

Police shoot man at Flaxmere Primary School

Summary of the Incident

1. On the afternoon of 17 December 2019, Officers A and B went to the Flaxmere Primary School in response to a report of a man (Mr X) behaving in a threatening manner. When the officers approached Mr X inside the school grounds, he presented a pistol¹ that was tucked into the front of his shorts.
2. Officer A challenged Mr X to drop his weapon, but Mr X ran from the grounds onto an adjoining street still holding the pistol in his hand. The officers chased him and called on him to drop his weapon, however Mr X ran through a residential property and jumped a fence back into the school grounds.
3. Mr X ran to the centre of the school netball court while Officers A and B positioned themselves behind cover around the court perimeter, as did Officers C (a Police dog handler) and D who had arrived to assist.
4. Officer C released his Police dog to apprehend Mr X. As the dog ran forward, Mr X pulled the air pistol from the front of his shorts and waved it around his body. Officer A fired one shot from his Bushmaster rifle at Mr X and Officer D discharged his Taser.
5. Mr X dropped the air pistol and fell to the ground. The Taser probes did not connect with Mr X's body, but he received a gunshot wound to his arm and abdomen. First aid was administered, and he was taken to hospital and underwent surgery for his injuries.
6. The Police reported this incident to the Authority on 18 December 2019 and the Authority conducted an independent investigation into the force used when Mr X was arrested.

¹ A pistol that met the definition of an 'air pistol' under the Arms Act 1983.

The Authority's Investigation

7. As part of its investigation the Authority interviewed Officers A, B, C and D and six civilian witnesses. It also reviewed the Police investigation file including the evidential statements of the Police officers and civilian witnesses, the Central Communications Centre (CentComms) audio transmissions, and the Taser Camera and CCTV footage of the incident.
8. The Authority considered:
 - 1) whether Officer A was justified in shooting Mr X; and
 - 2) whether the command and control arrangements were appropriate.

The Authority's Findings

ISSUE 1: WAS OFFICER A JUSTIFIED IN SHOOTING MR X?

Background

9. At about 8am on 17 December 2019 Mr X went to the Flaxmere Primary School where his ex-partner worked as a teacher. Mr X had not seen or had contact with his ex-partner for some time and he wanted to see how she was and what she had been up to. He had with him their 8-year old daughter who, although not a pupil at the school, was on school holidays and wanting to spend the day in the care of her mother.
10. When Mr X entered the classroom, his ex-partner was not present but before leaving he took with him her mobile phone that was on her desk. Mr X was depressed about the breakup of their relationship, and on reading some of the messages on her phone, he became more distressed to the point of feeling suicidal.
11. About an hour later Mr X was again in the school grounds when he was approached by his ex-partner. He said he wanted to speak with her, but she said she was going back to her classroom. After she left, Mr X was approached by the school Deputy Principal who asked if he was okay and if there was anything she could help him with. Mr X shook his head and walked out of the school grounds.
12. After leaving the school Mr X attended his place of work for a short time before going to a local discount store and buying an air pistol. He then visited some of his children before returning to Flaxmere Primary School to see his daughter. Mr X told the Authority that with everything going on in his life, he had decided he wanted to die that day.
13. At about 2pm, Mr X returned to the school with the air pistol tucked into the front of his shorts, concealed by his tee shirt. The Deputy Principal approached him and asked if there was anything she could help him with. Mr X replied that he was there to pick up his daughter.

14. The Deputy Principal went and spoke with Mr X's ex-partner and their daughter who said she did not wish to go with Mr X. When the Deputy Principal told Mr X of this, he said *"If I don't get to see those two, the school is going to go into lockdown"*.
15. The school Principal was advised, and she, too, spoke briefly to Mr X but he did not engage with her. Concerned with the situation, the Principal commenced lockdown procedures and arranged for Police to be called. The Deputy Principal and another teacher continued to speak with Mr X, trying to calm him down.

Arrival of Officers A and B

16. Officers A and B were starting their shift at the Flaxmere Police Station when the call came in. They were told that a man was at the Flaxmere Primary School behaving in a threatening manner.
17. When they arrived at the school, they spoke with the Principal who told them of the domestic situation between Mr X and his ex-partner, and the threat Mr X had made to put the school into lockdown if he did not see his daughter. They noticed the school was in lockdown, with curtains drawn and no children in sight. The Principal directed them to where the Deputy Principal was still speaking with Mr X.

