IPCA
Independent Police Conduct Authority
Whaia te pono, kia puawai ko te tika

Complaint of excessive force following arrest in Hokitika

INTRODUCTION

1. On 21 April 2015, Mr X was arrested by Police in Hokitika after threatening five different people. During the arrest, Officer A twice used a Taser on Mr X.

2. Local Police and the community were aware of Mr X and his mental health issues.

3. On 29 April 2015, Mr X made a statement to Police about the circumstances of his arrest. He said that he considered the first use of Taser on him was justified, as he did not stop after he was warned. His complaints were that:

    a) the second use of Taser was not necessary as he was on the ground and not resisting;

    b) Officer B kicked him in the head and used his running shoe to pin him down by his neck with "*considerable force*" and it was not necessary;

    c) when he asked for medical attention for the Taser effects and his sore neck, it was not provided; and

    d) he wanted to make a complaint that night but was told by Officer C to talk to someone in the morning as he was "*extremely busy*".

4. The Authority conducted an independent investigation into the complaint. This report sets out the results of that investigation and the Authority's findings and recommendations.

BACKGROUND

Summary of events

5. At about 5.15pm on 21 April 2015, Mr X approached a group of two men and a woman at a private address in Revell Street, Hokitika and threatened to take their car. He told them that he was "*tough and could fight anyone in Hokitika*". When Mr X was challenged by one of the men,

he accused the man's girlfriend of "*narking*" and said that he was going to "*get her*". He was wearing boxing gloves and told them that they were now on his "*target list*". He made a throat slitting gesture and then left.

6. At 5.35pm the woman of the group made a complaint to Officer A, in front of Officers B and D, at the Hokitika Police station. She complained about Mr X's threatening behaviour.

7. Officers B and D had been at a training day together and Officer A was about to give them a lift home. As a result of the complaint, Officers A, B and D first went to Mr X's address to arrest him but were unable to locate him. Officer A then drove Officers B and D home.

8. At about 10pm, Officer A received another complaint about Mr X. The caller said that he was banging on the front window of the local bar. He had reportedly threatened the female bar owner, and other patrons, with a throat slitting gesture. Mr X had been trespassed from this bar four days earlier.

9. At about 10.50pm that same night, Police received a third complaint through the Southern Communications Centre (SouthComms). The caller said that Mr X had threatened another person with a stick at that person's home on Hampden Street.

10. A short time later, Officer B was off duty when he heard his dog growl and a disturbance in his front yard. He went out to the porch and saw Mr X at the corner of Stafford Street and Davie Street. Officer B told the Authority that he heard the sound of a Police car's engine cruising slowly down the street and suspected Officer A was looking for Mr X, so he telephoned Officer A to tell him where Mr X was.

11. Officer B then called out to Mr X to stop, telling him that he was under arrest, but Mr X ran off. Officer B ran after him.

12. Officer A said that he was in the process of radioing SouthComms to request a Police dog when he saw Mr X appear from a yard and run towards another property. Officer A got out of the patrol car and after a short foot chase, he found Mr X on Stafford Street. After warning him, he tasered and arrested him (see paragraphs 21-25 for further detail).

13. Officer B arrived at the scene, after Mr X had been tasered twice, and helped control Mr X on the ground before assisting Officer A to transport Mr X to the Hokitika Police station.

14. Mr X and the Police have different views of the force used during Mr X's arrest. Both versions are set out below.

Mr X's Version of Events

15. Mr X admits hiding from the Police at a private property. He said that he considered the first use of Taser on him was justified, as he did not stop after he was warned. He said; "*I have no issues with [Officer A] using the Taser as I was running away and he had called on me to stop and I ignored this*".

16. However, he said he was "*spread eagled*" on the ground when Officer A tasered him a second

time. He said that he was waving his arms around, due to the effects of the Taser, but he was not resisting.

17. Mr X also complained that, after he was tasered the second time, Officer B kicked him in the head and used his running shoe to push down on his neck and pin him on the ground, choking him for about 20 seconds. Mr X said he had a sore shoulder but that it was okay after a few days.

