



# **POLICE COMPLAINTS AUTHORITY**

**Report of the Police Complaints Authority  
on the Shooting at the Postbank, Moturoa, New Plymouth  
on 30 December 1991**



# Police Complaints Authority

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## REPORT OF THE POLICE COMPLAINTS AUTHORITY ON THE SHOOTING AT THE POSTBANK, MOTUROA, NEW PLYMOUTH ON 30 DECEMBER 1991

### INTRODUCTION

At about 10.00am on Monday 30 December 1991 Deputy Commissioner S A Rusbatch notified my staff that a member of the public had been shot by a member of the Police Armed Offenders Squad in New Plymouth. The injured person was in hospital. I was in turn informed shortly afterwards.

Arrangements for an internal Police investigation into the circumstances of the shooting had already been made. The investigating Police Officers were named as Chief Inspector M G Charles, Region Commander, Palmerston North, and an officer of his staff, Inspector D. Scott.

An Investigating Officer of the Police Complaints Authority, Mr J N Roberts, travelled to New Plymouth the next day to oversee the Police investigation.

No complaint has been received in respect of the shooting and it is not my intention to hold a formal hearing into it.

### ISSUES FOR INVESTIGATION

Those matters which come within my jurisdiction and demand my attention are:

1. The circumstances surrounding the shooting and whether any blame attaches to the Police.

2. Whether General Instructions, in particular G.I. F61, were complied with.
3. Whether any danger to the general public was posed by the actions of the Police.

#### OUTLINE OF FACTS

The New Plymouth and surrounding Taranaki area had, in the months preceding this incident, been subjected to the commission of a series of offences involving violence or firearms or both. Police suspected that several of these offences had been committed, or orchestrated, by a particular group of criminals.

Information came to the knowledge of the Police that a further violent offence was to be committed by members of this group. This was to be the armed robbery of a Postbank Branch in the New Plymouth suburb of Moturoa. Police next became aware that this robbery was planned to take place on the morning of Monday 30 December 1991.

Operational arrangements were consequently made by which it was expected that the intending robbers would be apprehended in the act of robbing the Postbank branch. To that end a sizeable force of Police was mobilised in New Plymouth in the early hours of Monday 30 December 1991.

Various deployments were made. Amongst these deployments Police established observation posts from which the development of the intended robbery could be tracked.

In particular, a group of four AOS members was located in the Postbank building. This group, comprising members referred to in this report as AOS3, AOS4, AOS6 and AOS17, were armed with .357 Ruger Magnum pistols. Soft-nosed ammunition was carried. The members were briefed to apprehend the offenders.

A second group of AOS members was located in an adjacent vacant premises. They were similarly armed. They were briefed to

prevent the escape of the offenders. To do this, this second group of AOS members was to emerge from the place of concealment immediately after the offenders had entered the Postbank. The AOS members were to position themselves between the exit from the Postbank and the offender's vehicle.

From an observation point overlooking both the Postbank and the place of concealment of the second AOS group an alert was to be given by cellular telephone when the offenders appeared. This was to be "Prepare". A further alert was to be given when the offenders entered the Postbank. This was to be "Action".

The AOS group located within the Postbank entered the building several hours before the expected time of the intended robbery. They had been briefed on the general situation. They had been reminded of the requirements of General Instruction F61.

They had been unable to reconnoitre the premises. On entering they discovered that the Postbank comprised a rectangular shaped area with concrete walls at each side and with glass windows and a glass door on the front, street, end of the building.

Approximately two thirds of the interior was given over to the public and tellers areas. These were separated along the length of the building by a counter on which stood four consoles or shelf units containing stationery.

At the street end of the public side of the counter was the entrance door, glass, opening outwards into a short entrance way. At the street end of the tellers' side of the counter was a small office, the manager's office.

At the opposite end of the public area was a small glass walled interview room with a wooden door giving access to the room from the public side of the counter.

At the end of the tellers' area was an opening giving access to the rear, staff, area of the Postbank and to the safe. The opening also led through to the small glass walled interview room previously described.

After entering the Postbank the four AOS members, 3, 4, 6 and 17, finalised their precise dispositions within the area and their plan of response to the expected appearance of the offenders.

It was decided that AOS4 should be posted in the small interview room separated by its wooden door and glass wall from the public side of the counter. AOS6 was to be concealed beneath the counter at the end nearest to the staff area and the safe. AOS3 was to be positioned out of sight of the public at the end of the tellers' area opposite the street. AOS17 was also to be in that area.

It was acknowledged by them that when the intended robbery commenced three possibilities existed.

