

Inappropriate force used on young people after pursuit through Christchurch

OUTLINE OF EVENTS

1. At about 2am on Saturday 30 September 2017, Officers A and B saw a Toyota ute being driven in what they considered to be a dangerous manner in central Christchurch. Upon looking more closely, they saw four people inside the ute wearing face coverings. Officer A, who was driving the Police car, believed the ute may have been stolen. He used his lights and siren to signal the driver of the ute to pull over. The driver (Mr X) failed to stop.
2. Police pursued the ute into and around Christchurch city centre for 21 minutes. The people in the ute broke the ute's front windscreen and windows. They threw tools and cans out of the windows into the path of the Police car.
3. At least four Police cars became involved in the pursuit, and a Police van also assisted in blocking streets to prevent the ute from going into more populated areas of the city. Officer C deployed road spikes to deflate the ute's tyres.¹ As Officer C was moving away from the road, Mr X appeared to drive at the officer. The ute was successfully spiked, causing it to slow considerably.
4. Eventually, Mr X drove the ute into Latimer Square, and Officer F drove in front of it. The ute crashed into the Police car, and several other Police cars moved to block the ute from driving away.
5. Police officers who had armed themselves rushed towards the ute and pulled the four people from it. As Officer D reached his arm into the car to aim his gun at Mr X, he struck Mr X with his gun. The nature of this strike is disputed. Officer D pulled Mr X out through the window and Mr X was put face down on the ground.

¹ Tyre Deflation Devices (TDDs), commonly known as road spikes, are an approved Police tool used by officers to deflate the tyres of fleeing vehicles. See paragraphs 124-125 for the relevant policy.

6. Several officers assisted in handcuffing Mr X, including Officer C, who struck at Mr X's clutched hands when Mr X refused to remove his hands from underneath his body. A Police dog was used in arresting Mr X, and bit his leg for approximately 50 seconds.
7. Eventually Mr X was successfully arrested and handcuffed. The other three people in the ute were also arrested, handcuffed, and taken to the Christchurch Central Police Station. Police determined after arrest that they were all under the age of 18 years.
8. Mr X was later taken to hospital for treatment of his dog bite wounds.
9. Police investigated the pursuit and subsequent arrests. They found that the decision to commence the pursuit was reasonable and that it was generally executed in line with Police policy. The actions of Officers B, C, D and a Police dog handler were also investigated and addressed through training and debriefs.
10. Police notified the Authority about this incident and the Authority conducted an independent investigation into the matter.

THE AUTHORITY'S INVESTIGATION

11. The Authority has interviewed 22 Police employees in respect of this matter. Eighteen were Police officers involved on the ground, and four were in the Police Communications Centre. The Authority has also received and viewed footage filmed by a film crew which was travelling with the Police dog handler that night. The Police were unable to access the full footage under the commercial arrangements they had entered into with the television company.
12. The Authority identified and considered the following issues:
 - 1) Were Police justified in initiating a pursuit of the ute?
 - 2) Did Police comply with the fleeing driver policy when following the ute?
 - 3) Did Police use appropriate tactics to stop the ute?
 - 4) Were officers justified in arming themselves?
 - 5) Did Police respond appropriately once the ute had stopped?
 - 6) Was the force used by Officers C and D when arresting Mr X reasonable?
 - 7) Was the force used by the dog handler when arresting Mr X reasonable?
 - 8) Did Police use derogatory language towards Mr X?

THE AUTHORITY'S FINDINGS

Issue 1: Were Police justified in initiating a pursuit of the ute?

13. Officers A and B were travelling down Linwood Avenue towards Sumner at approximately 2.00am. Officer A saw a ute come around the corner at speed.
14. The officers said that they suspected that the ute might have been stolen, as it was late at night, it looked like a tradesperson's ute, and the four occupants' faces were covered with red bandanas (often associated with the Mongrel Mob).
15. Police have the power to stop a vehicle in order to arrest a person under section 9 of Search and Surveillance Act 2012 if they have reasonable grounds to suspect that a person is unlawfully at large or has committed an imprisonable offence, and there are reasonable grounds to believe that the person is in the vehicle.² However, the officers' speculation about the ute and its occupants did not reach the threshold of reasonable suspicion that any occupant had committed an imprisonable offence. There was therefore no power to stop under section 9.
16. However, Police did have the power to stop the ute and speak to the driver under section 114 of the Land Transport Act 1998 for the purpose of enforcing or administering that Act.
17. Officer A acted on that power and signalled for the driver of the ute (Mr X) to stop, which Mr X failed to do. Officer A then started to pursue the ute.
18. Police policy requires that before pursuing a vehicle, officers conduct a risk assessment under the TENR framework.³ Officers must consider the threat posed by the person or people they are pursuing, the necessity of responding, the exposure of Police and members of the public, and therefore the appropriate response in those circumstances. Police policy also states that if the identities of the person or people in the fleeing vehicle are known, and they do not pose an immediate threat, it is preferable to not pursue, but rather to use other means of enquiry to find those people and arrest them.
19. There was minimal traffic on the road given the time of night, so there was limited risk to members of the public. Because their faces were covered, Police were not able to see that they were young people, meaning this was not a factor in their decision making. The officers were also prevented from identifying the occupants, and therefore could not use other lines of enquiry to locate and, if appropriate, arrest the occupants later.

