that case "*he was through the Court within two weeks.*"
10. Mr W drove to where Mr X was waiting on the side of the road with four people in a silver Nissan Terrano SUV (the SUV). He spoke to the driver of the SUV who advised that he was an off-duty Police officer (Officer A).
11. Officer A explained to Mr W that he was just looking for deer to show Ms U, who one of the passengers. Mr W told the Authority that he recognised Officer A as the owner of a local holiday home, and recalled that he had refused Officer A permission to hunt on his land earlier in the week.
12. Mr W rang 111 to report that people were poaching on his land, and that one of them was an off-duty Police officer.
13. The Police dispatcher directed the on-call constable (Officer B) to attend the incident. Officer B told the Authority that he asked the dispatcher to request the on-call sergeant, Officer C, to meet him at the scene, since an off-duty officer was involved and he had not dealt with a poaching incident before. He told the Authority, "*To be honest, I thought this was above my pay scale....*"

¹ Section 2 of the Wild Animal Control Act provides that the definition of 'hunt' includes searching for any wild animal.

14. Officer C was at home when he received a call from the District Command Centre about the incident,² and immediately started driving towards Omakau. He later said:

“With the police officers being involved I knew that we had to have an oversight as an NCO [sergeant] and a supervisor to make sure we took proper steps because we don’t want stuff reflecting back on us....”

15. Officer B said that Officer C called him while they were both driving to the scene, and directed him, *“If they’ve got an animal, give it back. If they’ve got weapons, seize the weapons Do get details, get full details”*

Police arrive at the scene

16. When Officer B arrived at approximately 11:35pm, he spoke to Mr W and Mr X, who confirmed that they had not seen or heard any shots being fired, or seen any animal carcasses.
17. Officer B then spoke to the occupants of the SUV, and asked them to wait until the sergeant arrived. He then wrote down their personal details and the SUV’s registration in his notebook.
18. Officer A and the right rear passenger (Officer D) confirmed that they were both off-duty Police officers from Christchurch. The man in the front passenger seat identified himself as Mr Y, and Ms U was sitting in the left rear passenger seat.
19. Officer B said that Officer D told him they were on their way back from *“shooting up at the [Department of Conservation] block”*, for which they had a permit, but *“they hadn’t shot anything.”* They had seen deer on this road earlier in the week, and only shone the spotlight into the paddock in order to show Ms U.
20. When Officer B looked inside the SUV, he could not see any animal carcasses or ammunition. However, he did see two firearms (belonging to Officer D and Mr Y) wedged beside the front passenger seat and behind the driver’s seat. He was told that Officer A’s firearm was in the boot with a dog. Officer B wrote down the make and model of the firearms, who they belonged to and where they were located in the SUV.
21. Officer B said that he was told by the off-duty officers that the guns were *“empty”*, and although he was invited to check them, he chose not to, because *“common sense told me they were telling the truth.”* Officer B told the Authority he thought it was very unlikely that anyone would drive around with loaded weapons wedged down by the seats.
22. Officer C arrived shortly after midnight, and was briefed by Officer B. Officer C spoke briefly to Mr W and Mr X and explained that Police would come to take statements from them later in the day, and that they could go home.

² The District Command Centre (DCC) has access to all communications information and maintains an overall view of policing within a Police District. It is able to deploy a wide range of staff and resources.

23. Officer B recalled that he and Officer C spoke about what to do next:

“As far as he was concerned, as far as I was concerned we’d got all the details. We’ve got everything. We’ve noted who’s got what rifle, where they are. I didn’t believe there was an offence committed”

24. The Authority asked Officer B whether he considered taking a formal statement from the occupants of the SUV at this stage. Officer B explained that he *“wasn’t going to interview cops”* because it might have been seen as *“cronyism”*. He was concerned that people might think that he had *“looked after”* his off-duty colleagues if he took statements from them.

25. He felt that this matter was *“serious”* and *“out of the ordinary”* and, while he might gather the preliminary information, *“they’ll be interviewed by someone higher than me.”*

26. The Authority also asked Officer B whether he considered seizing the firearms or hunting equipment from Officers A and D, and Mr Y, as permitted under the Wild Animal Control Act.³ Officer B explained:

“I wasn’t going to seize – I didn’t believe there was any offence committed. I mean the farmer had said, “No, no shots fired or heard.” Their explanation was plausible.”

