

Man tasered after apparent suicide attempt in Police cells

Outline of Events

1. On 13 February 2019, at around 5pm, staff at the Emergency Department at Dunedin Public Hospital rang Police because Mr X was intoxicated and acting aggressively towards them.
2. Officers A and B went to the hospital, Officer B described Mr X's behaviour as drunk and aggressive. Officer A said that Mr X smelt of alcohol, slurred his words and was unsteady on his feet. The officers checked the Police database and found that Mr X was subject to a bail condition not to drink alcohol.
3. Officer A arrested Mr X for breaching this condition. Officer B said Mr X was compliant but short-tempered and verbally abusive on the journey to the Dunedin Central Police Station.
4. At the Police station, Mr X was searched and placed into a holding cell. The custody CCTV shows Mr X was agitated, unsteady on his feet and kicking the cell door. A breath alcohol screening test was positive and he was escorted to the processing room by Officer A.
5. Officer C had arrived at work expecting to be assigned duties as a response officer and was wearing a Taser as part of her normal kit. At the start of her shift she was reassigned to work as a watch-house keeper. At Dunedin Police Station, the watch-house keeper is an officer assigned to work both public counter reception and custody area duties. Officer C did not remove her Taser after being reassigned duties and went to the processing room in the custody area still wearing it.
6. In accordance with policy, Officer C entered Mr X's health and welfare details in the Police electronic custody database and completed the required risk evaluation. The database assessed Mr X as "*not in need of specific care*" but Officer C manually increased this to "*in need of frequent monitoring*" recording the reason for the change as 'until he calms down'.¹ Officer C said she

¹ A person who is not in need of specific care must be checked at least once every two hours. Frequent monitoring requires a detainee to be checked at least five times an hour at irregular intervals. The relevant policy is set out in paragraphs 71-74.

increased the level of monitoring required because observations of Mr X's behaviour gave her the impression he was likely under the influence of drugs and alcohol.

7. After the custody area procedures had been completed, Mr X refused to walk to the observation cell assigned to him. He sat on the ground and was verbally abusive to Officer B. After refusing Officer A's requests to stand up, Officer A placed Mr X in an arm bar and walked him to his cell.²
8. At approximately 5.52pm, Mr X was placed in the observation cell. The observation cell has a Perspex front allowing staff to see into the cell from the corridor, and has a camera allowing the cell to be viewed in the watch-house area by CCTV. Not long after, Officer C saw on the CCTV monitor that Mr X was apparently attempting to strangle himself by tying his trousers around his neck. Officer C radioed for assistance. Initially, three officers responded: Officer B (wearing a Taser); Officer D (the acting custody Sergeant supervising the shift); and Officer E (wearing a Taser) who heard the call from the muster room.³ Officers B and E were front line officers who were temporarily in the station completing paperwork.
9. At approximately 6.10pm, Officers B, C, D and E went to the cell and saw Mr X slumped on the floor with a sheet over his head. Officer C stayed in the corridor outside the cell, watching through the doorway while Officers B, D and E entered. Mr X threw the sheet forward, laughed and said he had tricked them. Officers B and E picked Mr X up and put him on the bed. He struggled and kicked Officer B in the leg. Officer C, who was still outside the cell, removed her Taser from its holster and pointed it at the ground.

Officers B and E restrained Mr X while Officer D left the cell to fetch a tear resistant gown to prevent further suicide attempts. Officer B and Officer E stood over Mr X and pinned him on the mattress by applying pressure to his arms and legs. Mr X was lying on his side facing the officers. Mr X was being verbally abusive.

10. Officer C remained in the cell doorway, aimed a Taser at Mr X's legs and 'laser painted' him.⁴ This and following events were captured on the camera mounted on the Taser. From that footage, Mr X seems aware of Officer C's actions.
11. Eventually, Mr X appeared to relax, the officers released their hold on Mr X and he sat up. The officers moved back slightly away from the bed and towards the cell wall and were not touching Mr X. By this stage, three more officers arrived and stood in the corridor outside the cell door. Officer D also returned with the tear resistant gown.
12. Officer E told Mr X Police were going to place him in a tear resistant gown and asked Mr X to remove his top. Mr X said 'no' and continued to swear and gesture at Officers B and E. He then focused his attention on Officer C, who was still aiming her Taser at him and said "okay, shoot me." Officer C responded "no, I'm not going to shoot you". Mr X stood up and moved towards Officer C. Officer C fired the Taser twice towards Mr X, as she was finishing her response, and

² 'Arm bars' are approved manual restraint techniques which custody officers can use to control a person's movements.

