



IPCA

Independent Police
Conduct Authority

Whaia te pono, kia puawai ko te tika

Police discharge of a firearm following an attempted arrest in Mangere

July 2015

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Introduction

1. At about 6:45pm on Thursday 7 November 2013 at a private address in Mangere East, Manukau City, a Police officer acting in the execution of his duty fired at a man (Mr V) who he believed had presented a firearm at him. The shot missed Mr V, who fled the scene.
2. Police were at the address to arrest Mr V's son, Mr X, for breach of his home detention conditions. A violent confrontation developed between the home occupants and the three attending officers.
3. Because Police believed that Mr V had a firearm, the Armed Offenders Squad were deployed to search the address. Two men, two women and three young children were removed from the address at gunpoint and detained in Police vehicles for approximately an hour. The adults were then taken to Manukau Police Station to be interviewed. These were completed in the early hours of the following morning. One of the women had a young baby with her.
4. A month later, on Sunday 8 December 2013, Police briefly arrested Mr X for breaching his home detention conditions, but released him upon confirming that an administrative error had been made and Mr X had permission to be away from the address.
5. The family involved in these two incidents complained to Police and the Independent Police Conduct Authority about the Police officers' conduct, and in particular the discharge of a firearm at their family home where small children were present. The Authority conducted an independent investigation into these matters. This report sets out the results of that investigation and the Authority's findings.

Index of Police officers

Field Staff	Roles/Comment
Officer A	Supervising officer, attempted to arrest Mr X on 7 November 2013.
Officer B	Probationary officer, attempted to arrest Mr X on 7 November 2013.
Officer C	Probationary officer, attempted to arrest Mr X on 7 November 2013.
Officer D	Off-duty Police officer, assisted Officer A on 7 November 2013.
NorthComms shift commander	Inspector. Took initial control of the shooting incident until Officer E arrived at the scene.
Officer E	Inspector and Incident Controller.
Officer F	Senior Sergeant and District Shift Supervisor. Second in command at the Safe Forward Point.
AOS commanding officer	Inspector. Briefed and issued orders to AOS team.
Officer G	Sergeant. Accompanied arresting officers on 8 December 2013.
Officer H	Briefly arrested Mr X on 8 December 2013.
Officer I	Assisted with the arrest of Mr X on 8 December 2013.

Index of family members

Family members	Comment
Mr X	Serving home detention at his parent's house in Mangere East.
Mr V	Mr X's father.
Ms V	Mr X's mother.
Mr Y	Mr X's paternal uncle.
Ms W	Mr X's maternal aunt.
Mr Z	Mr X's maternal uncle.

Background

INITIAL POLICE ATTENDANCE AT MR X'S ADDRESS

6. At about 6:15pm on Thursday 7 November 2013, Officer A responded to a notification on his Police mobility device¹ that Mr X had breached his electronically monitored home detention by leaving his address between 2:57pm and 5:18pm that afternoon. A security guard had visited the address and found that Mr X was absent.
7. Officer A assigned this job to himself and the two probationary constables² he was supervising, Officers B and C.
8. Before making their way to the address Officer A rang the security company responsible for monitoring electronic bail and confirmed that Mr X did not have permission to be absent. Officer A then explained to the probationary constables that they would go to the address and speak to Mr X. If he did not have good reason for leaving the address without permission, Mr X would be arrested for breaching the conditions of his home detention.
9. At about 6:35pm the officers drove to the address and parked their unmarked Police car approximately 20 metres away. Officer A had used his mobility device to view a picture of Mr X and review Mr X's criminal history³. Officer A thought it was possible that Mr X might become aggressive and instructed Officer C to arm herself with a Taser, which she did.
10. The officers decided that Officer B would speak to Mr X and carry out the arrest, while Officer C would provide any necessary tactical support. Officer A would observe and intervene if required.
11. The house was separated from the road by a courtyard and tall front fence. A driveway ran down the side of the house to a large back garden. At the front of the house was a small raised and covered porch.
12. Officer B walked up two steps to the front porch and knocked on the open glass sliding door. Officer C stood slightly to the left of the porch steps. Officer A positioned himself approximately four metres from the front porch. From this position he was able to look down the driveway towards the back of the house.
13. Mr Y, Mr X's uncle, answered the door. Officer B introduced himself and asked to speak to Mr X. Mr Y said that he would go and find Mr X, who he thought was in the sleep-out at the rear of the property. From his position, Officer A could see Mr Y exit the house by a side door and go around the back of the house.