27. However, in hindsight, Officer B acknowledged that he could have taken photographs of the firearms and other equipment.

28. Officer C told the Authority that this was the first poaching incident he had attended and that he did not have a clear understanding of the relevant legislation. He explained that *“the reverse onus didn’t come into my mind.”*

29. Officer C said that he assumed that Officer B had already taken notes and photographs of the scene and the firearms: *“[Officer B] had been dealing with the scene and had that under control.”* Officer C did not take any notes himself. He directed Officer B to photograph Officer A’s Department of Conservation hunting permit, which was found to have expired on 31 July 2015.

30. Officer C said that his assessment at the time was that it was not clear that an offence had been committed, since the hunting party were on a public road, no shots had been fired and no carcasses were present. At the time, he did not see any need to seize their firearms or other equipment. He allowed the hunting party to leave.

31. When asked by the Authority, Officer C agreed that, with hindsight, it would have been good to have taken a statement from all four SUV occupants in his notebook, and seized their firearms and other hunting equipment.

³ Section 13 of the Wild Animal Control Act gives a police officer a range of search and seizure powers where the officer is acting in the exercise of his duty and has good reason to believe that an offence is about to be, is being or has been committed against the Act. Section 13(1)(c) permits a Police officer to seize, amongst other things, ammunition, firearms, dogs, vehicles and devices.

32. After briefly speaking to Mr W at his house, Officers B and C drove back to Alexandra Police Station. Officer C updated the District Command Centre and emailed the Area Commander and the sergeant on the next shift about the incident.
33. Officer B said that he entered the details of the incident into the Police computer system at this point. Either then, or later that day, the following information was recorded:
- the time, date, location and circumstances that caused Police to be called by Mr W;
 - the personal and contact details of all four SUV occupants;
 - Officer A's firearms licence details;
 - The fact that no shots had been heard or carcasses found; and
 - the general explanation provided by the SUV's occupants about their what they had been doing that day, why they had firearms with them, the fact that the firearms were unloaded, and why they had shone the spotlight into the paddock:
- "They have admitted that they were spotlighting but not shooting...they were travelling home so they put the spotlight on to show [Ms U]..."*
34. Statements were taken from Mr W and Mr X later that day. Mr W referred Police to another local farmer, Mr Z, who he thought might have information about Officer A unlawfully hunting on his own land.

The Police investigation commences in Central Otago

35. On 25 January 2016, the Area Commander directed Officer E to review the file to ensure that Police had all the necessary information. Officer E told the Authority that, while he had not prosecuted someone for poaching before, he was familiar with how the legislation worked.
36. Between 28 January and 11 February 2016, Officer E carried out further enquiries, including requesting statements from Officers B and C,⁴ speaking to Mr Z about his past interactions with Officer A (which were historical and unproven),⁵ and checking whether any members of the hunting party held valid Department of Conservation hunting permits for the hunting block they had been to (which they did not).
37. On 11 February 2016, Officer E sent his investigation report to his supervisor, Officer F, without Officer C's statement attached (as it had not yet been completed). Officer E concluded that it appeared an offence had been committed on Mr W's land under section 8(2) of the Wild Animal Control Act. However the occupants of the SUV needed to be interviewed so they

⁴ Officer B submitted his statement on 28 January 2016, but Officer C did not submit his statement until 16 March 2016, see paragraph 43.

⁵ Mr Z told Police that he found a camera belonging to Officer A on his property ten years ago, and believed that Officer A had gone onto his land without permission. Mr Z said that Officer A asked for permission to hunt on his land in January 2016, but this was declined.

could explain their actions, and the make and model of the firearms carried by the hunting party needed to be recorded.⁶

38. Officer E recommended that:

- Police should consider seizing the firearms belonging to Officers A and D and Mr Y as evidence of criminal offending and for safety reasons, since Police should review whether to cancel their firearms licences;⁷
- all relevant information should be forwarded to the Department of Conservation so officials could assess whether they wished to take action for unlawful hunting under their own legislation;⁸ and
- the file should be sent to Canterbury Police Professional Conduct in Christchurch (where the Officers A and D lived) for further investigation.⁹ Officer E later explained to the Authority:

“Given that [Officers A and D] were members of the Police, I thought it was most appropriate that if they were to be interviewed, it would be by a member of Professional [Conduct].”