² Section 9 of the Search and Surveillance Act 2012 is set out in paragraph 105.

³ 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. This is set out in paragraphs 112-113.

20. The Authority therefore considers that it was appropriate for Officer A to commence the pursuit and that he notified the Southern Communications Centre (SouthComms) and gave the reason for the pursuit in accordance with policy.⁴

FINDINGS ON ISSUE 1

Police were justified in signalling the ute to stop under section 114 of the Land Transport Act 1998, and then initiating a pursuit when it failed to do so.

Issue 2: Did Police comply with the fleeing driver policy when following the ute?

Calling the pursuit

21. Police policy requires that the passenger in the lead vehicle, in this case Officer B, undertake communications with SouthComms. However, Officer B had only very recently graduated from Police college, had never been involved in a pursuit and indicated that she was not comfortable in providing the commentary. Officer A therefore drove as well as updating SouthComms with details of the pursuit.
22. A Police officer should not opt out of their responsibilities merely because they do not feel comfortable with them. Officer B should have performed her role of providing commentary during the pursuit. Doing so would have allowed each officer to focus on doing their respective jobs as effectively as possible.
23. Officer A gave a running commentary of the pursuit over the radio. He told SouthComms that the occupants of the ute waved tools such as hammers and a tomahawk at them, smashed out the front windscreen, and threw tools in their path. Officer A also advised that the dog handler had joined the pursuit and was behind him.
24. From this point there is video footage of the pursuit which has informed the Authority's view of events. As the pursuit continued, the dog handler overtook Officer A's car. Officer A advised SouthComms, and stated that he would continue the commentary for the pursuit.
25. The Police dog handler radioed that the passenger had a hammer in his hand. Officer A expanded on this, explaining that the front passenger was hanging out of the front window with a hammer.
26. In the Authority's view, Officer A and the dog handler communicated well; the dog handler said *"you [over]take me mate, I'll drop back into two,"* and in the video footage the dog handler can be seen moving ahead of Officer A.
27. Officer A's commentary was, for the most part, calm, comprehensive and effective in keeping SouthComms and other units updated on the progress of the pursuit. However, at times it did not paint an accurate picture about which lane the ute was travelling in.

⁴ There are three Communications Centres based in Auckland (NorthComms), Wellington (CentComms) and Christchurch (SouthComms).

28. At points during pursuit, the video footage shows the ute moving into the oncoming lane, and then correcting itself, particularly in the earliest and latest stages. Yet Officer A is heard several times advising that the ute is “*within his lane,*” including at times when it was in fact travelling on the wrong side of the road.
29. The Authority acknowledges Officer A’s high cognitive workload and that time pressures did not allow for all aspects of a pursuit to be communicated by the officer in the lead vehicle. It notes that these problems were exacerbated by Officer A having to perform both his and Officer B’s roles. However, whether or not a vehicle is travelling on the wrong side of the road is information that informs the assessment of risk in deciding whether to continue or abandon a pursuit. The pursuit controller in the Communications Centre relies on accurate information to be able to undertake that risk assessment.⁵

Driving in the pursuit

30. Before Officer C successfully spiked all four tyres of the ute, it was travelling at around 65 to 70 kph in a 50kph zone. After the spiking its speed dropped to around 30 kph, minimising risk.
31. On occasion, the ute veered onto the wrong side of the road. However, video footage shows that even when the ute was on the correct side of the road, which it was for most of the pursuit, the dog handler spent a significant amount of time driving on the wrong side. The dog handler told the Authority that there was minimal risk in him driving on the wrong side of the road because the vehicles were travelling slowly, and it was in the early hours of the morning in an area where there were few pedestrians and minimal traffic. He told the Authority that he drove on the wrong side of the road to:
 - give him a better view of the ute when driving behind Officer A;
 - be in a better position to pursue the occupants on foot if they ran from the ute, which he expected them to do after the ute was spiked;
 - be better able to alert oncoming traffic of the pursuit, as his lights would be more visible than those on Officer A’s car (which may have been obscured by the ute); and
 - to shepherd the ute towards other Police cars at certain points when approaching intersections. There is one point in the video footage where the dog handler can be seen executing this effectively.
32. Police policy states that the role of the secondary vehicle is to follow behind the lead vehicle at a safe distance, to provide support and tactical options as required. The Authority accepts that the lack of traffic on the roads meant that the risk of the dog handler driving on the wrong side of the road was lower than it might otherwise have been and that at certain points there may have been a tactical advantage to driving on the wrong side.

⁵ During a pursuit, the shift commander in the Communications Centre takes on the role of pursuit controller, and responsibility for supervising a pursuit and coordinating the overall tactical response.

33. However, watching the video footage gave the Authority the impression that the dog handler's default position was to drive on the wrong side, and this was more likely to increase the risk posed to the public rather than lessen it. His manner of driving put increased pressure on Mr X and may have encouraged him to drive the ute more erratically.

Should Police have abandoned the pursuit?