18. Mr X said that he asked for medical treatment when he was taken back to Hokitika station but none was provided. However, Mr X said, "*At the Greymouth station I got attention from [Officer C] who put plasters on my back".*

19. Mr X further said that he mentioned his sore neck and wanting to make a complaint and that Officer C told him talk to someone in the morning as he was *"extremely busy*".

Officers' Versions of Events

20. Officer A was working alone in Hokitika, where the nearest support is in Greymouth, 40kms away.

First Taser

21. Officer A told the Authority that he caught up to Mr X and followed him into a dark yard. The officer warned him that he would use the Taser, "*stop or I'll Taser you*". Officer A said that as he called out this warning, Mr X tripped and as he got up, to continue running away, Officer A tasered him in the back.

22. In his Tactical Options Report (TOR)[1], Officer A said that before using his Taser, he considered that Mr X was a threat to him and Officer B due to a combination of:

- Mr X's physical stature,
- the fact that he was on his own (before Officer B arrived),
- his previous knowledge of Mr X's mental illness and his past dealings with him, and
- the fact that Mr X had threatened five people on three different occasions earlier that night.

23. Officer A knew that there were no other officers on duty to call on for support. He said that Mr X continued to run away after he was warned. Officer A considered it likely that Mr X would continue to offend if he was not immediately stopped and arrested and that the Taser was the best option to enable him to do this.

Second Taser

24. Officer A told the Authority that after the first use of the Taser, Mr X was on the ground face

[1] A report that an officer is required to complete when he or she has used 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.

down, with his hands under his torso. Officer A said, "*I was just really concerned about the fact that he was so tensed up and I wasn't sure what he had in his hands, he was lying prone*[2] *and his arms were underneath him and they didn't look like they were going to come out anytime, and it just looked like he would either spring back to his feet or have a go*".

25. Officer A said that he feared for his safety, as Mr X *"is a very large individual and mentally unwell…I did not wish to engage with him in that situation. I discharged the Taser for a second time*".

26. Officer B arrived when Mr X was on the ground, after the second Taser application. Officer A said that with Officer B's help they managed to get Mr X's hands out from underneath him, as he was resisting, and handcuff him.

Alleged Kick

27. Officer B denies kicking Mr X in the head. The officer said that when he arrived at the scene he took Officer A' s handcuffs from his vest, knelt down and put one of his knees on Mr X's back to control him while he was putting the handcuffs on him. As this occurred, Officer A stood over them with the Taser.

28. Officer B said that Mr X "*tried to push/roll over using his legs off the ground at which time I used a right forearm across the top of his shoulders to push him back into the prone position*".

29. The officer further said, "*I remember [Officer A] informing [Mr X] that he was under arrest, [Mr X] continued to try and struggle and I told him to stop resisting, I ended up half kneeling on [Mr X's] right shoulder and right lower back and holding his head with my right hand to keep him from moving*".

30. Officer A said that Officer B did not kick Mr X. Officer A said that Mr X was repeatedly told to stop struggling and that Officer B had his knee on Mr X's lower back to control him.

Back at the Police station – Aftercare and failure to take Mr X's complaint

31. Officer B removed the Taser probes, which were located in the material of Mr X's track suit pants' leg and in his lower back, before putting Mr X in the patrol car.

32. Officers A and B advised their supervisor, Officer C, who was at Greymouth Police station, that a Taser had been deployed. Officers A and B briefed Officer C about the incident and their concerns for Mr X's mental health.

33. Back at Hokitika Police station, Mr X became verbally and physically aggressive, to the extent that the officers chose to leave the handcuffs on him while he was in the cells. Officer A said, "*back at the station Mr X was just out of control. He was in the cells just absolutely going to town".* Officer B described Mr X as *"raging, at this stage he was yelling and screaming, his face was a bright red colour and he was kicking the cell door".*

[2] Lying face down on the ground.

34. As a result, the officers decided that it was not safe to have a doctor attend to Mr X, to check on his health after being tasered. Instead they called a prison van from Greymouth to transport Mr X there for processing[3] and overnight custody, instead of taking him by a patrol car, as they thought it would be safer.