39. On 12 February 2016, Officer F read the report and sent it to Officer C to review while Officer F went on leave (Officer C was to relieve for Officer F during this period). The report remained with Officer C for approximately three weeks while he became busy with other work.

40. On 7 March 2016, Mr W rang Officer C for an update. Officer C later recorded the conversation in a job sheet. Officer C incorrectly explained to Mr W that, while Police were still reviewing the matter, they were *“probably short of evidential sufficiency”* to lay charges because there were *“no deer shot and they were on a public road.”*

41. Mr W became angry at this explanation, arguing that the law presumed that the SUV occupants were hunting due to the circumstances they were found in, and they were being treated differently because they were off-duty Police officers.

42. On 15 March 2016, having been made aware of the phone conversation between Officer C and Mr W, Officer E travelled to Mr W’s farm to advise him that the matter would be investigated by Canterbury Police and no decisions had been made about charging the occupants of the SUV. Officer E also clarified the correct interpretation of the relevant legislation.

43. On 17 March 2016, the Area Commander sent a final version of Officer E’s report (including Officer C’s statement, which had been completed the day before) to the Southern District Commander. In his covering note, the Area Commander included a list of local, unrelated but factually similar unlawful hunting cases to assist the investigation. He also noted:

⁶ On 19 May 2016, Officer B submitted an addendum to his original statement (dated 28 January 2016), describing the make and model of the three firearms belonging to the hunters, and where they were located in the SUV.

⁷ Police must be satisfied that a person is *“fit and proper”* to hold a firearms licence.

⁸ Section 38 of the Conservation Act 1987.

⁹ The New Zealand Police Professional Conduct Group investigate complaints and significant incidents involving Police.

“Illegal hunting is prevalent in Central Otago and has generated a lot of public and media interest. Police have been taking a firm stance with persons found to be [illegally] hunting and have been working closely with Department of Conservation whose land is often involved.”

44. The Area Commander acknowledged there was *“criticism that can be levelled at Police”* about the amount of time taken to forward the file to Canterbury Police Professional Conduct. He alerted the Southern District Commander to the growing media interest in the matter, including allegations that Police were deliberately not investigating the matter thoroughly due to the involvement of off-duty officers.
45. On 18 March 2016, the Southern District Commander sent the file to Canterbury Police Professional Conduct for further investigation.

The Police investigation is taken over by Canterbury Police Professional Conduct

46. In mid-April 2016, Officer G, a detective sergeant, started a joint investigation with the Department of Conservation into the alleged offending.
47. On 19 April 2016, Officer G sent letters to Officers A and D to advise them that they were under investigation for illegally hunting on private and public land. Officer G asked them to make themselves available for interview, and requested copies of any relevant permits or authorities they might hold to hunt on either Mr W’s or the Department of Conservation land. Officer A duly supplied three historical permits for the Department of Conservation block.
48. On 20 April 2016, Police served Officer A with trespass notices from Mr W’s and Mr Z’s land, on the request of the landowners. When Mr W was advised by a local Police officer that the trespass order had been served, he expressed his dissatisfaction with the progress of the investigation, and complained that he felt like he had *“been left in the dark”*. The officer recorded Mr W’s views in an email to his supervisor. On 26 April 2016, the Area Commander undertook to make contact with Mr W to discuss the matter with him.
49. On 19 May 2016, Officers A and D wrote to Officer G through their lawyer and declined to be interviewed. However, they provided statements that set out their version of events. These statements reiterated the explanation originally given to Police, highlighting that they had:
 - driven to the hunting block with the intention of hunting deer and believing that both Officers A and D had valid hunting permits, but they did not see any deer or fire any shots;
 - brought the spotlight with them to help with opening and closing gates along the rural public road in the dark; and
 - shone the spotlight into Mr W’s paddock for approximately 15 seconds and had no intention of shooting any animals, as no permission had been granted, and it would have been unsafe.