They were, first, that the offenders when challenged would surrender. Second, that the offenders would immediately flee, and, thirdly, that the offenders would open fire on the AOS.

Taking these options into account it was decided that on receipt of the alert "Prepare" AOS4 would open the door of the interview room and drag or urge into the room any member of the public who happened to be in the Postbank at that moment.

In addition to the four AOS members two further Police members in civilian clothes had assumed the role of tellers and were briefed to give the same information to any member of the public who, despite the notice, might still enter the premises.

At a signal immediately before the entry of the offenders the tellers were to withdraw to the rear regions of the Postbank.

At the expected time of the intended robbery it became apparent to the Police that three offenders were making preparations to carry out the robbery. At 8.56am a Police member at an observation post saw two persons in a two-tone blue Holden car donning balaclavas. The alert "Prepare" was given.

A few seconds later the member in charge of the second AOS group posted in the vacant premises adjacent to the Postbank saw the car draw up outside the Postbank, two persons alighted from it and quickly entered the Postbank. As the car came to a halt this member gave the alert "Action" and his group started to exit their position preparatory to cutting off the line of withdrawal of the offenders from the Postbank.

Before this could be achieved a number of shots were heard and the two offenders ran from the Postbank, one behind the other. The first offender leaped into the car which began to pull away, barely giving time for the second offender to get in.

#### 1. The Circumstances of the Shooting

Inside the Postbank the two offenders had entered, one moving towards the counter and the other remaining behind him in the mid-public area.

AOS3 stepped from the area near the safe and into view of the offender. Holding his weapon low and extended to the front, he shouted to the two tellers "Down!" and then to the offender who was approaching the counter "Armed Police!. Stop!" or "Stop!. Armed Police!".

The offender did not stop. AOS3 saw the offender bring up from beside his right leg a sawn off weapon of some sort and begin to train it on him. AOS3 thereupon fired his pistol at the offender. There was no immediate effect on the forward progress of the offender who began to mount the counter between the two consoles furthest away from AOS3.

AOS3 continued firing at the offender until his pistol clicked on a used round indicating that the full six rounds in the pistol had been fired. As AOS3 fired the last or last but one round he heard the offender say "Shit!", suggesting to AOS3 that he had hit the offender.

As AOS3 stepped back into the rear area to reload his pistol, AOS17 stepped forward and fired one round at the offender. The offender had by this time moved back from the counter preparatory to turning and running from the Postbank. He dropped the weapon he had been holding on to the counter on the tellers' side. It was found to be a .22 sawn off Ruger pistol. Attached to it was a magazine containing eleven rounds of ammunition.

Meanwhile AOS4 opened the wooden door separating the small interview room in which he was posted from the public area of the Postbank. As he did so the second offender came into his view. On seeing AOS4 the second offender raised a sawn off shotgun and fired at AOS4.

The charge struck the door-frame, narrowly missing AOS4. AOS4 then fired three shots at the second offender who came towards him and fell against the glass wall of the office. AOS4 then fired one more shot at the second offender through the glass wall. No shot fired by AOS4 struck the second offender.

Both offenders then ran from the Postbank. The total time from the entry of the offenders to their exit was, I am satisfied, approximately seven to eight seconds.

## 2. Compliance with General Instruction F61

The critical aspect of this occurrence concerned the justifiability of the AOS members' actions in firing at the two offenders. The relevant Police General Instruction is General Instruction F61. In my enquiry it was necessary for the actions of the AOS members in the Postbank to be carefully measured against the provisions of that General Instruction.

To form an accurate appreciation of the factors involved I travelled to New Plymouth and visited the Postbank. I interviewed several of the Police members involved in the operation mounted in and around the Postbank.

I also spoke to two persons who were in remand custody at New Plymouth Prison, charged with the attempted robbery of the Postbank. Both of these persons hotly denied being in the Postbank. This despite being apprehended shortly afterwards by Police who were deployed in another part of the locality near the Postbank in circumstances which strongly suggested they were the two offenders.

Because of the inability of these two persons to comment on the events in the Postbank my enquiries have perforce been limited to establishing what happened solely from the perspective of the Police. Nevertheless I have, as best the circumstances allow, attempted to exercise the objective independent judgement with which I approach all of my reviews of Police conduct.

First, then, to examine the General Instructions governing the use of firearms by the Police.

