



SUMMARY REPORT

30 November 2012

Shooting justified, Authority finds

An independent investigation has found a Police officer was justified in shooting a man during an incident in Otaki on 24 February 2011.

The Independent Police Conduct Authority has issued a summary report of its detailed investigation into the non-fatal shooting of William Robert Hartley. The matter was reported to the Authority by Police, as required by law when an officer causes serious harm in the course of their duties.

Background

At about 10.30pm, 14 February 2011, Police Central Communications Centre (CentralComms) received a 111 call regarding a domestic assault. A woman alleged that William Robert Hartley had assaulted her and left her on the side of the road in Levin. She alleged that Mr Hartley had threatened to shoot her and had access to firearms although she had not seen them. This information was not recorded by Police in the National Intelligence Application (NIA). The woman was interviewed at the Levin Police station while Police attempted to intercept Mr Hartley without success.

On 23 February, following observations on Mr Hartley's address in Otaki, Officer A made the decision to return to the address to try and locate him. Officer A discussed his intentions with Officer E – the ranking supervisor on duty at Levin – who provided him with Officers C and D to assist. Officer E authorised the carriage of firearms and a Taser by the four officers.

Officers A, C and D met up with Officer B, who was observing at the target address, and at 01.33am (24 February) Officer A advised CentralComms of their intention to enter the premises and that the members were armed. They were not wearing ballistic body armour.

Prior to entering the premises, Officer B observed, through a gap in the curtains, Mr Hartley leave the lounge and walk down the hallway towards the rear of the house. At the same time, another occupant was arrested for obstructing the officers' entry.

By the time Officers A, B and C gained entry into the house, Mr Hartley had used overturned furniture to barricade himself in a bedroom.

Despite repeated verbal requests, Mr Hartley refused to come out of the bedroom. An attempt by the officers to force the door failed. However, Officer A was able to see Mr Hartley through a hole in the door standing in the centre of the room apparently unarmed and posing no obvious threat.

A short time later, whilst still talking to Mr Hartley, Officer A saw Mr Hartley make movements which led him to believe that Mr Hartley was intent on self-harm. As a consequence, Officer A forced the door open.

As Officers A and C were about to enter the room, Mr Hartley partially secreted himself in a wardrobe and produced a firearm which he pointed at Officer A before focusing his attention on Officer C. Officer A immediately stepped back out of the room and drew his Glock.

Officer C saw the rifle barrel pointing at him from a distance of about 2 metres, drew his Glock pistol and fired two rounds through the wardrobe door.

Mr Hartley suffered two non life-threatening gunshot wounds to the right hand and forearm and was taken into custody. His firearm was found to be fully loaded with eight rounds including one in the breach and cocked. It only required pressure on the trigger to discharge.

Mr Hartley was later found guilty on two charges of using a firearm against a member of Police and was sentenced on 22 August 2012 to four years' imprisonment.

Conclusions and recommendations

The Authority's investigation considered eight key issues:

- *Was the response by CentralComms appropriate?*
- *Police response to the family violence incident on 14 February 2011*
- *Planning, preparation and execution of Mr Hartley's apprehension on 23/24 February 2011*
- *Were Officers A, C and D justified in arming themselves for the purpose of apprehending Mr Hartley?*
- *Was Officer C justified in shooting Mr Hartley?*
- *Were other tactical options available and considered?*
- *Was all reasonable assistance given to Mr Hartley after he was shot?*
- *Were there breaches of Police practice, policy or procedure?*

The Authority's findings were:

1. CentralComms staff dealt with the original woman complainant professionally and obtained as much information regarding Mr Hartley's alleged access to firearms as she was likely to give at the time and that information was duly recorded and communicated to field units.
2. Police attending the domestic incident on 14 February 2011 met all requirements however there was a failure to update the National Intelligence Application (NIA) to include reference to Mr Hartley's unconfirmed possession and access to firearms. The Authority is satisfied that this matter has been appropriately addressed by the District.
3. Based on the information available to Officer A, the planning and execution of his strategy to locate Mr Hartley was sound.
4. All officers attending the address were justified and authorised to arm themselves in accordance with relevant Police Instructions.
5. Officer C was lawfully justified in using potentially lethal force to defend himself from Mr Hartley, in the circumstances as he perceived them to be. The nature of the force he used was not excessive in the circumstances.

6. Given the circumstances, there was no opportunity for Officers A and C to consider the other tactical options available to them prior to Mr Hartley being shot.
7. There was no undue delay in officers rendering first aid and summoning medical treatment following Mr Hartley being shot.
8. Officers A, C and D failed to wear ballistic body armour when carrying a firearm in breach of Police policy. Officer E failed in his responsibility as a supervisor to ensure that the three officers complied with policy.

The Authority Chair, Judge Sir David Carruthers, said Police had complied with the law and had used sound judgment.

“The officer was justified in using force to defend himself and the force was not excessive in the circumstances,” Sir David said.

Section 27(1) of the Independent Police Conduct Authority Act 1988 requires the Authority to form an opinion as to whether or not any act, omission, conduct, policy, practice or procedure was contrary to law, unreasonable, unjustified, unfair or undesirable. Section 27(2) enables the Authority to make recommendations.

Pursuant to section 27 the Authority has formed the opinion that the shooting was justified and no Police actions were contrary to law.

In relation to the breaches of Police policy, separate from the shooting itself, the Authority has formed the opinion that the officers’ failure to wear ballistic body armour while carrying firearms, and the supervising officer’s failure to ensure that, was unjustified. The Authority also noted that a failure to complete relevant NIA documentation was undesirable.

The Authority has recommended that all staff be reminded of their obligation to wear ballistic body armour when carrying firearms in accordance with Police policy.

NOTE: The Authority has chosen to not produce a full public report in light of its conclusions. Police conduct in this case did not raise issues that require a full report in the public interest. This summary report serves as a statement of the facts of the shooting and of the Authority’s findings.