35. Officer C drove the prison van from Greymouth to Hokitika station and arrived at 11.40pm. As the area supervisor, Officer C was required by policy to attend and ensure post Taser policy requirements were complied with.

36. Officer C observed Mr X in the cell and noted that he appeared agitated and was lying on a mattress, restrained in handcuffs. Officer C spent about an hour at Hokitika station supervising the post Taser policy requirements (see paragraph 62). These included:

- observing that Mr X had a single puncture wound from being tasered and monitoring him;
- ensuring the TOR was completed and that he signed it off as the supervisor; and
- ensuring that the Taser Cam footage was downloaded and the Taser probes and cartridge identification tags were secured in the Police exhibit store.

37. Officer C then took Mr X back to Greymouth Police station in the prison van. By the time they arrived in Greymouth, Mr X had calmed down and his handcuffs were removed. On arrival, Mr X was put in a monitored cell[4] and Officer C wiped the Taser puncture wound with an antiseptic wipe and put on a dressing.

38. Officer C acknowledged that Mr X was not examined by a registered doctor due to an "*oversight*". He explained to the Authority that this meant that he had forgotten that Police policy requires that a doctor be called out for every Taser deployment regardless of the injuries suffered. Officer C reported that a mental health nurse checked on Mr X's mental health the next morning in Greymouth.

39. Officer C told the Authority that Mr X had said that he wanted some medical attention and that he wanted to "*get*" Officer B for what he had done to him. Officer C said he did not realise that Mr X wanted to make a formal complaint.

40. Officer C filled out the supervisor's section of the TOR, in which he approved both of Officer A's Taser deployments, but he did not document the post Taser procedures which he had completed. Officer C stated in the TOR that Officer A's use of the Taser on Mr X was "*justified and reasonable in the circumstances*".

41. Officer E, the TOR Reviewer[5], also supported both uses of the Taser when he viewed the Taser Cam footage and reviewed and signed off the TOR. He stated "*Taser footage viewed,*

[3] Prisoners from Hokitika are required to be transported to Greymouth.
[4] This means that the cell is monitored by a CCTV camera.
[5] A senior officer, who is an inspector or above, must view the Taser cam footage and decide whether the use of the Taser was justified in accordance with policy. They enter their comments on the TOR after the first supervisor has done so.

appropriate tactical option used to arrest offender. Justification under sections 38 and 40 of the Crimes Act 1961".

Taser Cam Footage

42. During its investigation, the Authority has analysed video footage of the incident provided by the camera in Officer A's Taser (Taser Cam footage). The Taser Cam began recording when Officer A activated the Taser. The recording lasted for 2.30 minutes from 10:51:45pm. Officer A's Taser fired two five second discharges[6].

43. The Taser Cam footage shows the Taser sighted on Mr X's lower back and then the Taser discharge noise can be heard and Mr X yells and goes to the ground, lying face down.

44. Officer A instructs Mr X to put his hands behind his back. As Mr X does this, the Taser is discharged for a second time. The footage does not show Mr X being aggressive or assaultive towards Officer A.

45. Officer B can be seen putting the handcuffs on, behind Mr X's back. Whilst the camera is not always focused on Mr X's head and back, the footage does not show any officer kick Mr X or place their knee on Mr X's back or neck. It does show Officer B holding onto the back of Mr X's neck with his hands for a few seconds.

Mr X

46. Mr X was 37 years old at the time of this incident. He is 182cms tall and of solid build. He has a history of mental illness and is well known to Police. His mental illness is adversely affected by alcohol and drug taking and he has been trespassed from several Hokitika addresses.

47. Following this incident, Mr X was charged with threatening behaviour (x5), possession of cannabis and loitering. He pleaded guilty to all of the charges and was convicted and discharged on 2 June 2015.

Police officers involved

48. At the time of this incident, Officer A (a constable) had served about 13 years in the Police. His Taser certification was current.

49. Officer B (a constable) had served about 17 years in the Police.

50. Officer C had served about 28 years in the Police, including 11 years as a sergeant.

[6] A standard discharge is five seconds and it is automatic once fired.