³ The muster room is a room where Police officers process their paperwork.

⁴ Police policy describes 'laser painting' as overlaying the laser sighting system on a subject, as a visual deterrent, in conjunction with a verbal warning.

without issuing him with a warning. Three probes attached to Mr X and caused neuromuscular incapacitation.⁵

13. Mr X fell back onto his bed and made no attempt to move. He continued swearing at the officers and refused to allow the Taser probes to be removed. An ambulance was called. Mr X was eventually sedated by Ambulance staff and taken to hospital for treatment. He appeared in Dunedin District Court the following morning.
14. Police investigated the incident and found that Officer C breached Police policy by carrying a Taser into the custody area. Nevertheless, Police concluded Officer C's decision to use the Taser was appropriate in the circumstances.
15. Police also notified the Independent Police Conduct Authority of the incident and the Authority conducted an independent investigation into Officer C's actions. This report outlines the investigation and the Authority's findings.
16. The Authority is satisfied post-Taser discharge procedures, including medical after care, complied with Policy and are not specifically included in this report.

The Authority's Investigation

17. The Authority interviewed Officers B, C, D, E, and F. The Authority also visited the scene, viewed relevant footage and reviewed Police documentation of the incident, including statements and reports.
18. The Authority considered the following issues:
 - 1) Was it appropriate for Officer C to carry a Taser in the custody area?
 - 2) Was the force used by Officers B and E immediately after Mr X's suicide attempt justified?
 - 3) Was Officer C justified in discharging her Taser at Mr X?

The Authority's Findings

ISSUE 1: WAS IT APPROPRIATE FOR OFFICER C TO CARRY A TASER IN THE CUSTODY AREA?

19. Police Taser policy at the time provided that: *"Tasers should not be routinely carried in custodial areas and officers should remove and secure Tasers before entering custodial areas. However, Tasers should be available in custodial areas should they be needed in response to a particular detainee."*
20. Officer C said that she obtained her Taser at the start of her shift because she was initially assigned as a response officer. The Taser logs corroborate this, as the safety checks were carried

⁵ Neuro-muscular incapacitation is when the nervous system and muscles are temporarily not able to permit movement.

out at the beginning of the shift. Officer C initially reported to Police that when she was reassigned to watch-house duties, she had no time to remove the Taser.

21. However, on closer questioning by the Authority, it was clear she was not actually aware of any policy relating to Taser carriage in the custody area. When asked about the policy, Officer C said: *“No, never given it any thought. My understanding at that point is that if there is a taser available we are to be wearing it when we are responding.”*
22. When the Authority visited Dunedin Central Police Station, staff in the watch house area at the time were carrying Tasers. The Authority finds that while Taser carriage when assigned to watch-house duties was normal practice in Dunedin at the time, Officer C breached Police policy by not removing the Taser before entering the custody area.
23. Technically, Officers B and E were also in breach of the policy by wearing Tasers into the custody area. However, their actions were understandable and reasonable given they only moved to the custody area in response to the emergency call for assistance.
24. Police have updated the policy to make it clear that staff must remove Tasers when entering custodial areas.

FINDINGS ON ISSUE 1

Officer C carried a Taser into the custody area in accordance with normal practice at the time, but in breach of policy.

Officers B and E breached policy by carrying Tasers into custody area, but this was reasonable in the circumstances.

ISSUE 2: WAS THE FORCE USED BY OFFICERS B AND E IMMEDIATELY AFTER MR X’S SUICIDE ATTEMPT JUSTIFIED?

25. Section 39 of the Crimes Act 1961 empowers Police to use such force as may be necessary in the execution of their duties such as arrests or law enforcement processes unless any such process can be executed by *“reasonable means in a less violent manner.”*⁶

Execution of a law enforcement process

26. Police policy for people in custody provides that if a detainee has been identified as a suicide risk, Police must consider removing their clothing and replacing it with a tear resistant gown.
27. Although the threat of imminent suicide ended when the officers entered the cell and Mr X claimed he had tricked them, his behaviour identified him as a continuing suicide risk. The Authority accepts the Police assessment Mr X was still a suicide risk was reasonable. Officers B and E told the Authority that they grabbed Mr X off the ground so that they could remove his shirt and put him in a tear resistant gown. CCTV footage shows Officer D left the observation cell to fetch the gown once she felt Officers B and E had Mr X under control.