Initial engagement with Mr X

18. Officers A and B approached Mr X and the Deputy Principal who were standing talking to each other. Officer A described Mr X as appearing to be emotional, hyped up and speaking with a raised voice.
19. Mr X raised his tee shirt, clearly exposing the handle of the air pistol that was tucked into the front of his shorts. On seeing this, Officer A advised CentComms by radio that Mr X had a firearm². Officer A then spoke with Mr X about seeing his daughter but said he first had to put down his gun.
20. Officer B returned to the patrol car to obtain their police firearms and he put on a Hard Armour Plate (also known as HAP - a ballistic body armour vest). A second HAP was not available for Officer A who explained to the Authority that his patrol car was one normally equipped for only one officer.
21. Officer B returned from the patrol car armed with a Glock pistol and he handed Officer A a Bushmaster rifle. When Mr X saw that Officers A and B were now armed, he pulled the air pistol from his pants (but did not present it at them). Officer A yelled at Mr X, *"armed Police, drop the weapon"*. In response, Mr X ran off down the school driveway holding the air pistol in his right hand.
22. Officers A and B (and a third officer who had arrived to assist) ran after Mr X, taking cover behind parked vehicles in the school driveway, calling on him to drop his weapon. Mr X stopped momentarily in the middle of the road before running through a residential property and

² The air pistol had the appearance of a Glock or similar operational handgun.

jumping the backyard fence into the school grounds. The officers ran back into the school and found Mr X standing in the middle of the school netball court.

23. While this was happening, Officers C and D were also on their way to the school, working separately but arriving at the same time. They heard over the radio Mr X had a firearm down his pants, had run off, but was now back in the school grounds on the netball court.

The arrest of Mr X and the use of force

24. When Mr X reached the netball court, he had his hands to his side and was not carrying the air pistol. The Officers positioned themselves around the perimeter of the court, Officer A behind a tree to Mr X's left and Officer B to his right holding cover by a classroom about 25 metres away.
25. From this position Mr X spoke with Officer B, telling him he was happy to talk to him, but he just wanted to see his daughter. Officer B repeated several times "*.... if you walk over there and put your gun down, we'll talk about you seeing your daughter*". Officer A was also yelling at Mr X to "*get on the ground*" and Mr X replied, "*I'm not talking to you, I'm talking to him [Officer B]*".
26. While Officer B was talking with Mr X, Officers C and D arrived at the netball court. Officer D moved closer to where Officer B was positioned, while Officer C remained about 20 metres in front of Mr X holding his Police dog.
27. Officer C then released his dog to apprehend Mr X. As the dog ran towards him, Mr X reached into the front of his shorts with his right hand and pulled out the air pistol. Officer C was about nine meters in front of Mr X, running behind his dog. Mr X brought his left hand to the air pistol and appeared to action it³ before moving the gun downwards to his side. Officer D was now walking towards Mr X with his Taser aimed at him, also about nine meters away. Simultaneously, Officer D discharged his Taser at Mr X and Officer A fired one round from his rifle, penetrating Mr X's arm and abdomen. Mr X dropped the air pistol and fell to the ground. The Police dog took hold of Mr X's leg but was removed by Officer C without causing injury. The Authority has viewed the CCTV footage and estimates the time between Mr X pulling the air pistol from his pants and being shot was three seconds.
28. Officer C told the Authority he believed they were dealing with someone who was "*highly driven*". He said he could see Mr X looked anxious in the middle of the court. He knew that Mr X had already run off once, and the school was still full of children. Officer C said he also considered the safety of the teachers, himself and his colleagues. He said, "*there was no way I was letting him out of that courtyard or out of that school or giving him a chance or opportunity to use that firearm.....hence, the dog was deployed*". The Authority considers Officer C's deployment of the Police dog was a reasonable and proportionate use of force in the circumstances.
29. Officer D told the Authority he knew Mr X was concealing a pistol in his pants and he could hear the other officers telling Mr X to get on the ground. When he heard Officer C release his dog, Officer D said he 'broke cover' and started moving closer to Mr X. Officer D said "*by the time*

³ The method by which ammunition is loaded into the breech

[Mr X] drew the pistol I was at the point of no return and I thought I was close enough to engage him with the Taser...I believed he was in the death/GBH [level] of the tactical options framework". The Taser was fired out of range, so the probes did not affect Mr X. The Authority considers Officer D's discharge of the Taser was a reasonable and proportionate use of force in the circumstances.

Was Officer A justified in shooting Mr X?

30. Officer A said he fired his rifle in self-defence. 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."

31. To rely on this justification for his use of force, Officer A's actions must be assessed on the following three questions:

- a) What did he believe the circumstances to be at the time he shot Mr X?
- b) In light of that belief, did he fire the shot for the purpose of defending himself or others?
- c) If he did, was shooting Mr X reasonable in the circumstances as he believed them to be?

What did Officer A believe the circumstances to be at the time he fired the shot at Mr X?

32. Officer A believed that:

- Mr X was involved in a relationship breakdown and had threatened to put the school into lockdown if he could not see his daughter;
- the school was full of children and teachers;
- the school was in lockdown;
- Mr X was armed with a pistol and had failed to drop it when challenged to do so;
- Officers B and D were in close proximity to Mr X when he drew the pistol and waved it around his body.

Did Officer A fire the shot for the purpose of defending himself or another?

33. Officer A told the Authority he fired his weapon to defend of Officers B and D.

34. He said *"I believed [Mr X] was presenting a firearm to shoot them.... the purpose of shooting Mr X was to incapacitate him and defend Officers B and D..."*

35. Although Mr X was not aiming the air pistol at the officers the moment he was shot, Officer A had seen him action it for use and Officers C and D were out of cover and moving towards him. The Authority accepts Officer A genuinely believed Mr X could hurt or kill Officers B or D and fired the shot to defend them.