50. On 25 May 2016, Officer G completed his investigation report. As well as setting out the evidence gathered, Officer G noted the significant ongoing media interest in the investigation. This particularly focussed on the length of time the investigation was taking, the fact that the matter was now being investigated in Christchurch rather than locally, and perception by some local farmers that their concerns were being “fobbed off”.
51. Officer G recommended that Police obtain a legal opinion from an “independent third party” to assess the liability of Officers A and D, for spotlighting on Mr X’s land, and whether they should be charged according to the Solicitor-General’s Prosecution Guidelines.¹⁰
52. In early June 2016, Police received a legal opinion from the Crown Solicitor about the alleged offending on Mr X’s land. At this point, the Police investigation was considered to be complete.
53. Canterbury Police Professional Conduct decided to wait for the Department of Conservation to finish their own investigation and make a decision about prosecution, so that both investigation reports could be sent to the Southern District Commander to inform his decision about whether to charge Officers A and D.
54. However, in mid-August, the Department of Conservation had still not completed their investigation. Officer G’s investigation report and the Police file were sent to Southern Police Professional Conduct on the understanding that the Department of Conservation’s decision would be forwarded when available.
55. On 18 August 2016, the Southern Police Professional Conduct Manager prepared a cover note for the Southern District Commander to accompany the file. He highlighted the following details:
 - Officers B and C had not searched the SUV, seized any firearms or interviewed the suspects under Bill of Rights caution on the night of the incident;
 - the Area Commander (from Central Otago) had recently advised him that prosecutions had been sought in two factually similar cases in the region;
 - complaints had been made to the IPCA about a perceived lack of Police action (see paragraph 63 below); and
 - media interest remained significant.
56. On 28 August 2016, the Southern District Commander decided that he could not wait any longer for the Department of Conservation to finish their investigation.
57. He decided against prosecuting Officers A and D, stating in an email to the Area Commander and the Canterbury Police Professional Conduct Manager:

¹⁰ The Solicitor-General’s Prosecution Guidelines help prosecutors to decide whether or not criminal proceedings should be commenced. The Guidelines contemplate that there will be circumstances in which, although the evidence is sufficient to provide a reasonable prospect of conviction, the offence is not serious and prosecution is not required in the public interest (this is referred to as the ‘public interest test’). See paragraphs 71-73 for a full explanation.

"I believe that if the members involved [Officers A and D] were ordinary members of the public they would have most correctly been dealt with by way of warning or trespass from the property on the night in question."

58. When discussing his decision with the Authority, the Southern District Commander explained that he was satisfied that the off-duty officers had not intended to hunt when spotlighting on Mr W's paddock, and in those circumstances, he *"could not see and do not believe that [any member of the public] would be dealt with by way of arrest or immediate prosecution."*
59. On 29 August 2016, Mr W was advised of this decision not to prosecute the off-duty officers. On 4 September 2016, Police released a media statement about the decision, noting that there was *"insufficient evidence currently to warrant a prosecution."*
60. On 16 September 2016, the Area Commander met with Mr W, Mr Z and a representative from Federated Farmers to discuss the decision, as they were unhappy that the off-duty officers had not been charged.
61. On 12 October 2016, the Department of Conservation completed their investigation.
62. Police commenced an employment investigation into Officer A's and D's actions, which is ongoing.

Complaints

63. The Authority received four separate complaints about this matter from a group of hunters represented by the New Zealand Police Conduct Association,¹¹ Mr Z,¹² Mr W,¹³ and Federated Farmers,¹⁴ between July and October 2016. These can be summarised as:
 - 1) Police did not properly or efficiently investigate this matter, and did not keep Mr W properly updated.
 - 2) Police have *"double-standards"* because ordinary members of the public have been prosecuted for similar incidents.
 - 3) The off-duty officers should have been prosecuted.

Police involved

64. Officer B is a senior constable. At the time of this incident he had 34 years' experience in the New Zealand Police.
65. Officer C is a sergeant. At the time of this incident, he had 30 years' experience in the New Zealand Police.

¹¹ Dated 20 July 2016.

¹² Dated 1 August 2016

¹³ Dated 24 August 2016

¹⁴ Dated 4 October 2016.

Authority’s investigation

66. The Authority interviewed Mr W, Mr X, the other complainants and the relevant Police officers. The Authority visited the scene of the incident on 11 January 2017 and has reviewed the full Police investigation file.