⁶ This section is set out in paragraph 59.

28. Prior to attending the cell, Officers B and E had heard a call for assistance over the Police radio that Mr X attempted suicide by tying his trousers around his neck. Therefore, the Authority is satisfied the officers used force in execution of a law enforcement process because it was for the purpose of removing his clothing and putting him in a tear resistant gown to prevent further suicide attempts and ensure his safety.

The level of force used

29. Officers B and E used empty hand tactics to restrain Mr X onto the bed.⁷ Officer B told the Authority that Mr X was verbally aggressive in response to their request to sit up and remove his shirt and that he was also assaultive as he had kicked Officer B. Officer E's statement to the Authority also confirms this account and that officers were trying to calm Mr X down.
30. As communicating with Mr X was not effective, the Authority finds Officers B and E did not have any "less violent" options than manually restraining Mr X onto the mattress to get Mr X into a tear resistant gown. The use of force was proportionate and reasonable.

FINDING ON ISSUE 2

Officers B and E's use of force immediately after Mr X's suicide attempt was justified in the circumstances.

ISSUE 3: WAS OFFICER C JUSTIFIED IN DISCHARGING HER TASER AT MR X?

31. The Authority notes Officer C wrote in her Tactical Options Report⁸ that she fired the second cartridge as the first did not result in successful incapacitation.⁹ However, the Taser firing log shows the second cartridge was fired approximately 0.03 of a second after the first, which is not enough time to make an assessment to fire a second time. The Authority put this discrepancy to Officer C, but she maintained she intentionally discharged the Taser twice.
32. Police analysed the Taser data and concluded that the discharge of the second cartridge was not intentional and was "accidental due to the sensitivity of the trigger and the operators finger remaining on the trigger momentarily."
33. While Officer C genuinely believes she consciously fired the second time, the Authority tends to the same view as the Police analysis that it is likely this second Taser discharge was unintentional due to the trigger's sensitivity. For that reason, this report will assess Officer C's Taser discharge as one intentional discharge only.
34. When interviewed by the Authority, Officer C said that she used the Taser to defend herself and Officers B and E from Mr X's aggression. Section 48 of the Crimes Act 1961 provides legal

⁷ 'Empty hand' refers to weapon less use of force, such as grabbing hold of, pushing, or punching a person

⁸ An officer is required to complete a TOR when he or she has used a certain level of force on a member of the public. The report includes each tactical option and a description of the force used and the reasons for using it.

⁹ A Taser has two cartridges with two probes in each cartridge

justification for any person, including Police officers, to use reasonable force in defence of themselves or another.¹⁰

35. To rely on this justification for her use of force, Officer C's actions must be assessed on the following three questions:

- 1) What did Officer C believe the circumstances to be at the time she tasered Mr X?
- 2) Did Officer C use the Taser to defend herself or Officers B and E?
- 3) Was the use of the Taser reasonable in the circumstances as Officer C believed them to be?

What did Officer C believe the circumstances to be at the time she tasered Mr X?

36. Officer C knew that Mr X attempted to self-harm as she had just witnessed through the CCTV observation of his cell.

37. She also said that there *"was quite a significant increase in his agitated state"* immediately after his suicide attempt in the cell compared to how Mr X presented himself in the processing area. Officer C believed his behaviour had deteriorated from being angry and belligerent to *"off the charts"*. She described Mr X as someone strong for his size while Officers B and E restrained him which confirmed in her mind the state of his mental health and/or that he may have been under the influence of drugs. Officer C had earlier increased the level of monitoring required because of her observation that Mr X may be under the influence of drugs.

38. Officer C believed Mr X was in the *"hugely assaultive range."* She believed if he was prepared to harm himself then he was prepared to harm Officers B and E inside the cell.

39. She drew her Taser because she saw Mr X kick Officer B as Officers B and E were restraining him. Officer C said that:

"I can see his biceps flexing and like the veins going down...So there's three of us and those two boys, well Officer E is pretty strong, Officer B maybe not so much. So I drew my Taser 'cos he's already assaulted one of them, it seemed like, like his face was going red again, the veins in his neck were bulging."