¹ This is either an iPad or an iPhone that Police officers carry in their vehicles and can use to access Police databases.

² Probationary constables are temporary sworn members of police who have graduated from the Police College. They must successfully complete further training before being appointed as a permanent Constable.

³ At the time, Mr X had active charges for theft and wilful damage.

14. At about this time, Mr X's parents (Mr and Ms V) arrived home and parked their car in the driveway. They had two young children (aged six years and eight years old) and a baby (aged seven months) with them.
15. Ms V said that she saw three Police officers standing outside her house and walked up to Officer A to ask him why they were there. Officer A replied that they had come to speak to Mr X about breach of his home detention. Ms V suggested that perhaps Mr X had gone to the very back of the property, which was beyond his electronic perimeter. Officer A replied that Mr X had been away from the property for two-and-a-half hours. Mr and Ms V then took the children into the house.
16. By this time, Mr Y had returned with Mr X and they stepped out on to the front porch. Mr and Ms V also came back outside to talk to the Police. Ms V went to stand beside her car in the driveway, while Mr V stood on the porch near Mr Y.
17. Mr X together with his family, and the Police officers have different versions of what occurred next, and the reasons why the situation escalated into a violent confrontation.

The family's version of events

18. Mr V told the Authority that he was aware that his son had in fact left the property that afternoon and had been drinking alcohol, contrary to his home detention conditions. Mr X, Mr and Ms V, and Mr Y said that they were prepared to talk reasonably with Officer B about this matter, but the situation deteriorated because Officer A acted in an overbearing and unprofessional way.
19. The family all told the Authority in separate interviews that Officer A stepped forward at an early point in the conversation and told Mr X that he had to come with them to the Police station because he had been away from the house during the afternoon. Mr V said that Officer A was *"pushing himself around, trying to act like this big tough patch member or something and showing these two other cops."*
20. The family said that after Mr X denied he had left the address, Officer A walked up the front steps and used his right hand to grab Mr X's shoulder. After a brief struggle, several family members heard Mr X tell the Police officer that he would come if Officer A let go of him.
21. Rather than release him and give Mr X this opportunity, the family said that Officer A grabbed Mr X's other shoulder and tried to pull Mr X down the steps towards him.
22. Mr V admits that he then *"jumped"* between Mr X and Officer A in order to hold Officer A away from his son, and demanded to know if his son was under arrest. Mr V said that Officer A replied that Mr X wasn't under arrest. Mr V told Officer A *"then you can't take him!"* because he thought that Officer A required a warrant to take his son away.
23. Ms V told the Authority that she heard Officer A warn Mr V to stop trying to intervene or he would be arrested for obstruction.