LAWS AND POLICIES

Managing conflicts of interest policy

67. The ‘Managing conflicts of interests’ chapter of the Police Manual explains that conflicts of interests can occur *“fairly frequently”* in a small country like New Zealand. The policy states that all actual, potential or perceived conflicts of interest must be declared and appropriately managed:

“All Police employees must be aware of these critical points:

- *A perceived or potential conflict of interest can be just as damaging as an actual conflict of interest.*
- *All actual, potential or perceived conflicts of interest must be declared to a supervisor by way of the appropriate declaration.*
- *Supervisors must never investigate allegations of sexual or other serious misconduct by employees under their direct supervision.*
- *Supervisors must work with employees who declare conflicts of interest to assess the risks involved, and to identify appropriate strategies to manage those risks.”*

68. The policy defines the following terms:

Actual conflict of interest	<i>A conflict between our official duties and our other interests that could interfere with our ability to be impartial, objective and independent.</i>
Perceived conflict of interest	<i>The perception of outside observers that our other interests may interfere with our ability to be impartial, objective and independent, whether or not that is the case. The perception of a conflict of interest can be just as damaging to reputation as an actual conflict.</i>
Potential conflict of interest	<i>A situation where our other interests have the potential to interfere with our official duties in the future, or where our official duties could affect our other interests in the future.”</i>

69. The Police Code defines a conflict of interest as: *“a situation where our personal or professional interests may conflict with our position, obligations or responsibilities as a Police employee.”*

70. The 'Managing conflicts of interest' policy identifies that Police investigations of Police employees, and the resolutions of any incidents or investigations, are "most likely to face scrutiny". The policy states:

"It is important when we are involved in informal resolutions, pre-charge warnings and prosecution that we ensure that our objectivity cannot be questioned. Employees involved at this stage of any incident or investigation should be aware of the potential for conflicts of interest, and declare any actual, perceived or potential conflicts of interest to our supervisor in writing as soon as we become aware of the conflict."

The Solicitor-General's Prosecution Guidelines

71. Prosecutions must only be initiated where the prosecutor is satisfied that:
- 1) There is sufficient evidence which can be presented to the Court to provide a reasonable prospect of conviction (the Evidential Test); and
 - 2) It is in the public interest to prosecute (the Public Interest Test).
72. The public interest considerations in favour of prosecution focus on the nature and seriousness of the offence, which is measured by such factors as:
- the maximum sentence and the anticipated penalty;
 - the degree of violence and risk of harm or serious financial loss;
 - whether the offence was premeditated, carried out by a group or an incident of organised crime;
 - whether the offence involved an abuse of trust or was committed against a vulnerable victim;
 - whether the offence is likely to be continued or repeated.
73. The public interest considerations against prosecution include (amongst other considerations):
- where the Court is likely to impose a very small or nominal penalty;
 - where the offence is not on any test of a serious nature, and is unlikely to be repeated;
 - where the defendant is a youth or has no previous convictions;
 - where a prosecution is likely to have a detrimental effect on the physical or mental health of a victim or witness; and
 - where the victim accepts that the defendant has rectified the loss or harm that was caused (although defendants should not be able to avoid prosecution simply because they pay compensation).

THE AUTHORITY'S FINDINGS

74. Based on the heads of complaint received, the Authority has considered three issues as part of its investigation:
- 1) Did Officers B and C adequately investigate the alleged poaching incident?
 - 2) Was there a perceived conflict of interest and did Police manage it appropriately?
 - 3) Should Officers A and D have been prosecuted?

Issue 1: Did Officers B and C adequately investigate the alleged poaching incident?

75. Officers B and C responded to Mr W's 111 call in a timely manner. It was appropriate for Officer C, the on-call sergeant, to attend the incident. The involvement of a supervisor is required where, as in this case, Police must investigate the actions of off-duty Police officers and consequently a perceived conflict of interest exists.
76. There are fundamental tasks that Police should undertake at the scene of an incident, to ensure that the scene is safe if firearms are involved, and to ensure that the matter can be properly investigated.
77. Officer B recorded personal and contact details of the hunting party, as well as the details about the SUV, the firearms and the explanation provided by the off-duty officers. Most of this information (apart from details about the make, model and position of the firearms) was recorded in the Police database on 22 January 2016 (see paragraph 33).
78. However, in the Authority's view, it was not sufficient for Officer B to only record general information about what the hunting party had been doing and why. Nor was it appropriate for him to rely on the word of Officers A and D that the firearms were "empty" (see paragraph 21).
79. Both Officers B and C should have properly examined all three firearms to ensure that they were unloaded, for safety reasons and to check that Officers A and D were telling the truth. Further, Officers B and C should have spoken to each occupant of the SUV separately to obtain individual accounts of what had happened that evening. This is standard investigative practice and allows evidence to be corroborated and inconsistencies to be challenged, and ultimately enables Police make efficient and robust decisions about what (if any) action to take against individuals.
80. Officer B told the Authority he believed that he had gathered sufficient preliminary information from the occupants of the SUV, and was certain that the off-duty officers would, and should, be interviewed by senior officers rather than himself. He also explained that he did not want to "interview cops" because he was concerned that people would think that he would produce statements that were inaccurate and favourable to his colleagues (see paragraphs 24 and 25).