40. Officer C also observed Officers B and E successfully restrain him and Mr X briefly calm down. She was also aware that more officers came to answer the radio call for assistance. The CCTV hallway footage outside the cell confirms Officer C speaking to these other officers, as does her description: *"so there's three of us and those two boys."*

41. According to Officer C, she believed Mr X was intending to assault her after Officers B and E released their restraint on him on the bed and he focused his attention to Officer C and moved towards her. She said:

¹⁰ This section is set out in paragraph 60.

“...he was looking directly at me and the boys were off to the side so in my mind, without a doubt, that he was gonna come for me in either an effort to get out of the cell or give me a quick punch and then out of the cell.”

Was Officer C’s use of the Taser for the purpose of defending herself or others?

42. When asked by the Authority what Officer C was worried Mr X was able to do, she replied: *“Punch, strangle, kick, stomp myself or one of the other officers.”* She told the Authority that if she left Officers B and E to deal with Mr X then he would assault them.
43. The firing of the Taser occurred when Mr X lunged at her from the bed. At that time, the other officers in the cell had released their hold and had moved back slightly from the bed. Officer C was standing between one and two metres from Mr X.
44. On the evidence, the Authority accepts that Officer C genuinely believed Mr X was in the assaultive range and that she fired the Taser to defend herself. However, it does not accept Officer C was acting to defend Officers B and E. Those officers were not the subject of imminent attack from Mr X. The Taser camera footage clearly shows his intention and attention was focused solely on Officer C.

Was using the Taser reasonable in the circumstances as Officer C believed them to be?

45. For firing the Taser at Mr X to have been reasonable in the circumstances perceived by Officer C, it needs to have been:
 - proportionate to the level of threat perceived; and
 - appropriate (in that no less forceful tactical option was available to mitigate or avoid the threat).
46. The other officers’ accounts corroborate Officer C’s impression of Mr X’s aggressive demeanour. A review of the Taser camera footage confirms Officer C’s description of his aggression as he moved towards her.
47. The Authority does not agree the use of the Taser was reasonable because there were other less forceful options to protect herself.
48. Officer C said she believed that the sequence of events happened very quickly and so she needed an option that was going to be effective quickly. She recorded in her Report that communication was not going to work against Mr X’s agitated state. She had also just witnessed him refuse Officers E’s request. She discounted using the baton due to the close confines of the cell. She also deemed pepper spray ineffective against a person in a drug-affected mental health state and she was also concerned it would contaminate the other officers leaving them incapacitated whilst Mr X wouldn’t be. However, Officer C had already selected her option long before there was any actual threat to her from Mr X. By presenting the Taser earlier and indicating to Mr X she would use it she had effectively committed herself to that course of action.

49. Officer C did not consider that stepping back out to the corridor to allow Officers B and E (who were still inside the cell) to restrain Mr X as they had previously done, was an appropriate response.
50. She said her reasons for not stepping back were because Officer B had already been assaulted and one of them would get assaulted if they *“go hands on with him again”*. The Authority does not accept these reasons for not stepping back or allowing Officers B and E to restrain Mr X because Officer C was aware that they had already successfully restrained him immediately prior to Officer C’s use of the Taser. Taser camera footage shows that Officer E was close enough to Mr X to prevent him from reaching Officer C. Officer E moved towards Mr X as Mr X started to stand.
51. The Authority also notes that Officer C was aware of the other officers outside the corridor who had answered the radio-call for assistance. Officer F was the District Shift Commander in the Command Centre and one of the four officers standing in the corridor. He said that two of the officers’ present were not deployable because they were not wearing any body armour or equipment. He also said that *“grappling is extremely difficult”* and a mass entry into the cell *“is not putting everyone’s safety first”* and risks causing injury to the officers and Mr X because of the potential danger of multiple officers piling on top of Mr X.
52. The Authority does not accept that this was the only other available option or that the situation would have escalated to that level. Officer C had the option of stepping out of the cell’s doorway, allowing the two officers in the cell to restrain Mr X in the manner they had earlier. If Officers B and E needed assistance, they had the option of calling for one of the officers at the corridor.
53. The use of the Taser was also inconsistent with Police policy which requires the user to issue a warning prior to discharge. Officer C told the Authority there was not enough practicable time to do so.
54. The use of the Taser by Officer C was not a justifiable use of force.

Was Officer C’s use of force justified for any other reason?

