

THE AUTHORITY'S ROLE

6. Following the supervision of a Police investigation, or an independent investigation by the Authority, our statutory responsibility is to

“... form an opinion on whether or not any decision, recommendation, act, omission, conduct, policy, practice, or procedure which may be the subject matter of the investigation was contrary to law, unreasonable, unjustified, unfair or undesirable.”
7. Having formed any such opinion, the Authority must convey the same to Police and may make whatever recommendations it regards as appropriate.
8. The Authority's jurisdiction expressly enables it to reach views, as to whether or not the Police should consider commencing civil (almost invariably disciplinary) or criminal proceedings.

ISSUE 1: DID POLICE EXERCISE APPROPRIATE COMMAND AND CONTROL OF THE INCIDENT?

9. In this section we look at how Police managed their response to Mr X's actions and consider whether they complied with their policies on command and control and fleeing drivers.

Did Police respond appropriately to the sighting of the stolen car?

10. Police received a notification that the stolen car Mr X was driving was at a petrol station in Te Atatu via the Retail Crime Intelligence Platform, Auror. We found that the Police's use of Auror adhered to their 'Automatic Number Plate Recognition' policy and the accompanying Standard Operating Procedures.
11. Officers A and C were on their way to conduct an inquiry on the North Shore and heard a radio broadcast about the stolen car. They recognised the registration number as that of a car involved in an aggravated robbery with a firearm that had occurred the night before and decided to drive to the petrol station.
12. Officer B, who was the frontline sergeant, advised that if they saw the stolen car driving they should follow it until the Police helicopter (Eagle) was above and road spikes could be used to stop the car.
13. Officers A and C decided to arm themselves. They discovered there was only one Glock pistol in their car's gun safe. The officers had neglected to check their vehicle at the start of their shift to confirm there were two pistols. As both officers accept, this was a breach of the 'Police Deployability Policy'.

14. Officer C gave Officer A the pistol. Officer A told us he was unaware of the issue at the time and did not realise Officer C was unable to access another pistol.
15. Officers A and C arrived at the petrol station at about 3.25pm and saw the stolen car parked to the right of the store next to other parked vehicles. It appeared to be unattended, and Officer A believed the driver was likely inside the petrol station. He provided this information to the sergeant and asked for approval to block the stolen car in to prevent the driver from fleeing.
16. The sergeant approved Officer A's plan, so Officer A drove his car directly up to the rear of the stolen car and blocked it in.
17. Officer C assumed they would stop near the petrol station and get observation on the stolen car, allowing her to retrieve a firearm from the boot. This did not occur, Officer A went forward and blocked in the stolen car immediately on arrival without discussion. Officer C says she would have preferred to have been armed before approaching the vehicle but she did not raise this concern with Officer A.
18. Officers A and C then walked up to the stolen car and saw a man, Mr X, slouched down in the driver's seat. Police did not know Mr X's identity at the time. Officer A drew his pistol and commanded Mr X to get out of the car. Officer C drew her Taser. The officers advised Mr X they were armed and asked him to show them his hands.
19. Officer A told Mr X to *"get out of the vehicle"* and to *"turn the vehicle off"* multiple times. This can be seen in Officer C's Taser footage. Although both officers were in plain clothes, they were both wearing standard issue Police body armour and clearly identifiable as Police officers. Mr X refused to comply with instructions and began doing a multiple point turn, ramming into parked cars to facilitate his escape.

Did Police comply with policy during the pursuit?

20. Mr X left the petrol station and entered the Northwestern motorway a short distance away. Officer A correctly obtained authorisation to pursue him from the Northern Police Communications Centre (NorthComms) shift commander.¹ We accept that Police needed to pursue Mr X because of his suspected involvement in an aggravated robbery with a firearm.
21. Officer A's car was unmarked but had red and blue flashing lights visible on the front and a siren. A short time later a marked patrol car joined Officer A behind Mr X, that also had its flashing lights and siren on.
22. The pursuit posed a limited risk to other road users as the stolen car was travelling at very low speed due to damage sustained from ramming the vehicles. There was a concrete barrier between the north and southbound lanes and Police conducted a 'rolling block', driving behind the stolen car to keep the public at a safer distance.

¹ The shift commander is the senior officer at a Police communications centre, usually ranked inspector.

23. Officer A gave concise updates over the radio until Eagle arrived overhead and took over the commentary.
24. The shift commander advised that all staff involved in the incident must be armed and wearing safety equipment. The shift commander passed incident control to Officer B and asked him to form a team prepared to approach Mr X. About six minutes into the pursuit, the Auckland Transport Operations Centre (ATOC) advised Police that they had seen a firearm on the stolen car's passenger seat. The pursuing vehicles acknowledged the threat.
25. Mr X took the Lincoln Road exit. Police asked ATOC to control the busy intersection ahead as best they could by altering the traffic signals to stop.
26. At the top of the off ramp Mr X turned right into a line of stationary oncoming traffic. He got out of the stolen car and Officer A followed him on foot across the overbridge. Eagle advised that Mr X was attempting to hijack members of the public's vehicles at gun point, and that officers needed to get to him quickly. The pursuit soon ended when Officer A shot Mr X as he tried to hijack a truck.
27. We have concluded that Police were justified in pursuing Mr X and complied with Police policy concerning fleeing drivers. The NorthComms shift commander delivered a clear and appropriate tactical plan on how to deal with the fleeing armed offender and ensured it was understood and acknowledged by Officers A and B. The scene was also well controlled and contained after the shooting.