81. Unfortunately, by not taking detailed accounts at the time of the incident, the opportunity to gather information directly from the hunting party was lost. In the Authority's view, the implications of not collecting individual accounts had a greater adverse impact on the public perception of the investigation than Officer B's concerns about interviewing fellow Police officers (see paragraphs 94-98).
82. It is also clear to the Authority that Officers B and C did not properly understand the offence of unlawful hunting as set out in section 8(2) of the Wild Animal Control Act, the circumstances which trigger the reverse presumption and the powers available to Police officers, such as the ability to seize firearms and equipment (see paragraphs 13 and 28). This also led to gaps in the evidence collected at the scene.
83. Officers B and C wrongly concluded that the lack of shots fired or carcasses at the scene meant that an offence could not have been committed, and there was no reason or justification to seize the hunting party's firearms (see paragraphs 23, 26 and 30).
84. As a consequence of their misunderstanding of the law, Officers B and C did not:
- seize the firearms or other hunting equipment for evidential and safety reasons; or
 - photograph the firearms and other equipment, the SUV, the scene and the occupants of the SUV for evidential purposes.
85. The Authority acknowledges that Officer B took notes about the location, ownership, make and model of the firearms, and accepts his view that he could have given sworn evidence about the firearms in court. Nevertheless, the Authority believes it would have been preferable for him to take photographs of the items listed in paragraph 84, given the availability of a mobility device (a Police-issued cellphone) for that purpose.
86. Officer C told the Authority he believed that Officer B had already taken photographs of the firearms and the scene before he arrived. However, given the risks he had already recognised (see paragraph 14), the Authority considers that he should have supervised Officer B more proactively to ensure that this had been done.

FINDINGS

Officers B and C should have had a better understanding of the law relating to unlawful hunting and the powers available to them.

Officers B and C should have conducted a more thorough investigation at the scene by:

- examining the firearms;
- collecting separate accounts from each member of the hunting party; and
- photographing and seizing evidence.

Issue 2: Was there a perceived conflict of interest and did Police manage it appropriately?

87. Police policy states that a perceived conflict of interest arises where an outside observer might perceive that *“our other interests may interfere with our ability to be impartial, objective and independent, whether or not that is the case.”* The policy warns officers that *“the perception of a conflict of interest can be just as damaging to reputation as an actual conflict.”*
88. It should be noted that Police policy does not require an actual conflict of interest to exist. It is sufficient that a conflict of interest might arise.
89. Where a perceived conflict of interest is identified, supervisors should work with officers *“to assess the risks involved, and to identify appropriate strategies to manage those risks.”* Available strategies include assigning a different officer to conduct an investigation, or simply ensuring that the decision-making process is timely and appropriately transparent.
90. When Police investigate other serving officers, as in this case, a perception of potential conflict is naturally created. The situation is not uncommon, and Police have processes and procedures to manage the perception (see paragraph 89). Police should also take extra precautions to avoid mistakes, and ensure that they are acting consistently with law and policy.
91. However, the fact that the Officers A and D were accused of poaching significantly heightened the potential that a conflict of interest would be perceived. Poaching is known to be a topic that generates strong views in the community (see paragraph 43) and had attracted controversy in the past¹⁵.
92. Consequently it was foreseeable (even probable) that Mr W, Mr X and others would question the impartiality and independence of the Police investigation into the actions of Officers A and D, whether or not an actual conflict of interest existed.
93. Both Officers B and C were mindful that the involvement of off-duty officers in the incident meant that careful handling and oversight were required. Officer B correctly ensured his supervisor attended the incident with him, and Officer C made sure that the District Command Centre, the Area Commander and the next shift sergeant were aware of what had happened.
94. However, they did not follow normal investigative procedure, nor did they check the correct interpretation of an area of law that neither of them were familiar with. They could have read the relevant legislation on their mobility devices, or have contacted the District Command Centre for advice. Their failure to take the extra level of care required by the circumstances exacerbated the risk that the public would perceive that a conflict existed.