24. Ms V said that the pushing and pulling caused Mr V, Mr X and Officer A to stumble down the porch steps onto the paved area in front of the house, near to where the other two Police officers were standing. She said that the two Police officers “*jumped in*” to the scuffle, while Mr Y stood off to the side. Ms V yelled at the Police officers: “*Stop it! Stop it! I got children in here!*”
25. The family all told the Authority that Officer A then pepper sprayed Mr X, Mr V and Mr Y without any warning. Mr V remembers that Mr X was sprayed directly in his face.
26. Mr V recalls that Mr X grabbed Officer C, who was standing near the fence, and “*started whacking her.*” Mr Y told the Authority that rather than targeting the Police officer, he thought that Mr X was hitting out wildly in anger as a result of being sprayed. He recalls Mr X yelling “*I can’t see!*” Both Mr Y and Mr V said they pulled Mr X away from Officer C. Mr X told the Authority that he does not remember punching the officer. All of the Police officers then ran out of the driveway on to the road. Mr Y and Mr X went inside the house to wash their faces, but Mr V “*stumbled*” after the Police officers onto the pavement.
27. Mr V told the Authority that he picked up half a brick and went to throw it at the officers because he felt really angry about the way the Police officers had dealt with his family. He said that he changed his mind at the last minute, but as he put down the brick he banged into some trees, which angered him and caused him to throw the brick towards the officers’ Police car. The brick landed on the grass verge, bounced up and whacked against the side of the car.
28. Mr V went inside the house to wipe his face. He then picked up a sledgehammer from the back garden, and wrapped his sweatshirt over the handle as he returned to the driveway. He told the Authority that he could “*hardly see*” due to the effects of the spray. Mr X followed him outside but remained in the paved area in front of the house.
29. At this point, Ms V’s sister, Ms W, who has a hearing impairment, parked her car in the driveway behind Mr and Ms V’s car. She had come to pick up her eight-year-old son. She had seen three Police officers standing around a Police car which was parked two houses down from her sister’s house, and was worried that something was wrong.
30. She told the Authority that as she got out of her car, she saw Mr V running towards the driveway entrance holding what she described as a long thin object covered with a rag. She yelled: “*Bro, what are you doing?*” He was shaking his head and trying to wipe his eyes, which she noticed were red. As Mr V approached the end of the driveway, she saw Police officers run behind their car. Ms W followed Mr V to the top of the driveway, but stayed behind him and the front fence so that she could not be seen from the road.
31. Mr V said he walked to the end of his driveway and yelled “*Fuck yous!*” while pointing the sledgehammer handle towards the Police officers. Officer A was standing on the pavement next to the neighbour’s property. Mr V said that Officer A already had a gun in his hand, and when he saw Mr V, Officer A aimed the gun at him.

32. Mr V said that Officer A started moving to his left towards the hedge at the front of the neighbour's property but kept his gun pointing at Mr V, and he then fired a shot. After he had fired the shot, Mr V said that Officer A twice yelled: *"Put down your weapon!"*
33. Mr V then turned and ran back to the house, yelling to Mr X to go inside because the Police were firing at them. Ms W had already run back inside. Mr V dropped the sledgehammer and then he and Mr X fled the address.
34. Mr V turned himself in to Police at approximately 7:15pm that evening. Mr X turned himself in to Police at approximately 10:40pm.

The Police officers' version of events

35. Only Officer C recalls seeing young children arrive home with Mr and Ms V.
36. Officer B told the Authority that the family were uncooperative from the beginning. He said that Mr X appeared to be nervous when he came to the front door, and became increasingly anxious when asked where he had been that afternoon. Mr X maintained that he had not left the property. By contrast, Mr V had adopted an aggressive manner towards Police from the time he first arrived home. Officer B said that Mr V stood on the porch steps in front of Mr X and demanded to see a warrant before he would allow Mr X to be taken to the Police station.
37. Officer B said that Mr V's demands about a warrant made him uncertain about whether a warrant was required and what to do next, and he turned and looked towards Officer A to take over the situation, stepping backwards off the steps as he did so.
38. Officer A told the Authority that at this stage he believed that the situation had moved beyond what the probationary officers could cope with, and he decided to take control. He stepped forward and told Mr V that they did not need a warrant and to *"just go with it"*. However, Mr V continued to shout, argue and resist.
39. Officer A said that he realised his communication tactics were not working and that the family were not going to be reasonable. He walked up the porch steps and grabbed hold of Mr X's upper left arm and told him: *"You're coming with us."*
40. Officer C told the Authority that as soon as Officer A touched Mr X things escalated very quickly and a feeling of aggressiveness was evident. She said that Mr X wasn't acting aggressively before Officer A touched him. Officer A agrees that the situation turned when he touched Mr X, but he also believes that he had little choice and that *"it was going bad"* before this point.
41. Officer A said to the Authority that Mr X tried to shove him away with increasing force, and at the same time Mr V and Mr Y tried to pull Officer A's hands off Mr X and elbow him in his face.
42. At this point, all three officers heard Mr X say that he would come with them. However, Officer A told the Authority that he believed that this was a ruse and that Mr X would try to

escape through the house if he let go. Officer A strongly believed that it was unacceptable to allow Mr X to escape because he had a serious criminal history.