Use of force by Police

Legal provisions

51. Section 39 of the Crimes Act 1961 provides for a Police officer 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."*

52. Section 40 of the Crimes Act 1961 provides that a Police officer may use necessary force in order to prevent a person from fleeing to avoid arrest, unless the escape can be prevented by reasonable means in a less violent manner.

53. Section 62 of the Crimes Act 1961 makes a Police officer criminally responsible for excessive use of force.

Police guidance on use of force

54. 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.

55. 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.

56. An officer 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. Police refer to this assessment as an officer's Perceived Cumulative Assessment (PCA).

57. 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.

58. Police 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.

Use of Taser

59. Police policy states that a Taser may only be used to arrest an offender if the officer believes the offender poses a risk of physical injury and the arrest cannot be effected less forcefully. A Taser must only be used on a person who is assaultive (defined as *"actively hostile behaviour accompanied by physical actions or intent, expressed either verbally and/or through body language, to cause physical harm"*) and cannot be used on a person who uses passive resistance in relation to Police.

60. Police policy expressly states that a Taser should never be used against an uncooperative but non-aggressive person to induce compliance.

61. Police policy also states that subsequent applications and extended cycles of the Taser should be avoided, but where they are unavoidable must be reasonable, necessary and proportionate in the circumstances.

62. The Taser policy further provides that supervisors must:

- attend the scene as soon as possible and ensure proper aftercare and any appropriate medical attention has been provided;
- preserve and photograph the scene;
- ensure that all evidence, including discharged cartridges, wires, probes and sufficient (4-5) cartridge identification tags (CIT) are recovered from the scene and secured appropriately;
- determine whether the use of the Taser was in accordance with policy;
- ensure the operator fills out the Taser register;
- ensure the operator submits a Tactical Options Report;
- ensure the operator involved uploads the incident into Evidence.Com; and
- informs the district Taser coordinator of the incident.

63. The 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. It also states that Mental Health patients are among those at greatest risk from any harmful effects of a Taser.

Tactical Options Report

64. On the TOR form there is a requirement that the senior officer/inspector reviewing the use of the Taser must view the Taser Cam footage and firing log and note that they have done so in their comments.

Complaints

65. Police policy states that every complaint received by Police must be dealt with promptly, and the complainant advised of the procedure to take their complaint forward. A Police employee who receives a complaint at a Police station must record the complaint in writing. They must not ask the complainant to return, or attempt to have them dealt with by another Police employee.

ISSUES CONSIDERED

66. The Authority's investigation considered the following issues:

1) Was Officer A's first use of the Taser justified?

2) Was Officer A's second use of the Taser justified?

3) Was Officer B's use of force during the arrest of Mr X excessive?

4) Was the appropriate medical care given to Mr X after he was tasered?

5) Did Officer A's supervisors correctly determine whether his use of the Taser was in accordance with policy?

6) Did Officer C fail to take a complaint from Mr X?

THE AUTHORITY'S FINDINGS

Issue 1: Was Officer A's first use of the Taser justified?

67. As outlined in paragraph 21, when Officer A caught up with Mr X he warned Mr X to stop or he would be tasered.

68. Sections 39 and 48 of the Crimes Act 1961 authorised Officer A to use reasonable force necessary to effect Mr X's arrest and in defence of himself. Section 40 (see paragraph 52) provides that a Police officer may use necessary force in order to prevent a person from fleeing to avoid arrest, unless the escape can be prevented by reasonable means in a less violent manner.

69. However, Police policy states that a Taser may only be used to arrest an offender if the officer believes the offender poses a risk of physical injury and the arrest cannot be effected less forcefully. A Taser must only be used on a person who is 'assaultive' (defined as *"actively hostile behaviour accompanied by physical actions or intent, expressed either verbally and/or through*

body language, to cause physical harm") and cannot be used on a person who uses passive resistance in relation to Police (see paragraph 59).

70. Mr X did not complain about being tasered the first time. He accepts that he was called on to stop and ignored the officer (see paragraph 15). However, the Authority has still considered whether this first use of the Taser was justified.