34. Under Police policy, the decision to commence, continue or abandon a pursuit must be continually assessed and reassessed in accordance with the Police risk assessment tool. A Police officer can order the pursuit to be abandoned if they believe the risk to the public, Police and/or the driver outweighs the seriousness of the offence and the necessity of immediate apprehension.
35. From about five minutes into the pursuit, the occupants of the ute began throwing objects out the window into the path of the pursuing Police cars. The Authority accepts that Police dealt with this by dropping back slightly so the objects could not hit them, and that abandonment was not necessary for this reason.
36. While the ute was being driven at around 70kph in a 50kph zone in the early stages of the pursuit, following its successful spiking it was only travelling at around 20 – 30kph. Given the time of night and the lack of traffic on the roads, the Authority is satisfied that there were no immediate risks that outweighed the need to stop the ute, and therefore abandonment was not necessary.

Was the number of cars involved in the pursuit appropriate?

37. The pursuit controller stated over the radio that *"there's too many cars pursuing, some of those cars come down some side roads..."* Officer D responded, *"we're fourth in line but we got a firearm"*. Police 'fleeing driver' policy states that beyond the primary and secondary vehicles (here driven by Officer A and the dog handler) other Police cars in the vicinity of a pursuit must not actively participate unless they are preparing tactical options or other specified tasks and must not follow unless directed or approved to do so by the pursuit controller.
38. Whether or not Officer D should have been armed will be explored from paragraph 50, but his response shows that there were at least four cars pursuing, which was not in accordance with policy. The pursuit controller was therefore correct in directing other Police cars down side roads rather than to actively pursue.

End of pursuit

39. Approximately 20 minutes into the pursuit, the ute drove up the gutter and into Latimer Square, which is a park-like area bounded on four sides by arterial roads. It continued to drive around the park for about another minute before it rammed a Police car and came to a stop.

FINDINGS ON ISSUE 2

Officer B did not comply with policy, which required her to provide commentary during the pursuit.

Officer A should have advised SouthComms each time the ute was driven on the wrong side of the road.

Although at times it was appropriate for the dog handler to drive on the wrong side of the road, he spent too much time doing so, which unnecessarily increased the risk posed to the public by the pursuit.

The Authority agrees with the pursuit controller's direction that there were too many Police cars pursuing the ute.

Issue 3: Did Police use appropriate tactics to stop the ute?

Front block

40. About five minutes into the pursuit Officer F positioned his Police car directly in front of the ute in an attempt to block it. The ute was stationary at the time he performed the front block, but Mr X immediately accelerated and rammed his Police car, disabling it.
41. The tactic was not successful, and Officer F put himself and his car at risk by performing it. However, taking into consideration that the pursuit had been underway for five minutes, the occupants of the ute had started throwing tools at pursuing officers, the ute was stationary and the roads were quiet at the time, the Authority accepts that under the TENR risk assessment process, it was reasonable for Officer F to attempt the block.

Tyre deflation devices (spikes)

42. Shortly after this, Officer D deployed spikes, resulting in the spiking of the front right tyre of the ute. Around ten minutes into the pursuit, Officer C successfully spiked all four tyres. In the course of deploying the spikes, the ute drove straight at Officer C, requiring him to jump out of the way.
43. The legal justification for Police deployment of spikes is section 39 of the Crimes Act 1961, which permits the use of force in executing a process or arrest and protects from criminal responsibility a person who uses reasonable force to overcome resistance to that process or arrest.⁶ Police are responsible for their actions and must not place themselves, colleagues or members of the public at unjustified risk.
44. Police policy on the use of spikes provides that they can be deployed:
 - where no other, less dangerous, means of stopping a vehicle is reasonably available;
 - where they can be deployed without unjustified risk to any person; and
 - with the authority of the pursuit controller.
45. Near the start of the pursuit the pursuit controller asked, "*anybody able to head to the area with spikes?*" The officers therefore had the authority of the pursuit controller. The Authority is

⁶ This legislation is set out in paragraph 106.

satisfied that deployment of spikes to stop the stolen vehicle, being driven dangerously and with tools being thrown from the windows, was appropriate.

Non-compliant vehicle stop

46. Nineteen minutes into the pursuit, Officer C reported to SouthComms that “*a decision has to be made to take this car off the road*”, and Officer A agreed. An unknown officer broadcast over the radio that he was conversant with non-compliant vehicle stops, in which Police use their cars to stop a fleeing vehicle. In response, the pursuit controller refused to give permission, instead directing them to “*leave it as is*”.
47. The Authority understands that the pursuing officers were requesting permission from the pursuit commander to use their cars to bring the ute to a stop, for example through nudging the ute or conducting a “*moving block*” where two or more Police vehicles are driven in specific formation to moderate an offending vehicle’s speed and bring it to a halt.
48. At the time of the event, this tactic was no longer included in Police policy and officers outside of the Armed Offenders Squad (AOS) or Special Tactics Group were not trained to use it. The Authority agrees with the pursuit controller’s decision not to authorise this tactic.
49. While the ute was driving in circles around Latimer Park, another request was made to perform a “*non-compliant vehicle stop*”, this time by Officer A. The pursuit commander did not authorise this and the ute ultimately stopped when it rammed a Police car.

FINDINGS ON ISSUE 3

The front block was a reasonable tactic to attempt in the circumstances.

The deployment of spikes was justified.

The pursuit commander was correct in not allowing officers to attempt a moving block or a non-compliant vehicle stop.

Issue 4: Were officers justified in arming themselves?