55. Because Mr X could have been brought under control using a lesser use of force than the Taser, Officer C’s actions would not have been justified under section 39 of the Crimes Act.

FINDING ON ISSUE 3

Officer C’s use of the Taser was unjustified in the circumstances.

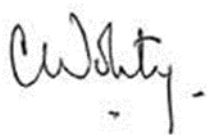
Subsequent Police Action

56. Police subsequently updated Taser policy to make it clear that staff must remove Tasers when entering custodial areas.
57. The policy wording now states:

“Except where expressly necessary, TASERs must not be routinely carried in custodial areas (including court cells). Staff entering custodial areas should remove and secure TASERs before doing so. TASERs should be available in custodial areas should they be needed in response to a particular detainee.”

Conclusions

58. The Authority found that:
- 1) Officer C carried a Taser into the custody area in accordance with normal practice at the time, but in breach of policy.
 - 2) Officers B and E breached policy by carrying Tasers into custody area, but this was reasonable in the circumstances.
 - 3) Officers B’s and Officer E’s use of force immediately after Mr X’s suicide attempt was justified in the circumstances;
 - 4) Officer C’s use of the Taser was unjustified in the circumstances.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

16 July 2020

IPCA: 18-1789

Appendix One – Laws and Policies

Law relating to use of force

59. 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.”*
60. 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.”*

Use of Force policy

61. The Police’s ‘Use of Force’ policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, Tasers and firearms.
62. Police officers must also constantly assess an incident based on information they know about the situation and the behaviour of the people involved; and the potential for de-escalation or escalation. The officer must choose the most reasonable option (use of force), given all the circumstances known to them at the time. This may include information on: the incident type, location and time; the officer and subject’s abilities; emotional state, the influence of drugs and alcohol, and the presence or proximity of weapons; similar previous experiences; and environmental conditions.
63. A key part of an officer’s decision to decide when, how, and at what level to use force depends on the actions of, or potential actions of, the people involved, and depends on whether they are: cooperative; passively resisting (refuses verbally or with physical inactivity); actively resisting (pulls, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or presenting a threat of grievous bodily harm or death to any person. Ultimately, the legal authority to use force is derived from the law and not from Police policy.
64. The policy states that any force must be considered, timely, proportionate and appropriate given the circumstances known at the time. Victim, public and Police safety always take precedence, and every effort must be taken to minimise harm and maximise safety.

Taser policy

65. A Taser must only be used on a person whose behaviour is within or beyond the assaultive range or has the potential to escalate to within or beyond the assaultive range.
66. Assaultive is defined as *“actively hostile behaviour accompanied by physical actions or intent, expressed either verbally and/or through body language, to cause physical harm”*.
67. ‘Presentation’ of a Taser means to draw the device and present it at a subject as a visual deterrent. Presentation must be in conjunction with a verbal warning.
68. To encourage de-escalation and to warn others nearby, officers must give a verbal warning in conjunction with the deployment of a Taser unless impractical to do so. The warning relevant to the presentation of a Taser is *“Taser”*. The warning relevant to a discharge or contact stun is *“Taser, Taser, Taser”*.
69. A ‘discharge’ is an *“application by firing two probes over a distance from a cartridge attached to the Taser, or subsequent applications of electrical current via the probes, which are in contact with the subject after firing, in conjunction with a verbal warning”*.
70. Police policy on Taser aftercare states that a registered medical doctor must examine anyone who is exposed to the application of a Taser as soon as is practicable.

Care of people in custody policy

71. The ‘People in Police detention’ policy contains procedures for receiving, assessing, monitoring and managing people in custody, and provides instructions for what to do when a person has consumed alcohol or drugs, is injured, has a known medical issue, or there is a risk of self-harm or suicide. It also sets out the responsibilities and duties of staff involved in custodial management to maximise health, safety and security.
72. Custody staff are instructed to *“record risk information, any special care instructions, and everything that happens in relation to a detainee, from processing to release, in the ECM.”*
73. The ‘Procedures for custody area staff’ states that custody staff must evaluate and classify detainees as either not in need of specific care, in need of care and frequent monitoring, or in need of care and constant monitoring.
74. A person who is not in need of specific care must be checked at least once every two hours. Frequent monitoring requires a detainee to be checked at least five times an hour at irregular intervals. Constant monitoring requires a detainee to be *“directly observed without interruption.”*

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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