Was the shooting of Mr X reasonable in the circumstances as Officer A believed them to be?

36. Officer A was not aware Officer C had arrived, and he had no warning when the Police dog was released. When he saw Mr X pull the air pistol from his shorts he knew that Officers B and D were in close proximity to Mr X and he believed there was no time to challenge him again. He told the Authority *“it was an instantaneous thing....it all happened within seconds....there was just no time”*.
37. The school grounds were monitored by CCTV cameras. The Taser operated by Officer D included an operational camera. The Authority has viewed the Taser camera and CCTV footage and notes the air pistol has close resemblance to the Glock pistols issued to Police. The footage shows Mr X being shot and confirms Officer A only had about three seconds to consider his options. The Authority also accepts the only other tactical option available to Officer A to use in the circumstances was to either do nothing, or continue to shout at Mr X. Faced with what Officer A perceived as the real and imminent threat of severe injury or death to Officers B and D, his actions in using the rifle were reasonable.
38. Mr X told the Authority he was upset that day and not thinking rationally. He said his purpose in going to the school was to speak to his daughter who he described as having a calming influence over him.
39. Mr X acknowledged he probably wouldn't have been shot if he hadn't pulled the air pistol from his pants. He said the officers involved knew nothing about him and wouldn't have known what sort of pistol it was. He believed the officers probably just saw the pistol and, knowing that there were children close by, [Officer A] *“did what he had to do”*. He said he held no anger towards Police for the action they took.
40. In the circumstances, the use of force by Officer A was reasonable, proportionate and legally justified.

FINDING ON ISSUE 1

Officer A was legally justified in shooting Mr X as it was a reasonable use of force in the circumstances

ISSUE 2: WERE THE COMMAND AND CONTROL ARRANGEMENTS APPROPRIATE?

41. As part of its investigation, the Authority looked at the overall command and control of the Police response to this incident. The Authority notes that the total time from the initial dispatch to Mr X being arrested was approximately 15 minutes. During that time additional units were dispatched, a Safe Forward Point for units was identified, cordons were set up and direction was provided to staff by CentComms. After Mr X was shot, timely first aid was provided, paramedics attended, and a Police incident controller was confirmed.

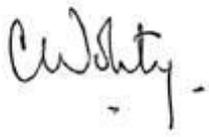
FINDING ON ISSUE 2

The command and control arrangements in response to this incident were appropriate.

Conclusions

42. The Authority found that:

- 1) Officer A was legally justified in shooting Mr X as it was a reasonable use of force in the circumstances.
- 2) The command and control arrangements in response to this incident were appropriate.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

15 July 2020

IPCA: 19-1734

Appendix – Laws and Policies

POLICY

'Use of Force' policy

43. 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.
44. 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.
45. Police officers must 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).
46. Wherever possible and appropriate, officers should use tactical communication throughout an incident, alone or with any other tactical options. Tactical communication is crucial to safely deescalating an incident with uncooperative subjects. Tactical communication should be attempted in every incident where Police action is necessary in response to uncooperative subjects, including those that may require force to be used.
47. 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. 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.

'Firearms' policy

48. An officer may carry a firearm when they have assessed a situation as being within, or likely to escalate to be within, the death/grievous bodily harm range. They must advise their immediate

supervisor and the Police Communications Centre of their decision to carry a firearm as soon as practicable, and also carry a Taser where one is available.

49. Officers must wear approved ballistic body armour, or hard armour plate (HAP) over stab resistant body armour (SRBA).
50. Police may only use firearms for the purposes of defending themselves or others, arresting an offender, or preventing escape where:
 - *“... Police believe on reasonable grounds that the offender poses a threat of death or grievous bodily harm to any person; and*
 - *the offender flees to avoid arrest or escapes after arrest; and the flight or escape cannot reasonably be prevented in a less violent manner.”*
51. Officers should not use a firearm unless it can be done without putting other people in danger.
52. An offender is not to be shot until all of the following conditions have been satisfied:
 - *“they must have first been asked to surrender (unless it is impractical or unsafe to do so);*
 - *it is clear that the person cannot be disarmed or arrested without first being shot; and*
 - *further delay in apprehending the offender would be dangerous or impractical.”*
53. Any officer issued with a firearm is personally responsible for ensuring that he or she is thoroughly familiar with relevant law and all relevant instructions and guidelines in the Police Manual.
54. When dealing with an armed offender or an offender believed to be armed, Police should observe these basic principles:
 - *“It is better to take the matter too seriously than too lightly.*
 - *Treat all armed offenders or offenders believed to be armed, as dangerous and hostile unless there is definite evidence to the contrary.*
 - *Caution is not cowardice.*
 - *When the offender's actions permit, focus on de-escalation, communication, and prevention, cordon the area, and adopt the wait and appeal role in order to negotiate a surrender.*
 - *Never go unnecessarily into danger. However, if the offender is acting in a way that makes casualties likely, Police must act immediately to prevent this.”*

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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