50. About 13 minutes into the pursuit, Officer D can be heard calling for all units to arm themselves. Officer B then armed himself with a Glock pistol. By this point in the pursuit the occupants of the ute had been throwing objects into the path of the pursuing Police cars and waving a hammer and tomahawk out the window. Officer C told the Authority that he armed himself after Mr X drove at him while he was spiking the ute.
51. Police firearms policy provides that an officer may carry a firearm when his or her assessment of a situation is that it is in, or likely to escalate to be within, the death or grievous bodily harm range.⁷ The weapons that Police saw being held by the occupants of the car were objects that could cause damage only if they were approached at close range. Police did not see any firearms.

⁷ Police firearms policy is set out in paragraphs 129-131.

52. Officer D told the Authority that his assessment of the situation changed when Mr X drove at Officer C when he was deploying spikes because it showed that Mr X and the occupants of the ute were intent on causing serious harm to the public and Police. His view was that the actions of the ute's occupants in waving weapons and yelling insults at Police made it likely that they would turn on Police at the conclusion of the pursuit, and that tactical options such as a Taser, pepper spray and baton would have been insufficient.
53. The shift commander during the incident told the Authority that he did not believe that the situation had reached the threshold of requiring officers to carry firearms and that if it had, he probably would have advised the pursuing officers to abandon or pull back a considerable distance. The Authority agrees with this position. The occupants' actions during the pursuit did not meet the threshold for arming, and if the pursuing officers genuinely believed the threat was in the realm of death or grievous bodily harm to themselves they should have abandoned the pursuit.
54. None of the officers who armed themselves during the pursuit put on their body armour as Police policy requires. The body armour is routinely carried in the boot of Police cars so the Authority accepts that it may not have been practicable to stop and put it on during the pursuit. However, if the threat was such that Police felt it necessary to arm, the Authority believes that they should have put on their body armour before rushing at the ute after it stopped in Latimer Square, as described in paragraph 62.⁸

FINDINGS ON ISSUE 4

Police were not justified in arming themselves in the circumstances of this pursuit.

The officers breached policy by failing to put on their body armour before rushing at the ute after it stopped in Latimer Square.

Issue 5: Did Police respond appropriately once the ute had stopped?

55. As discussed, Police officers decided to arm themselves during the pursuit because of the threat that they believed the occupants of the ute posed. Yet at no stage during the pursuit did they communicate a plan for how to respond once the ute stopped.
56. The pursuit lasted for 21 minutes and for a lot of this time the ute was travelling at low speed. The pursuing officers therefore had time to formulate a plan. Once the ute entered Latimer Square and began driving in circles there was the opportunity for an officer to suggest over the radio that, given the numerous Police cars in the vicinity, they set up a cordon and aim to block the ute in the middle of them.
57. Instead, as soon as the ute came to a stop video footage shows many Police officers converging on the ute in order to arrest the occupants, without pausing to put on their ballistic body armour. Officer D, for example, jumped out of the car with his pistol drawn. The Authority put it to Officer

⁸ Police policy requires officers to wear ballistic body armour – in this case, hard armour plating (HAP) over their standard issue Stab Resistant Body Armour (SRBA) – which provides additional protection of vital organs during incidents involving firearms. See paragraph 131 for policy.

D that he could have stayed back and spoken to Mr X using the cover of his Police car. Officer D's response was that he didn't think verbal communication would have been effective and that he could see that Mr X was attempting to restart the ute in order to flee.

58. If Police did believe that the occupants were armed with weapons of some type, the prudent course of action would have been to hold back and establish a cordon. The ute was in the middle of a park surrounded by roads. Given there were at least six Police units present, a cordon could have enabled Police to prevent the escape of the occupants while giving them time to assess and prepare for the risk that the occupants posed. Rushing in to arrest the occupants placed the officers at higher risk than was necessary in the circumstances.
59. Officer C reflected on this with the benefit of his AOS experience. He told the Authority that with the benefit of hindsight it was not appropriate to have Police running towards each other when some have firearms. He said:

"Ideally we would've had – been able to communicate a better plan in terms of end state and had a contact team go forward, had the dog handler in cover, had the police cars..."

60. Officer G also commented to the Authority: *"I think we were probably too hasty to get in there."* Both officers qualified their statements in noting how quickly a situation can unfold and the impact of the heat of the moment.
61. The Authority accepts both of those factors, but maintains that the same risk assessment that each officer undertook in deciding to arm themselves should rationally also have led to officers holding back and attempting verbal communication rather than rushing towards a ute carrying people they believed to have weapons. It appears to the Authority that during the pursuit none of the officers turned their mind to the best way to respond once the ute had stopped.

FINDINGS ON ISSUE 5

When the ute came to a stop in Latimer Square it would have been prudent for Police to have held back and established a cordon to contain the occupants of the ute, rather than converging on it, some with firearms drawn.

During the pursuit Police should have formulated and communicated a plan on how to deal with the ute and its occupants when it stopped.

Issue 6: Was the force used by Officers C and D when arresting Mr X reasonable?

62. Officer D ran to the driver's window of the ute with his pistol in his right hand. His assessment was that other tactical options such as Taser, baton and pepper spray would not be effective to help him arrest Mr X, and that he was worried that Mr X would restart the car. As stated, the Authority believes that the best option would have been to hold back. Failing that, the Authority believes that pepper spray would have been effective in these circumstances, given that the cab of a ute is a confined space even when the windows have been smashed.