43. Officer A perceived that the level of force used by Mr X and his two male family members was increasing and he felt threatened by their mounting aggression. He felt that he was in a precarious position on the steps and so shoved Mr X away from him, stepping backwards off the steps to gain some space. The officers all agree that all three men then started advancing towards them in an angry and aggressive manner. Officer B said the men had clenched fists and he feared he and the other officers were about to be assaulted.
44. Officer A said he was aware that the exit to the property was now partially blocked by the family's car, and the men were about two metres away from the officers. He shouted a warning to his colleagues and used his Oleoresin Capsicum (OC) spray on all three men with the intention of "*getting us out of there.*" He expected that the spray would cause the men to retreat, but instead they became more aggressive.
45. Officer B remembers that Mr X was either crying or yelling in pain, his face was scrunched up and he was baring his teeth. Officer C said that Mr X "*pounced*" on her, punching her in the head while backing her towards the front fence. Officer C said she felt that the punches were uncontrolled, however Officers A and B said that they appeared to be very forceful. Officer B recalls hearing the sound of the impact of the punches.
46. Officer C was able to duck under Mr X's arm and the three officers ran out of the driveway and towards their patrol car. Officer A looked over his shoulder and could see Mr V chasing after them with a brick held above his head, which was then thrown at them.
47. Officer A made an emergency call for assistance on his radio and advised the Northern Communications Centre (NorthComms) that an officer had been assaulted. He could still hear shouting coming from the house and decided to arm himself with a Glock pistol from the patrol car's gun safe in case the men came out with weapons to confront them.
48. Meanwhile, an off-duty Police officer who was driving past, Officer D, stopped and offered to assist. He had seen the officers being chased from the address. He suggested going back into the address to arrest the men, but Officer A could hear sirens and decided that they would wait for back-up to arrive.
49. Less than a minute after Mr V had retreated, Officer A saw him re-appear at the top of the driveway holding a long, thin cylindrical object with both hands diagonally across his body. His right hand and the top of the object were covered with a dark coloured sweatshirt.
50. Officer A was still standing beside the front passenger door of the patrol car, approximately 15 metres away from Mr V. He said that he had no immediate cover. He believed that Mr V was holding a shotgun and he feared for his life. Officer A yelled: "*Gun!*" and drew his Glock and pointed it towards Mr V while moving towards his left. Officer A said he yelled: "*Drop the gun, drop the gun!*" Officer B said he heard Officer A yell something at Mr V, which caused Mr V to hesitate.

51. Officer A said that Mr V stopped, took a step backwards, then raised what Officer A thought was the barrel of the shotgun. He told the Authority that he thought that Mr V was going to shoot him and felt that he had no other option than to use his firearm. Officer A said he could clearly see Mr V silhouetted against the family car, and noticed that there was bush beyond should he miss. He couldn't see anyone close to Mr V. Officer A assessed that he had a safe arc of fire and fired a shot at Mr V, which missed. Following the shot, Mr V retreated behind the fence of his property.
52. Officer A informed NorthComms that one shot had been fired by an officer, and that the officers would be retreating to a safe distance about 100 metres from the property. Mobile phone footage shot by a member of the public shows that Officer A retreated while keeping his Glock trained on the driveway.
53. The officers took cover behind a four wheel drive while they waited for back-up to arrive.
54. At this point, the NorthComms shift commander assumed command of the incident and established the Safe Forward Point (SFP)⁴ outside the Mangere East Library on Massey Road. He contacted the field Inspector who was tasked with taking command of critical incidents in the Counties Manukau Police district (Officer E), and directed him to the SFP to act as the Incident Controller⁵. Officer F, a senior sergeant and the District Shift Supervisor for the Counties Manukau district, was also alerted. Her role was to be the Incident Controller's second-in-command at the SFP.
55. At 6:50pm, the Armed Offenders Squad (AOS) commanding officer was alerted to this incident by the NorthComms shift commander. Following discussion, the AOS commander made the decision to call out the squad.
56. A short time later, Officers A, B and C were then taken to the SFP. Officer A briefed the senior officers about what had happened.
57. Police then followed post-shooting protocols. In accordance with Police best practice, Officer A was breath tested and returned a negative result.