FINDINGS ON ISSUE 1

Police exercised appropriate command and control of the incident.

Police conducted the pursuit of the stolen car in accordance with Police policy.

ISSUE 2: WAS OFFICER A JUSTIFIED IN FIRING SHOTS AT MR X?

28. Here we set out the circumstances in which Officer A shot at Mr X and assess whether his use of force was justified.

What happened when Officer A fired shots at Mr X?

29. When Mr X got out of the stolen car on the Lincoln Road interchange, he was pointing his firearm out of the driver's window at the driver of another stationary car on the overbridge. That driver drove into Mr X as he exited the stolen car, pushing him a short distance further down the road. Mr X then began to run across the overbridge carrying his firearm.
30. Officer A stopped near the top of the off ramp and followed Mr X on foot. Unknown to Officer A, Officer C was unable to follow immediately because she first had to go to the boot of their car to retrieve a firearm.

31. Mr X tried to open the driver's door of the second vehicle in the line of stationary traffic and then tried to smash the window with the butt of his firearm. As he did this, Officer A came around the corner onto the overbridge.
32. Officer A says Mr X turned towards him and raised the black, long barrelled firearm in his direction. The Eagle footage confirms that Mr X pointed the weapon down the road in Officer A's direction before turning and continuing to run across the overbridge.² Officer A considered shooting at Mr X at this point, but decided against it due to him being approximately 30 metres away, not having sufficient time to prepare to take the shot, and several people being in close proximity in their vehicles. Instead, Officer A took cover and yelled for Mr X to drop his weapon.
33. Mr X ignored the instruction and continued to move down the line of stationary vehicles. Officer A followed him. Mr X then ran towards a truck at the back of the line and opened the passenger door, yelling at the driver to get out. Officer A stopped at the rear of the vehicle in front of the truck.
34. Officer A says Mr X had his firearm pointed at the driver as he climbed into the truck's cab. The driver then scrambled to get out of the driver's door. Officer A fired his pistol five times through the windscreen of the truck's cab, hitting Mr X. The driver was exiting the cab as the first rounds were discharged.
35. About this time Officer B and two other officers were also on the overbridge, approaching the truck on foot. Officers A and B called on Mr X to get out of the truck. After a few seconds, Mr X placed his hands out of the truck's door and surrendered.
36. Police arrested Mr X and quickly transported him to the nearby Waitakere Hospital where he underwent surgery. Mr X had been shot twice in the back, left posterior thoracic region (consistent with him facing the driver and being shot from the angle Officer A was at). His left middle finger was also injured.
37. Hospital blood tests found Mr X had a substantial amount of Methamphetamine in his system (170 ng/ml).
38. At the time of the incident Mr X was on electronically monitored bail for aggravated robbery, possession of a firearm, and receiving property. He was wanted by Police for breaching his bail conditions, allegedly using tinfoil to cover his monitor and avoid detection.
39. After the event, Police identified the firearm as a Gamo brand, Chacal model, 5.5 millimetres calibre, bolt action air rifle. It is classified as an especially dangerous airgun.

² There are multiple angles of the incident available from Eagle's camera, traffic cameras and dash cameras. All are consistent with Officer A's account.

What are the possible justifications for Officer A's use of force in these circumstances?

40. As already described, it is necessary to apply the language of the Crimes Act 1961 in assessing whether the force used by Officer A was justified. That is because the power to use force against other people in particular situations is derived from certain provisions of the Act. The most relevant provisions here are sections 40 and 48.
41. Section 40 empowers Police to use *"such force as may be necessary"* to prevent the escape of someone who takes to flight to avoid arrest. Section 48 provides that any person, including a Police officer, is legally justified in using reasonable force in defence of themselves or another.
42. We consider that section 48 is the most appropriate provision to apply in this case, because Officer A says he shot Mr X due to the threat he posed to himself and others.

Was Officer A justified in shooting Mr X to defend himself and others?

43. The s48 assessment involves three questions:
 - a) What were the circumstances as the officer believed them to be (a subjective test)?
 - b) Was the officer's use of force against Mr X for the purpose of defending himself or another (a subjective test)?
 - c) Was the officer's use of force against Mr X reasonable in the circumstances as the officer believed them to be (an objective test)?

What were the circumstances as Officer A believed them to be?