63. When Officer D reached the ute he put his right hand (still holding the pistol) through the open window. Mr X told Police that Officer D struck him above his left eye with the pistol. In response, Officer D told the Authority that:

“... the firearm struck [Mr X] in the head but it was more of a – it was a result of him leaning forward and me presenting the firearm...There was absolutely no intent to strike him with the firearm. It was just a case of me presenting it as he leaned forward to try and get the car started.”

64. The Authority does not find Officer D’s explanation as to how the pistol struck Mr X plausible. Further, the video footage shows Officer D striking towards Mr X’s head with the pistol.
65. Sections 39 and 40 of the Crimes Act 1961 allow Police officers to use “such force as may be necessary” to overcome any force used in resisting arrest, or to prevent the escape of a person attempting to avoid arrest unless the process “can be carried out by reasonable means in a less violent manner.”⁹ Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.
66. The Authority is satisfied that some level of force may have been required to arrest the occupants of the car, given their behaviour during the pursuit. However, to reiterate, a more prudent tactic would have been to form a cordon around the ute rather than rushing to approach it. Officer D could also have attempted verbal communication before escalating his tactical options to use pepper spray. It was not necessary for Officer D to approach the ute with his pistol drawn, and striking Mr X in the head with the pistol constituted an excessive use of force.
67. Mr X and Police gave accounts of what happened next.
68. Mr X told the Authority that after he was pulled from the car he landed on his back and Police punched him before handcuffing him.
69. Officer D told the Authority that he put his pistol back in his holster after Mr X raised his hands. He then reached into the car and pulled Mr X out through the window because he could not open the door.
70. Officer D said that Mr X abused him, swung his arms and struck him on the face. Once Mr X was lying on the ground outside the car, he refused to release his arms from underneath his body so that Police could secure him. In an attempt to get him to release his arms, Officer D said, “I believe I struck him three times with my right hand on to the side of his face with an open palm.” Officer D said he then became aware that Officer C was there and together they got Mr X’s hands into a wrist-lock so he could be handcuffed.
71. Officer C told the Authority that he was some distance away when the ute came to a stop. When he reached it, Mr X was standing outside the driver’s side door having just been removed from the ute. Officer C said that he took Mr X to the ground as quickly as possible. Mr X was then lying

⁹ Relevant legislation is set out in paragraphs 106-107.

on his front and Officer C, together with two other officers, struggled to get his arms out from beneath him.

72. Officer C said that he did not punch Mr X at any stage, although he did strike at Mr X's clutched hands in an attempt to get them out from under his body. He said: *"I fell on him really heavily and I stayed on him really heavily and I held him really heavily."*
73. The Authority accepts that Police were justified in using some force to arrest Mr X as he was resisting by swinging his arms and hitting Officer D. However, striking Mr X's face was not an effective or reasonable tactic to get Mr X to release his hands from underneath his body when Officer D could instead have struck Mr X's arms or legs to achieve the same aim.

FINDINGS ON ISSUE 6

Officer D used excessive force when striking Mr X with his pistol.

Officer D was not justified in striking the side of Mr X's face in order to gain control of Mr X's arms and handcuff him. A lesser use of force would have achieved this.

Officer C did not use excessive force when arresting Mr X.

Issue 7: Was the force used by the dog handler when arresting Mr X reasonable?

74. As soon as the ute came to a stop in Latimer Square, the dog handler got his Police dog out of his Police van. Controlling the dog by its harness, he commanded his dog to bite Mr X. The dog latched onto Mr X's right hamstring. The dog handler admitted that he did not give a verbal warning before commanding the dog to engage, which he was required to do if practicable. He later accepted he should have done so.
75. The dog handler said that when he saw that Mr X had released his hands from under his body he removed the dog. This was 50 seconds after the bite started.
76. Officers are required to complete a Tactical Options Report (report) in certain circumstances when they use force during an incident. The dog handler completed this report and recorded that he deployed his dog under section 48 of the Act to defend Officer C.¹⁰
77. To rely on this justification for his use of force, the dog handler's actions must be assessed against the following three questions:
- 1) What did the dog handler believe the circumstances were at the time he ordered his dog to bite Mr X?
 - 2) Was the dog handler acting in defence of himself or others?
 - 3) Was the dog handler's use of the dog reasonable in circumstances as he believed them to be?

¹⁰ This legislation is set out in paragraph 108.

What did the dog handler believe the circumstances to be at the time he ordered his dog to bite Mr X?