71. Officer A confirmed what Mr X said about being called upon to stop or he would be tasered. The officer said the yard Mr X was running into was dark and he knew about Mr X's psychiatric history, his unpredictability, and the complaints made about him. He said that Mr X was a big man who had failed to stop on command.

72. Officer A said that he believed he "*acted in good faith*", as he was on his own, and the Taser was the only option available to him at that time to arrest Mr X and prevent him from escaping. He said that he would not have been able to arrest him using empty hand tactics alone.

73. In assessing Officer A's justification for using the Taser, the Authority acknowledges that Officer A was alone and believed that Mr X needed to be arrested so that he did not continue to commit offences against members of the public. For this reason, Officer A's actions were not unlawful, as Officer A believed he was using necessary force to prevent Mr X from fleeing to avoid arrest.

74. However, Police policy clearly states that a Taser must only be used on a person who is 'assaultive'. Mr X was running away at the time he was tasered; he was actively resisting but was not assaultive. Therefore, Officer A's first use of the Taser on Mr X was in breach of policy.

FINDING

Officer A's first use of the Taser was in breach of Police policy.

Issue 2: Was Officer A's second use of the Taser justified?

75. Police policy expressly states that a Taser should never be used against an uncooperative but non-aggressive person to induce compliance (see paragraph 60).

76. Police policy also states that subsequent applications and extended cycles of the Taser should be avoided, but where they are unavoidable must be reasonable, necessary and proportionate in the circumstances (see paragraph 61).

77. After the first Taser deployment, Mr X was on the ground, face down with his hands underneath his body.

78. Officer A said that even when Mr X was on the ground he still posed a threat as it was dark and he could not see Mr X's hands and whether he had anything in them. The officer said that Mr X was very tense and he did not know if Mr X was going to jump up and "*have a go*". Officer A interpreted these movements as Mr X being aggressive or preparing to flee again.

79. Officer A was the only officer on duty in the Hokitika area at that time and he was unaware of Officer B's exact proximity. He said that a combination of these factors led him to believe that a second deployment of the Taser was necessary.

80. There are conflicting statements about whether Mr X was waving his arms around, as he said, or they were under his body, and difficult to get out, as stated by the officers. However, the Taser Cam footage shows that Mr X was not waving his arms around and was no immediate threat to anybody. He was lying face down on the ground and was clearly not assaultive.

81. It also shows the deployment of a second five second cycle occurred two seconds after the end of the first cycle, which did not give Mr X enough time to comply with Police instructions to put his hands behind his back.

82. After considering the evidence, the Authority does not consider that the second deployment of the Taser was justified. Mr X put his hands behind his back at the same time as he was tasered for the second time.

FINDING

Officer A's second use of the Taser was a disproportionate and unjustified use of force.

Issue 3: Was Officer B's use of force during the arrest of Mr X excessive?

83. Mr X complained that Officer B kicked him in the head and pinned him to the ground with his foot, choking him for about 20 seconds, after he was tasered the second time.

84. Officer B denied kicking Mr X or pinning him to the ground with his foot. He said that when he arrived at the scene Mr X was already on the ground. He said that he put one of his knees on Mr X's back to control him while he was handcuffed, while Officer A stood over them with the Taser.

85. Officer A said that Officer B did not kick Mr X. Officer A said that Mr X was repeatedly told to stop struggling and that Officer B had his knee on Mr X's lower back to control him.

86. The Taser Cam footage shows Mr X on the ground face down and Officer B handcuffing him behind his back. While the Taser camera momentarily points away from Mr X's back and neck, it does not show any kick or any knees on Mr X's back or neck. It does show Officer B holding onto the back of Mr X's neck with his hands for a few seconds.

87. After considering all the evidence, the Authority is satisfied, on the balance of probabilities, that Officer B did not kick Mr X in the head or pin him to the ground with his foot.

FINDINGS

Officer B's use of force to handcuff and control Mr X was reasonable and justified in the circumstances.

Officer B did not kick Mr X in the head or pin him to the ground with his foot.

Issue 4: Was the appropriate medical care given to Mr X after he was tasered?

88. The 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. It also states that Mental Health patients, like Mr X, are among those at greatest risk from any harmful effects of a Taser (see paragraph 63).