¹⁵ In 2015, the Authority investigated complaints that some local Police, who were also recreational hunters, were motivated by their own interests when prosecuting poachers. The Authority found that, while there was no evidence of corruption, at least one of the officers had an unacceptable conflict of interest. The Authority’s report, *Allegations of conflict of interest in the policing of Operation Poacher*, was published on 7 May 2015.

95. It became necessary to send the investigation file to Canterbury Police to obtain further information from the occupants of the SUV. This did not happen until mid-March, in part due to delays caused by Officer C. Officers A and D subsequently declined to be interviewed.
96. The outcome of the investigation was delayed by a further two months when Police decided to wait for the Department of Conservation to complete their investigation (see paragraph 53).
97. While the Authority appreciates that Police wished to achieve an outcome that was proportionate and consistent with the Department of Conservation's decision, the alleged offending on Mr W's land was a separate matter, involving different legislation. The Authority considers that it was more important in the circumstances to finalise the matter promptly.
98. In summary, the Police investigation into the alleged offending on Mr W's land was unnecessarily protracted, and only served to support the growing belief that the matter was being "*covered up*".
99. Mr W has also complained that he was dissatisfied with the updates he received from Police during the investigation.
100. Mr W was justifiably unhappy with the update he received from Officer C on 7 March 2016, which was incorrect. To his credit, Officer E went to speak to Mr W in person to try to address his concerns (see paragraph 42).
101. Police spoke to Mr W again at the end of April 2016, after the trespass notices were served (see paragraph 48). It appears that he was next spoken to in August 2016, when the final decision not to prosecute was made.
102. Police have an obligation to maintain regular contact with a victim or complainant during an investigation, and update them about any specific actions being taken against the accused person and the proceedings, unless there is a good reason for withholding this information.
103. The Authority considers that local Police did keep Mr W updated initially, but should have made contact with him between April and August to explain what was happening. Regular contact during this period, despite there being no substantive developments to communicate, might have helped to dispel the growing view that Police were trying to 'bury' the matter.

FINDINGS

Although there is no evidence that the attending officers and the off-duty officers knew each other, this incident involved a perceived conflict of interest, as defined by Police policy, because off-duty Police officers were involved.

Officer B's and C's failure to follow normal investigative procedure or take extra care to ensure that they were acting consistently with the law exacerbated the risk that the public would perceive that a conflict existed.

The protracted investigation and the long periods of inaction gave the impression that Police were treating their officers differently from members of the public, and looking for a reason not to take action.

Police kept Mr W appropriately updated at the start of the investigation. However, regular contact between April and August may have helped to address Mr W's concerns.

Issue 3: Should Officers A and D have been prosecuted?

104. The main concern raised by all complainants was that the off-duty officers should have been prosecuted because ordinary members of the public have been charged by Police in similar circumstances. They complain that local Police have made public comments about taking a hard line on poaching in Central Otago, but appear to have double-standards when it comes to prosecuting off-duty Police officers.
105. General comments made directly to the Authority, comments reported in the media, and views expressed to the Authority during a previous investigation (see footnote 15), indicate that there is a strong public belief that poaching is dealt with inconsistently by Police in Central Otago.
106. While the Area Commander's intention may be that a "firm stance" is taken on poaching, it is unclear what this means and how it should be applied to the wide range of circumstances presumed to be "unlawful hunting" under the Wild Animal Control Act.
107. The Authority asked for the Area Commander's opinion about whether the decision not to prosecute Officers A and D was in line with other incidents in Central Otago. He agreed that there were probably inconsistencies in the way Police have dealt with alleged unlawful hunting incidents because the offence is broad, and the seriousness of the circumstances vary:

"At times I think that we have not helped ourselves ... and I've had some files across my desk where we've actually prosecuted someone under the Act here and when you looked at their level of offending and their previous we probably should've, those people should've actually got a warning and we may have created [an expectation] with the local community ... when we look at the graduated response and looking at the Solicitor General's guidelines around prosecution some of these people potentially shouldn't have been prosecuted."