78. The dog handler recorded in his report he was aware that:
- at one point during the pursuit all four occupants of the ute were waving hammers at the pursuing Police officers;
 - Mr X intentionally drove at Officer C when he was trying to deploy spikes;
 - Mr X intentionally drove the ute close to a parked taxi; and
 - Mr X used his hammer to smash the driver's window of the taxi.
79. The dog handler said that Mr X's actions caused him to assess that Mr X posed a risk of causing death or grievous bodily harm to those around him. His actions were based on this perception.
80. The dog handler recorded in his report that when he arrived at the driver's side of the ute with his dog he saw Officer C in a physical struggle with Mr X, trying to take him to the ground. Mr X was violently resisting arrest and trying to break free of Officer C's grip. He went on to say that Mr X was purposely trying to conceal his hands and Mr X's actions led him to believe that Mr X was still holding a hammer. The dog handler did not recall any other officers near Mr X at that point.
81. Later in interview with the Authority, the dog handler corrected his earlier recollection, accepting that he did not see Officer C trying to take Mr X to the ground, and acknowledging that the two were already struggling on the ground. He attributed the discrepancy to "a typo."
82. The Authority has had the advantage of viewing the footage filmed by the television film crew. The crew had been with the dog handler for the duration of his shift and the camera was continuously filming throughout. The methodology appeared to be for the cameraman to be as close as possible to the dog handler, apparently in an attempt to give the viewer a realistic visual experience. Thus, when the dog handler deployed the dog the cameraman was in very close proximity and there is a clear view of the action.
83. The footage shows the dog handler holding his dog using a handle attached to a close-fitting body harness, rushing around the rear of the Police car that had collided with the ute and immediately "throwing" the dog on to Mr X. This all happens very quickly.
84. The Authority is always conscious of the nature of frontline policing and the need for officers to sometimes make split-second decisions. But in this case, the footage clearly shows that the dog handler did not take any stock of the situation confronting him as he rounded the rear of the other vehicle – he is head down, trying to control a highly excited young dog and intent on deploying the dog whatever the circumstances.
85. The Authority does not believe that one of the circumstances perceived by the dog handler was either that Mr X was holding his hands beneath him, or that Mr X could be holding a weapon. There was no time for the dog handler to have made that assessment before he deployed the dog.

Was the dog handler acting in defence of himself or others?

86. Given the finding above, Authority does not accept that the dog handler genuinely believed that Mr X posed a threat to Officer C, and therefore does not accept that the dog handler deployed his dog because he genuinely feared for the safety of Officer C.
87. The dog handler may have been aware of a general threat from earlier events and reports, but he did not take the time to make even a fleeting assessment of the circumstances that confronted him when he arrived at the scene, and could not therefore have concluded that he needed to defend Officer C.

Was the dog handler's use of the dog reasonable in circumstances as he believed them to be?

88. Even if the dog handler was acting in defence of Officer C, the manner in which the dog was used was not reasonable.
89. It would have been reasonable for the dog handler to command his dog to bite Mr X had he held a genuine fear for Officer C's safety. However, he not only left the dog attached to Mr X for 50 seconds, but during that time he vigorously used both hands to pull the dog back from Mr X by its harness. The camera shows him doing this at least 13 times while at the same time calling out "good boy" or "rouse."¹¹
90. The camera then pans away and when it returns 20 seconds later, he pulls vigorously on the harness at least four more times while the dog still remains attached to Mr X's leg. The footage shows that at the end of this, the exertion had been such as to leave the dog handler breathless.
91. This manoeuvre was explained by the dog handler as ensuring the dog stayed attached in the one location (on Mr X's body) and did not become disengaged and latch onto the flailing arm of a Police officer. He said: "...I didn't want [the dog] to go, 'Oh yeah I'll grab that one now because that one's moving,' so yeah, and because he's young I'm still teaching him that part of the game."
92. The Authority has been informed by Police that dog handlers are not taught this as a technique and are not permitted to use real life situations as a training opportunity. In consequence, Mr X was subjected to the considerable force of an engaged dog being repeatedly yanked, exacerbating the pressure and effect of the dog's bite on his hamstring.
93. The wounds caused by the dog bite were significant and required hospital treatment and 12 stitches to two deep wounds to the inside of his right thigh. It is unacceptable that Mr X had to suffer in that way so that the dog could be taught "that part of the game."
94. During most of this period, Officers C and D were restraining Mr X on the ground and two or three other officers are visible in the video footage standing by and ready to help them if necessary. The Authority finds that there was no justification for allowing the dog to bite Mr X for as long as it did.

¹¹ While there is no standard Police definition of the command "rouse," it is generally used in training and operational deployment to command a dog to bite.

FINDING ON ISSUE 7

The dog handler's use of the dog was unjustified. Even if it had been justified, the manner in which the dog was deployed constituted an excessive use of force.

Issue 8: Did Police use derogatory language towards Mr X?

95. Mr X told the Authority that the officer with the gun (Officer D) and another officer approached him when he was in the driver's seat. He said:

"When they were talking to me, while they were punching me, they just [said] 'Take that, take that you black nigger' and stuff".

96. The Authority put this allegation to the officers it interviewed who were at the scene. Officers C and D denied using racial slurs and the other officers said they did not hear any racial slurs.

97. In view of the conflict of evidence and in the absence of corroboration of Mr X's account, the Authority is unable to make a finding on this point.

FINDING ON ISSUE 8

The Authority is unable to make a finding on whether Police used derogatory language when arresting Mr X.

SUBSEQUENT POLICE ACTION

98. The Police investigated the pursuit and the subsequent arrests in Latimer Square. They found that the initial decision to commence the pursuit was reasonable and that the pursuit was generally carried out in compliance with policy. They also found that:

- 1) Officer A's actions and commentary during the pursuit were generally sound, although there were at least two early instances when he would have been justified in directing that the pursuit be abandoned. He has subsequently had a debrief and discussion with a trainer about the need to maintain composure during critical incidents and manage the approach to a vehicle and extraction of offenders.
- 2) Officer C's decision to arm himself was justified but his failure to wear body armour was a breach of policy. His empty hand tactics when helping to arrest Mr X was justified, but he has since received further training in these tactics.¹²
- 3) The dog handler's actions in using his dog to arrest Mr X were consistent with Police policy except for the failure to issue a challenge prior to deployment of the dog, which has been addressed by a supervisor.