89. Back at the Hokitika Police station, Mr X became verbally and physically aggressive, to the extent that Officers A and B decided to leave the handcuffs on while he was in the cells. The officers also decided that it was not safe to have a doctor attend to Mr X.

90. As a result of its investigation, the Authority accepts that it was not practicable for a doctor to attend to Mr X while he was in an aggressive state at the Hokitika Police station. The Authority is of the view that the earliest practical opportunity was when he settled down at the Greymouth station in the early hours of 22 April 2015.

91. Officer C, as the supervisor, should have ensured that, at the Greymouth station, Mr X was examined by a doctor as soon as practicable, particularly given that Mr X suffers from a mental illness.

92. Officer C acknowledged that he did not call a doctor to examine Mr X due to an "*oversight*".

FINDING

Officer C did not comply with policy regarding appropriate Taser aftercare.

Issue 5: Did Officer A's supervisors correctly determine whether his use of the Taser was in accordance with policy?

93. The Taser policy requires a supervisor to determine whether the use of the Taser was in accordance with policy (see paragraph 62). Officer C approved both of Officer A's Taser deployments, recording in the TOR that they were *"justified and reasonable in the circumstances."*

94. Likewise, Officer E, the TOR Reviewer, also supported both uses of the Taser when he viewed the Taser Cam footage, as is required (see paragraph 64), and reviewed and signed off Officer A's TOR. Officer E noted, *"…appropriate tactical option used to arrest offender. Justification under sections 38 and 40 of the Crimes Act 1961."*

95. The Authority does not agree with the determination of Officers C and E. The officers should have recognised that Officer A breached Police policy in his first use of Taser, as Mr X was not 'assaultive' when he was tasered in the back. More significantly, both officers were wrong to record that the second use of Taser was justified and an appropriate tactical option. It is clear from the Taser Cam footage that Mr X was lying on his stomach and was putting his hands behind his back at the time the second tasering took place. He was not physically resisting in any way, and was in fact complying with the instruction of Officer A.

FINDING

Officers C and E wrongly determined that Officer A's use of the Taser complied with policy.

Issue 6: Did Officer C fail to take a complaint from Mr X?

96. Police policy states that every complaint received by Police must be dealt with promptly, and the complainant advised of the procedure to take their complaint forward. A Police employee who receives a complaint at a Police station must record the complaint in writing. They must not ask the complainant to return, or attempt to have them dealt with by another Police employee.

97. Mr X said that he told Officer C that he had a sore neck and wanted to make a complaint. He said that the officer told him to talk to someone in the morning as he was "*extremely busy*".

98. Officer C told the Authority that Mr X had said that he wanted some medical attention and that he wanted to "*get*" Officer B but he did not appreciate that Mr X wanted to make a formal complaint about it.

99. Officer C said that Mr X seemed "*quite happy*" after the officer attended to his wound and that Mr X went to sleep. Officer C told the Authority that he would have done something more if Mr X had not been happy.

100. There is a conflict in the evidence as to whether Mr X made it clear to Officer C that he wished to make a complaint.

FINDING

Due to the conflict in evidence, the Authority is unable to make a finding as to whether or not Mr X made it clear to Officer C that he wished to make a complaint.

CONCLUSIONS

101. The Authority has reached the following conclusions on the balance of probabilities:

101.1 Officer A's first use of the Taser was in breach of Police policy.

101.2 Officer A's second use of the Taser was a disproportionate and unjustified use of force;

101.3 Officer B did not kick Mr X in the head and his use of force used was reasonable and justified in the circumstances;

101.4 Officer C did not comply with policy regarding appropriate Taser aftercare;

101.5 Officers C and E wrongly determined that Officer A's use of the Taser complied with policy.

101.6 the Authority is unable to make a finding as to whether or not Mr X made it clear to Officer C that he wished to make a complaint.

RECOMMENDATION

102. The Authority recommends that Police review the Taser policy in order to make provision for the use of a Taser for the purposes of preventing a person from evading lawful custody, in clearly defined circumstances.

Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

26 October 2016

IPCA: 14-2150

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 Sir David J. Carruthers.

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.

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