108. The apparent absence of an agreed and consistent approach leaves Police vulnerable to allegations of unfairness and partiality. It also makes it difficult for the Authority to conclude whether or not the off-duty officers 'should' have been prosecuted according to Police's interpretation of the Solicitor-General's Prosecution Guidelines (see paragraphs 71-73).
109. Having reviewed the entire criminal file, the Authority considers that the evidential test was met in this case. That is to say, there was sufficient evidence provided to Police (through Mr W's and Mr X's statements, and those provided by Officers A and D to establish in court that the actions of Officers A and D amounted to unlawful hunting.
110. However, as explained in paragraph 71, a prosecution must only proceed if it is in the public interest. The Authority accepts that the offending was low-level (no shots were fired or animals killed) and possibly unintentional, which meant there were genuine public interest reasons not to prosecute. Officers A and D have no previous convictions. The Authority is satisfied that the Southern District Commander's final decision was made on genuine public interest grounds, and that it was not unreasonable.
111. The Authority believes Officers A and D should at least have received formal warnings, considering the Southern District Commander's observation that this would be an appropriate outcome for ordinary members of the public (see paragraph 57).
112. Finally, the Authority notes that the wording of the media statement released to communicate the final decision not to prosecute the off-duty officers was inaccurate and unhelpful (see paragraph 59).
113. It stated that there was "*insufficient evidence*" to prosecute the off-duty officers, when it was quite clear to Mr W, Mr X and others that there was sufficient evidence of unlawful hunting under the reverse presumption. In fact, the decision not to prosecute was made on the basis that despite evidential sufficiency, prosecution was not required in the public interest. The media statement was therefore poorly worded and misleading, and only strengthened public mistrust.

FINDINGS

There is a strong public belief that there inconsistencies in Police handling of unlawful hunting matters in Central Otago, which leaves Police vulnerable to allegations of unfairness and partiality.

The decision not to prosecute Officers A and D was reasonable and justifiable on public interest grounds.

Officers A and D should at least have received formal warnings.

The Police media statement communicating this decision was poorly worded and misleading.

SUBSEQUENT POLICE ACTION

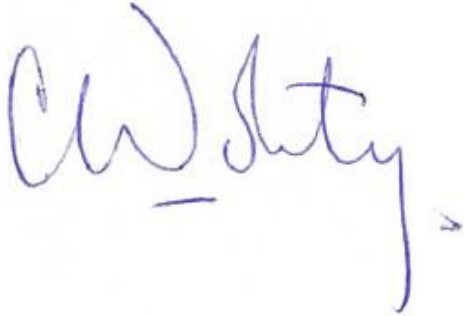
114. In March 2017, training on unlawful hunting was delivered to Police staff in Central Otago.

CONCLUSIONS AND RECOMMENDATION

115. The Authority has concluded on the balance of probabilities that:

- 1) Officers B and C should have had a better understanding of the law relating to unlawful hunting, and the powers available to them.
- 2) Officers B and C should have conducted a more thorough investigation at the scene by:
 - examining the firearms;
 - collecting separate accounts from each member of the hunting party; and
 - photographing and seizing evidence.
- 3) Although there is no evidence that the attending officers and the off-duty officers knew each other, this incident involved a perceived conflict of interest, as defined by Police policy, because off-duty Police officers were involved.
- 4) Officer B's and C's failure to follow normal investigative procedure or take extra care to ensure that they were acting consistently with the law exacerbated the risk that the public would perceive that a conflict existed.
- 5) The protracted investigation and the long periods of inaction gave the impression that Police were treating their officers differently from members of the public, and looking for a reason not to take action.
- 6) Police kept Mr W appropriately updated at the start of the investigation. However, regular contact between April and August may have helped to address Mr W's concerns.
- 7) There is a strong public belief that there inconsistencies in Police handling of unlawful hunting matters in Central Otago, which leaves Police vulnerable to allegations of unfairness and partiality.
- 8) The decision not to prosecute Officers A and D was reasonable and justifiable on public interest grounds.

- 9) Officers A and D should at least have received formal warnings.
- 10) The Police media statement communicating this decision was poorly worded and misleading.

A handwritten signature in blue ink, appearing to read 'Colin Doherty', with a horizontal line under the first name and a small mark at the end of the last name.

Judge Colin Doherty

Chair
Independent Police Conduct Authority

14 September 2017

IPCA: 16-0143

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 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.



Whaia te pono, kia puawai ko te tika

PO Box 25221, Wellington 6146

Freephone 0800 503 728

www.ipca.govt.nz