¹² 'Empty hand' refers to a weaponless use of force, such as grabbing hold of, pushing, or punching a person.

- 4) Officer D was justified in arming and presenting his pistol at Mr X. The contact between his pistol and Mr X's forehead was not intentional. His failure to wear body armour was a breach of policy. His actions were dealt with as a performance and training issue.

99. The Authority recognises that, in making these findings, the Police did not have the advantage of seeing the full video footage of the incident as the Authority did.

CONCLUSIONS

100. The Authority's view is that, while the pursuit was justified, the way the situation was handled when the ute stopped in Latimer Square was not satisfactory. Police should not have rushed, armed, to the ute if they genuinely believed that the occupants posed a significant threat. Instead, it would have been prudent for Police to have held back and established a cordon to contain the occupants of the ute. Further, Officer D and the dog handler used excessive force in arresting Mr X.

101. The Authority also determined that:

- 1) Police were justified in signalling the ute to stop under section 114 of the Land Transport Act 1998, and then initiating a pursuit when it failed to do so.
- 2) Officer B did not comply with policy, which required her to provide commentary during the pursuit.
- 3) Officer A should have advised SouthComms each time the ute was driven on the wrong side of the road.
- 4) Although at times it was appropriate for the dog handler to drive on the wrong side of the road, he spent too much time doing so, which unnecessarily increased the risk posed to the public by the pursuit.
- 5) The pursuit controller correctly identified that there were too many Police cars pursuing the ute.
- 6) The front block was a reasonable tactic to attempt in the circumstances.
- 7) The deployment of spikes was justified.
- 8) The pursuit commander was correct in not allowing officers to attempt a moving block or a non-compliant vehicle stop.
- 9) Police were not justified in arming themselves in the circumstances of this pursuit.
- 10) The officers breached policy by failing to put on their body armour before rushing at the ute after it stopped in Latimer Square.

- 11) When the ute came to a stop in Latimer Square it would have been prudent for Police to have held back and established a cordon to contain the occupants of the ute, rather than converging on it, some with firearms drawn.
- 12) During the pursuit Police should have formulated and communicated a plan on how to deal with the ute and its occupants when it stopped.
- 13) Officer D used excessive force when striking Mr X with his pistol.
- 14) Officer D was not justified in striking the side of Mr X's face in order to gain control of Mr X's arms and handcuff him. A lesser use of force would have achieved this.
- 15) Officer C did not use excessive force when arresting Mr X.
- 16) The dog handler's use of the dog was unjustified. Even if it had been justified, the manner in which the dog was deployed constituted an excessive use of force.
- 17) There is insufficient evidence to make a finding on whether Police used derogatory language when arresting Mr X.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

7 April 2020

IPCA: 17-0734

Legislation

102. Section 7 of the Land Transport Act 1998 states that a person must not drive a motor vehicle at a speed or in a manner which, having regard to all the circumstances, is or might be dangerous to the public or to the person.
103. Section 8 of the Land Transport Act 1998 states that a person may not drive a vehicle, or cause a vehicle to be driven, carelessly or without reasonable consideration for other persons.
104. Section 114 of the Land Transport Act 1998 empowers Police to stop vehicles for traffic enforcement purposes by the following means:
- an enforcement officer who is in uniform, or wearing a distinctive cap, hat, or helmet, with a badge of authority affixed to it, may signal or request the driver of a vehicle to stop the vehicle as soon as is practicable; and
 - an enforcement officer in a vehicle following another vehicle may, by displaying flashing blue, or blue and red, lights or sounding a siren, require the driver of the other vehicle to stop.
105. Section 9 of the Search and Surveillance Act 2012 provides:
- “A constable may stop a vehicle without a warrant to arrest a person if the constable has reasonable grounds—*
- (a) to suspect that a person—*
- (i) is unlawfully at large; or*
- (ii) has committed an offence punishable by imprisonment; and*
- (b) to believe that the person is in or on the vehicle.”*
106. Section 39 of the Crimes Act 1961 provides for law enforcement officers to use reasonable force in the execution of their duties such as arrests and enforcement of warrants. Specifically, it provides that officers may use *“such force as may be necessary”* to overcome any force used in resisting the law enforcement process unless the process *“can be carried out by reasonable means in a less violent manner.”*
107. Section 40(1) of the Crimes Act 1961 provides for Police officers to use reasonable force to *“prevent the escape of that other person if he takes flight in order to avoid arrest”*.
108. Section 48 of the Crimes Act 1961 states: *“Everyone is justified in using, in the defence of himself or herself or another, such force as, in the circumstances as he or she believes them to be, it is reasonable to use.”*

109. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

Fleeing driver policy

110. The overriding principle of the Police Fleeing driver policy is that: *“Public and staff safety takes precedence over the immediate apprehension of the offender.”*

111. It is the responsibility of the lead vehicle driver, or Police passenger, to notify Police Communications as soon as practicable and when it is safe to do so, that a vehicle has failed to stop, the location, direction, fleeing vehicle description, and reason that it is being pursued (failure to stop is not a reason).