44. Officer A did not know Mr X's identity and criminal history, but knew the stolen car Mr X was driving had been involved in an aggravated robbery the day before where a firearm had been presented. He therefore suspected Mr X had a firearm, and this was confirmed when ATOC advised they had seen a long-barrelled firearm on the passenger seat of the stolen car during the pursuit.
45. Officer A's first sighting of Mr X after he got out the stolen car was him standing next to a car about 30 metres away, pointing his firearm at a driver and then at him. Officer A then saw Mr X run away from him and approach a truck. Mr X opened the passenger door and began climbing into the cab yelling at the driver. Officer A told us he considered using a Taser to apprehend Mr X but was not close enough for the probes to reach him and was fearful that Mr X could turn at any point and fire at him.
46. Officer A took up a position at the rear of the car in front of the truck and decided to shoot Mr X with his pistol. He says he considered telling Mr X to drop his firearm again, but decided it was impractical at the time because he had no cover where he was standing and had to focus on his aim. Officer A believed he had less than a second before Mr X would point his firearm at the truck driver.

47. He says he saw Mr X point his firearm at the truck driver's head from less than a metre away as he climbed into the passenger seat. The truck driver was leaning away from him in terror, reaching to open his door.
48. Officer A told us he believed that Mr X intended to rob the truck and use it to escape, and that he was willing to shoot the truck driver to facilitate this. Officer A also believed that if Mr X gained control of the truck, he would be driving it directly towards arriving Police officers and members of the public. He knew Mr X was willing to ram other vehicles, as he had already done so. He thought that if Mr X had control of the truck, he would pose a much more serious risk to the public and Police due to the size of the truck and the force it could exert.
49. Officer A was also aware that the truck driver's seat provided a perfect elevated vantage point for firing upon arriving Police as it was about 2.5 metres off the ground.
50. The truck driver reaching for his door created a gap between him and Mr X. Officer A told us he was confident he would hit Mr X and not the truck driver when he fired his shots.

Was Officer A's use of force against Mr X for the purpose of defending himself or another?

51. We accept that Officer A shot at Mr X to defend the truck driver and himself, as well as other officers and members of the public.

Was Officer A's use of force against Mr X reasonable in the circumstances as Officer A believed them to be?

52. When Officer A fired shots at Mr X, he believed Mr X posed an immediate threat to the truck driver and an ongoing serious risk to himself, the public and any other Police officers he encountered. We are satisfied that Officer A needed to respond urgently because Mr X posed a real and imminent threat. The potential dangers Officer A identified were not merely speculative and, if any of the risks materialised, the consequences could be grave: death or serious injury.
53. Officer A had tried calling on Mr X to surrender without success. We accept that Officer A had no reasonable and less violent option other than the use of his firearm available to stop Mr X and eliminate the risk he posed. Other tactical options such as batons, pepper spray, and Tasers were all clearly unsuited to the task. Sponge rounds or a Police dog may have been suitable had they been available at the time, but the officers with these options were not yet on scene due to the speed at which this incident unfolded. We have of course considered the risk Officer A's decision to shoot at Mr X posed to the driver of the truck (and potentially others). However, it seems to us that that risk was materially less than the risk would have resulted in the Officer failing to act. Accordingly, it is unnecessary for us to consider the possibility of civil or criminal responsibility.
54. In our assessment, Officer A's use of force was reasonable and proportionate having regard to the circumstances as he believed them to be.

FINDING ON ISSUE 2

Officer A was justified in shooting Mr X to defend himself and others.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

11 November 2025

IPCA: 23-19771

Appendix

CRIMES ACT 1961

55. Section 40(1) of the Crimes Act states:

“Preventing escape or rescue

(1) *Where any person is lawfully authorised to arrest or to assist in arresting any other person, or is justified in or protected from criminal responsibility for arresting or assisting to arrest any other person, that authority, justification, or protection, as the case may be, shall extend and apply to the use of such force as may be necessary—*

(a) *to prevent the escape of that other person if he or she takes to flight in order to avoid arrest; or*

(b) *to prevent the escape or rescue of that other person after his or her arrest—*

unless in any such case the escape or rescue can be prevented by reasonable means in a less violent manner:

provided that, except in the case of a constable or a person called upon by a constable to assist him or her, this subsection shall not apply where the force used is intended or likely to cause death or grievous bodily harm.”

56. Section 48(1) provides:

“Self-defence and defence of another

(1) *Every one 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.”*

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.

We are not part of the Police – the law requires us to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Kenneth Johnston KC.

Being independent means that the Authority makes its own findings based on the facts and the law. We do not answer to the Police, the Government or anyone else over those findings. In this way, our 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 and may choose to investigate:

- complaints alleging misconduct or neglect of duty by Police;
- complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- notifications of incidents in which Police actions have caused or appear to have caused death or serious bodily harm; and
- referrals by Police under a Memorandum of Understanding between the Authority and Police, which covers instances of potential reputational risk to Police (including serious offending by a Police officer or Police actions that may have an element of corruption).

The Authority's investigation may include visiting the scene of the incident, interviewing the officers involved and any witnesses, and reviewing evidence from the Police's investigation.

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. 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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