OFFICER E ASSUMES COMMAND OF THE INCIDENT

58. At approximately 7pm Officer E arrived at the SFP, having been briefed en route by the NorthComms shift commander. He received a further briefing from a sergeant at the SFP, and at 7:11pm took command of the Police response to the incident. From his training and experience he understood that this meant that he had ultimate responsibility for the tactical decisions made during the Police response, as well as the management of staff and mitigation of risks.

⁴ A gathering point for briefings, and the allocation of roles and equipment.

⁵ The officer responsible for managing the Police response to an incident. Under Police radio protocols, the communications centre shift commander is the Incident Controller until that role is formally handed to a field commander.

59. Officer E told the Authority that his plan was to maintain the cordons around the address to contain any threat posed by the people still at the address, and allow the AOS to handle the incident. He spoke briefly to the AOS commander, and understood that the AOS would go to the address and ensure that it was safe for the investigation staff to enter and start their scene examination. Officer E agreed to this plan.
60. Officer E gave five separate orders over the radio (either directly or through other officers) during the 90 minute period he was in command of the incident. Two of these instructions were in response to confusion about whether radio silence was required as the AOS advanced towards the address. The NorthComms shift commander prompted Officer E to provide instructions to staff about implementing and ceasing radio silence.
61. Officer E said that he had difficulty communicating over his radio during the incident because the channel was often busy which meant that he couldn't transmit:

"...radio Comms were very difficult so I did a lot of talking on the phone, I think probably more talking on the phone than the radio otherwise someone else who had better access to a radio relayed my message..."

62. Officer F arrived at the SFP after Officer E had taken command. Officer F's role as second-in-command was to implement the Incident Controller's directions. In order to do this, it was essential that the two roles had a close working relationship and communicated effectively.
63. There is a discrepancy in how the two officers remember events at the SFP, particularly in relation to how Officer E exercised command during the incident.
64. Officer E told the Authority that, instead of commencing his own decision log⁶ at the SFP, he decided that the log kept by NorthComms would be sufficient. He told this Authority that *"it is common practice to rely on the Comms log"* amongst officers performing a similar role, and doing so avoids unnecessary duplication.
65. Officer E stated that he facilitated the following activities while incident controller:
- advised the NorthComms shift commander and AOS commander that it was unconfirmed whether the object presented at Police was a firearm;
 - checked on Officer A's welfare and told him to speak to an adviser from the Police Association;
 - directed that Officers A, B and C be attended by their sergeant and taken back to Manukau Police Station;
 - liaised with the officer that would take charge of the post-incident investigation, and established that he would take over the scene after the AOS had ensured that it was safe;

⁶ A decision log is a detailed record of key events and decisions made during an incident.

- directed that an armed guard be arranged for the scene of the shooting;
 - facilitated the hand-over of the scene of the shooting from the AOS to the investigation team; and
 - liaised with the AOS commanding officer about an appropriate time to stand down the cordons.
66. In Officer F's view, Officer E did not exercise good command and control during the incident.
67. When Officer F arrived at the SFP, she said that the briefing she received from Officer E was insufficient to allow her to carry out her role, so she spoke to her staff to obtain more up-to-date information. She enquired from Officer E which officer was keeping the decision log and was told that AOS would do it (Officer E denies this). Officer F said she felt that there was a need for a separate log of key decisions made at the SFP, and instructed an officer to start a log.
68. Officer F told the Authority that she carried out the majority of the tasks listed in paragraph 65 of her own initiative.
69. Officer F also told the Authority that her staff had commented on the "*uncertainty of direction*" at the SFP, and also on the fact that there were too many 'bosses' getting in the way. Two constables who the Authority spoke to also implied that there was a certain level of confusion at the SFP.
70. In response, Officer E commented that he only spoke to two other Inspectors at the SFP (the District Manager of Criminal Investigations and the duty Inspector) who were there for legitimate purposes. There was a risk that he might need to hand over command to the duty Inspector after another firearms event was reported at approximately 7:35pm.
71. Officer E said that he had no sense that staff were confused or uncertain of their roles at the SFP, but would have expected that they would come to him and ask for direction if that was the case.