112. Under the Police ‘Fleeing driver’ policy, the pursuing officer[s] must carry out a TENR (Threat-Exposure-Necessity-Response) risk assessment when deciding to commence or continue a pursuit. The assessment required of officers includes consideration of the following:

- a) The threat, by any individual or action which is likely to cause harm to Police in the course of their duties.
- b) Exposure refers to the potential for harm (physical or otherwise) to people, places, or things. Exposure can be mitigated through assessment and planning.
- c) Necessity is the assessment to determine if there is a need for the operation or intervention to proceed now, later, or at all.
- d) Response must be a proportionate and timely execution of Police duties aided by the appropriate use of tactics and tactical options.

113. The TENR risk assessment must weigh up:

“... the ongoing exposure to harm that the fleeing driver incident poses, or is creating, with the current threat that the fleeing driver poses and the necessity to respond.”

114. During a pursuit, warning lights and siren must be simultaneously activated at all times. The Communications Centre must also be advised immediately if there is a fleeing driver and that a pursuit has been initiated.

115. The fleeing driver policy outlines that Police officers responsible for the fleeing driver communications should provide the pursuit controller with timely and uniform situation reports (when safe to do so). They must advise Police Communications of their location, direction of travel, description of the fleeing vehicle, and reason for pursuit.

116. Police Communications transmits pursuit warning to all vehicles involved: *“{Call sign} if there is any unjustified risk to any person you must abandon pursuit immediately. Acknowledge”*

117. Officers are required to carry out risk assessments before and during a pursuit in order to determine whether the need to immediately apprehend the fleeing offender is outweighed by

the potential risks of a pursuit to the public, the occupants of the pursued vehicle, and/or the occupants of the Police vehicle.

118. Fleeing driver incidents must be managed in the safest possible manner. A pursuit will only be commenced and/or continued when the seriousness of the offence and the necessity of immediate apprehension outweigh the risk of pursuing. The fact that a driver is fleeing does not in itself justify engaging in a pursuit.
119. Unless there is an immediate threat to public or staff safety, a pursuit must be abandoned if:
- the identity of the offender becomes known,
 - the distance between the primary unit and the offending vehicle is too great,
 - any of the risk assessment conditions change,
 - there is a sustained loss of contact between the primary units and the Communications Centre.

Pursuit abandonment

120. Officers in the lead or secondary Police vehicles, the field supervisor and the pursuit controller are all authorised to abandon pursuit.
121. Field staff should notify the Police Communications Centre of the abandonment, the reason for it and their current location. Once the decision to abandon has been made, the pursuit controller must advise all vehicles involved that the pursuit has been abandoned by stating *“All vehicles, abandon pursuit now.”*
122. The ‘Fleeing driver’ policy also states:

“The pursuit controller must direct abandonment if the identity of the fleeing driver becomes known, the fleeing driver does not pose an immediate threat to the public or police employee safety, and they can be apprehended later.”

123. The policy sets out the steps that must be carried out following a decision to abandon a pursuit:

Step	Action
1	<i>Acknowledge any direction to abandon the fleeing driver pursuit, or advise the pursuit controller that the pursuit has been abandoned.</i>
2	<i>Immediately reduce speed to increase the distance between the fleeing vehicle and their own.</i>
3	<i>Deactivate warning devices once below the speed limit.</i>
4	<i>Stop as soon as it is safe to do so. If stopping in an area such as a motorway, safety may necessitate that the warning lights remain activated until the vehicle is mobile again.</i>
5	<i>Confirm to the pursuit controller they are stationary and state their specific location.</i>
6	<i>Undertake inquiry phase as directed by the field supervisor.</i>

Tyre deflation device policy

124. Tyre deflation devices (TDD) can be used under section 39 of the Crimes Act 1961.

125. Police policy on spikes provides that they can be deployed where no other, less dangerous, means of stopping the vehicle are reasonably available, and where they can be deployed without unjustified risk to any person and on the authority of the Pursuit Controller.

Use of a Police dog

126. Police dog handlers must consider all tactical options in situations that require use of force. They must consider whether a lesser, more appropriate use of force is available before deploying a Police dog. The law sees little difference between dogs, when used as a means of force, and other methods and implements used by Police, such as firearms, Taser and batons.

127. Police officers operating a Police dog are personally responsible for the use of force by the dog. They must be satisfied, before releasing the dog, that the use of force is justified in the circumstances. They must call on the person to desist unless impracticable to do so and ensure that the extent of the force used by the dog is kept to a minimum possible in the circumstances.

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

Police firearms policy

129. The 'Police firearms' policy provides guidance to Police officers about the use of firearms. It states that from time to time a Police officer at the level of inspector or above can authorise routine carriage of firearms with the following considerations:
- based on an assessment of a specific risk or coordinated pre-planned operation;
 - must be for a specific time frame;
 - continuously reviewed to ensure the threat still exists;
 - communicated to all staff in the operating environment including oncoming shifts;
 - must advise District Commander, District Command Centre and Comms; and
 - must specify roles and conditions of carriage specific to the threat.
130. In addition to general arming orders above, the policy states that an officer may carry firearms when their perceived cumulative assessment of a situation is that it is in, or likely to escalate to be within, the death/grievous bodily harm range as specified by the Tactical Options Framework. When this occurs, the officer must advise their immediate supervisor and the Police Communications Centre of their decision to deploy with firearms as soon as practicable.
131. When an officer deploys to an incident where they believe that firearms are or could be present they must wear ballistic body armour.

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.

This report

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



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