General Instruction F61 provides:

*"F61(1) A member shall not use a firearm except in the following circumstances:*

*(a) If he fears death or grievous bodily injury to himself or another person and he cannot protect himself or that person in a less violent manner*

*...*

*(2)(d) An offender is not to be shot:*

*(i) Until he has first been called upon to surrender and has refused to do so, unless in the circumstances it is not practical to do so; and*

*(ii) That it is clear that he cannot be disarmed or arrested without first being shot; and*

*(iii) That in the circumstances further delay in apprehending him would be dangerous or impracticable."*



In order to examine whether or not there existed justification for the AOS members to open fire on the two offenders it is necessary to consider the situation existing in the Postbank immediately following the entry of the two offenders.

The prior knowledge that the Police had that the intended offence was to be accompanied by the use of firearms fully justified the deployment of armed members in the Postbank. I have already referred to the series of offences involving the use of violence or firearms or both which had occurred in the local area in preceding months.

The strong belief that the intended robbery was one of that series and information that indicated that firearms were to be carried by the offenders would have rendered any response by the Police of an unarmed nature foolhardy. The deployment of armed Police within the Postbank and elsewhere was fully justified by the circumstances.

When the intended robbery began to unfold with the entry of the offenders to the Postbank there is clear evidence that AOS3 issued an appropriate warning to the two offenders with the words "Stop!. Armed Police!". This is verified by the other three AOS members and the two other Police members who were in the Postbank to act as tellers.

At that point the two offenders still had the opportunity to surrender to the Police. They chose not to do so.

Instead the first offender brought up to the levelled position the sawn off weapon he had held at his side as he entered the Postbank.

At that point AOS3, as he saw the offender's weapon coming up and pointing in his direction, was entitled to believe that his life was in imminent danger from the offender firing the rising weapon. Any reasonable person in his situation would have so believed.

That he did so believe was confirmed to me by AOS3 when I interviewed him at the Postbank and went through a form of reconstruction of the sequence of the events which had occurred on the day of the intended robbery.

The offender had been called upon by AOS3 to surrender and had refused to do so. This is evidenced by his continuing to advance and to raise his weapon after the words "Stop!. Armed Police!" in whatever order had been addressed to him by AOS3.

Having issued the warning, to no avail, it is plain to me that it was necessary to shoot the offender before it would be possible to disarm or arrest him.

I am therefore satisfied that the requirements of General Instruction F61(1)(a) and (2)(d) were observed by AOS3.

Turning to the situation in which AOS4 found himself on opening the door of the small interview room I find that this member, too, was justified in firing, in this case at the second offender. As AOS4 opened the door of the interview room he saw the second offender facing him halfway down the Postbank in the public area. As he caught sight of AOS4 the offender fired the sawn off shotgun he was holding.

The shot struck the vertical door jamb close to AOS4. There was no possible doubt that it was a deliberate shot intended to hit AOS4.

I am satisfied that the warning given by AOS3 was audible to both offenders. That the second offender ignored it and actually opened fire, sufficiently convinces me of the rightness of AOS4's action in firing at the second offender.

Concerning the single shot fired by AOS17, this was a continuation of the firing begun by AOS3. As such it was equally within the provisions of the General Instruction.

### 3. Danger to the General Public

When armed contact occurs between Police and offenders and shots are fired two questions immediately arise.

The first of these concerns the danger to the general public, to innocent bystanders or to others going about their lawful business. Bullets are no respecters of the innocent.

The second question therefore concerns the accuracy and control exercised by the Police in their use of firearms in situations where the public could be at risk. This was such a situation, arising as it did shortly before nine o'clock on a Monday morning in a suburban shopping area.

Eleven shots were fired by the three AOS members who used their firearms. One shot was fired by the second offender. To deal with the latter first, this shot was fired at AOS4 and its direction was away from the street end of the Postbank. No member of the public was therefore at risk.

Of the eleven shots, one, most probably fired by AOS3, struck the first offender glancingly. Five of the six shots fired by AOS3 passed through the consoles on the counter containing various banking forms and stationery. This was unavoidable. As the first offender approached the counter he presented a diminishing target as more and more of his body was concealed from the view of AOS3 by the counter. Shots aimed at him therefore struck the office furniture between AOS3 and the offender.

Some of these shots were deflected by the material they struck. Their force would have been much expended and, although a ballistic report is still in preparation, I was able to see that the floor of the Postbank was littered with fragments of bullet jacket and projectile. From this I drew the conclusion that many of the shots were spent within the premises.

However there were three starred panes of exterior glass at the street end of the Postbank which indicated that three shots impacted in that area. It is therefore likely that bullets, or fragments thereof, flew into the street. During my enquiries there was a suggestion, which it was not possible to substantiate, that fragments may have come in contact with a passing private vehicle.