DEPLOYMENT OF THE ARMED OFFENDERS SQUAD TO THE ADDRESS

72. Mr X's family and Police agree on the version of events from this point.
73. The first AOS squad members arrived at the SFP at about 7:40pm and were briefed by the AOS commanding officer. As part of this briefing they were told that: they were searching for a young male, Mr X, who was wanted for breach of home detention; a firearm or an object that looked like a firearm had been presented at Police; and Police had fired one shot in response.
74. The AOS commanding officer advised squad members that there were multiple people at the address, but did not specifically refer to women and children. The squad were also advised that Mr V had already turned himself in to Police and was being spoken to.

75. The AOS officers were read Police General Instruction F061 (Fire Orders) which is explanation of the circumstances under which Police may use firearms. They were then ordered by the AOS commanding officer to go forward and search the house for Mr X and for firearms. Police positioned closer to the address advised the AOS officers by radio that two people were currently outside the house.
76. An advance party of three AOS officers and an AOS dog handler started moving towards the address from the SFP. The road had been cordoned off. More AOS officers followed after arriving at the SFP and receiving a briefing.
77. Meanwhile, Mr Y and another family member, Mr Z, were sitting on the doorstep outside the house. Mr Z was drinking a can of beer when he saw AOS officers further down the road. He got up and walked to the gate to have a look. Seeing that the officers were advancing towards the house, he walked back to the steps of the house and sat down again to finish his beer. He called to his family members to come out of the house because the *"SWATs are here."*
78. The AOS officers arrived outside the address and one officer used his loud hailer to order the men to stand and put their hands up.
79. Ms W came to the front door and saw several AOS officers standing just beyond the fence line of the property with their guns trained on Mr Y and Mr Z, who were standing in front of the steps leading to the front door with their hands in the air. An AOS officer called out to Ms W and ordered her to stay where she was and put her hands up. Ms W complied.
80. The AOS officer asked Ms W how many people were inside the house. Ms W replied that there were three people, referring to Ms V and two young children. The AOS officer instructed Ms W to call these people to the door, which she did. Ms V came to the front door with her baby in her arms and the two young children.
81. The occupants were ordered to walk away from the property one by one. Mr Y and Mr Z went forward first. Each man walked towards an AOS officer who was standing in the middle of the road, and then diagonally back across the road where another AOS officer stood. They were then told to lie on the grass verge and were handcuffed, searched and questioned about the presence of a firearm on the property and the whereabouts of Mr X. Both men were asked for their personal details and were read their rights. Two AOS officers covered the men with an M4 rifle and a Taser.
82. At approximately 7:57pm, Ms W was instructed to come forward with her child. They both had their hands up. They were instructed to follow the same route as the men but were told to stop a little way away from where the men were being spoken to. Ms W hugged her child, who was shaking with fear.
83. Finally, Ms V was told to walk to where Ms W was standing. She carried her baby and her child walked beside her.