It is a fact that no member of the public was injured as a result of this shooting incident.

This aspect of this matter has caused me to reflect at some length on the Police decision to address the intended robbery in the way selected; by attempting to apprehend the offenders in the act of offending. It would have been clear from the outset of planning that a risk presented itself. Should there have been customers in the Postbank, or should the shooting have spilled into the street, then the potential danger to the public was clear to see.

In my deliberation I took together the danger of a customer entering the Postbank against the existence of Police observations posts and the close proximity of the second group of AOS in premises adjacent to the Postbank. There was the notice prominently displayed outside the Postbank saying it was not functioning due to a computer breakdown. The Police had given thought to the risk of someone happening innocently on the confrontation between the Police and the offenders and they had allowed as far as was possible for that contingency.

At the same time it was clear that there were going to be two armed offenders on the streets of New Plymouth that morning presenting a risk to the public. Even had the Police intercepted the offenders on their way to the Postbank it is not possible to say with certainty that shooting would not have broken out at the point of interception. At the Postbank the Police were able to exercise a degree of containment. This may not have been possible elsewhere.

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There is too the fact that a number of armed and violent offences had been committed in the New Plymouth area. Members of the public had been injured, one man to the risk of his life. Had the valuable opportunity presented by the Postbank robbery to apprehend some of the individuals carrying out these violent offences been lost, then subsequent offending by them or others could well have brought a greater risk to some members of the public from violent or armed offending than that presented in this incident.

Taken together, these considerations brought me to the conclusion that, although a risk to the public undoubtedly existed in the mounting of the attempt by the Police to apprehend these offenders in the act, it was less than other risks which would have continued to exist had this operation not been undertaken.

Addressing next the second of the two questions bearing on public safety: the accuracy and control exercised by Police in their use of firearms.

A noteworthy feature of this incident was that of eleven shots expended by the Police only one found its mark, and that glancing. The suggestion raises itself that the shooting was wild and uncontrolled; it bears some scrutiny.

Fortunately in this country Police rarely find themselves in what can be described as fire-fight confrontations with armed criminals. The AOS situation most commonly encountered is that of an armed offender being contained within a building, surrounded by AOS armed with rifles. The Aramoana situation springs readily to mind as an example of this.

I am of the opinion that a sudden confrontation such as the one enacted in the Moturoa Postbank presents the AOS member with a quite different problem. After reviewing this shooting incident I am not sure that the training methods currently employed in the AOS context adequately prepare the members for the urgent immediacy of having to counter an armed offender advancing at close quarters as in the Postbank and firing, or being about to fire, at the member.

In only one previous instance during the existence of the Police Complaints Authority has this situation come to notice. That was the shooting in Khyber Pass Road, Auckland, in November 1990, which resulted in the death of Paul Melvin Stowers. In that instance the Police Officer concerned was suddenly and quite unexpectedly confronted with a levelled sawn-off shotgun. Of the six shots that the Police Officer then fired only one, probably the fifth, found its mark.

The parallels with the Moturoa incident are plain: the firing of several shots by a Police member with only limited accuracy being achieved.

In talking to AOS3, who fired most of the shots at Moturoa, I was struck by his description of what he experienced during the incident and the similarity of what went through his mind to the chilling and graphic description of his emotions by the Police Officer confronted by Mr Stowers. Although little more than seven seconds elapsed, AOS3's sense of the passage of time became suspended. His concentration was focused entirely on the threat of the other weapon, so much so that the number of shots he had fired did not register on his consciousness and he went on pulling the trigger after his ammunition was expended.

AOS3 is an experienced mature member with several years of AOS experience. His arms training and range practice results are good in all conditions. He is not a young, recently qualified member. Even so the state of near-suspension which he experienced indicates to me that some aspect of his training warrants re-examination by the Commissioner of Police. The echoes it holds of the Stowers incident reinforces this indication.

Without reiterating my remarks, they appear equally appropriate in respect of AOS4 whose four shots did not impact on their target.

SUMMARY

To summarise, I find that:

- No blame attaches to the Police in this incident.
- The requirements of General Instruction F61 were complied with.
- Although some danger to the general public was posed by the actions of the Police, the historical and surrounding circumstances persuade me to find that the risk was unavoidable and that it lessened the likelihood of future incidents of offending involving violence or firearms or both in the New Plymouth area,

I recommend that the Commissioner of Police consider the need to tailor AOS training to address more directly the sudden and unexpected confrontation of Police members by armed and determined offenders.



Sir Peter Quilliam  
POLICE COMPLAINTS AUTHORITY  
3 February 1992