84. Both women were questioned about who else was in the house, their relationship to Mr Y and Mr Z, and where Mr X might be. Ms V said that one of the officers mentioned that Mr X might have been shot and injured. She had been unaware that a shot had been fired, and became worried for her son's safety.
85. Ms W and the two children were told to sit in the back of a Police patrol car. Mr Y, Mr Z, Ms V and the baby were told to sit in the back of a paddy wagon. Ms V told the Authority that she was concerned about her baby, who was distressed and unwell.
86. After about 10 minutes all of the occupants of the house were taken to the SFP on Massey Road, and waited in the Police vehicles. Ms W advised the Authority that she was told to stay in the back seat of the patrol car with the two young children, and that she knew that she needed to go to Manukau Police station to make a statement about what had happened.
87. Ms V asked an officer if she could be taken back to her house to fetch the baby's bottle and nappy bag. She was told that she had to wait.
88. After approximately one hour, the two children were picked up by a family member and the adults were taken to Manukau Police station to give witness statements. Ms V chose to keep her baby with her because the baby was still distressed. Ms V was taken to the Police station via her house, and allowed to pick up some supplies for her baby.
89. Ms W and Ms V finished giving their statements in the early hours of Friday 8 November 2013. Both women were able to take breaks when required, or when Ms V needed to comfort her baby. Ms V was informed when Mr X turned himself in to Police at about 10:40pm.
90. A Police officer drove them both to Ms W's home at about 12:30am. Ms V was able to return to her home later that day after the house had searched by the Police investigation team.

POLICE ATTENDANCE AT MR Z'S ADDRESS ON 8 DECEMBER 2013

91. Following this incident, Mr X's home detention conditions were altered and he moved to Mr Z's address. On Sunday 8 December he received permission from his parole officer to be away from the property until 6pm in order to attend a family celebration. He and Mr Z returned home at 5:45pm.
92. However, Mr X's parole manager mistakenly recorded the time by which Mr X had to be back at Mr Z's address as '4pm'. Mr X and Mr X were not aware of this error. Consequently, security guards came to check the address when Mr X's return signal had not been detected by 4pm. Finding no-one at home, Police were informed.
93. Police attempted to speak to Mr X's parole manager to check Mr X's absence, however the parole manager did not respond to the phone messages left by Police.

94. Officer G (a sergeant) and Officers H and I and a dog handler arrived at Mr X's address at about 9:30pm. Mindful of the aggressive behaviour shown towards Police during their last interaction with Mr X, officers decided to arm themselves before arriving at the house. Officer H was designated as the arresting officer, and was armed with an M4 rifle which he wore slung across his body.
95. Officer H knocked on the door which was answered by Mr Z, and asked for Mr X. When Mr X came to the door, Officers H and I immediately handcuffed him, informed him he was under arrest for breach of home detention, and walked him down the driveway towards the road. Mr X called to Mr Z to get the form which showed he had permission to be away from the property.
96. Mr X complained that while he was being walked towards the road he was verbally abused and threatened by the officers. He also said he was dragged through dog faeces and kicked.
97. The officers deny assaulting or threatening Mr X. Officer F said that Mr X was helped to sit on the ground when he refused to sit in the back of the Police car. Officers H and I then waited with Mr X while Officer G made enquiries into Mr X's authorisation to be away from the address that evening.
98. Upon seeing the permission form, Officer G accepted that an error had occurred and that Mr X had not breached his home detention conditions. Mr X was released, and the officers left.

Mr X and his family

99. As a result of the events of 7 November 2013, Mr X was charged with the aggravated assault of Officer A and Officer C,⁷ escaping custody⁸ and two counts of breaching home detention conditions⁹. On 25 February 2014 Mr X pleaded guilty to breaching his home detention conditions. On 8 May 2014 Police withdrew one charge of aggravated assault (relating to Officer C), and Mr X pleaded guilty to the remaining charge of aggravated assault (relating to Officer A) and the charge of escaping custody. He was sentenced to one months' imprisonment.
100. As a result of events on 7 November, Mr V was charged with using a firearm to prevent or resist arrest and assault with a blunt instrument. On 6 December 2014 Mr V pleaded guilty to the firearm charge and was sentenced to eight month's home detention. The assault charge was withdrawn.
101. It is clear to the Authority that Mr X's family have been greatly upset by the events of 7 November 2013, in particular the attendance of AOS at the family home. Mr X's parents and Ms W continue to have concerns about the impact of this experience on their young children.

⁷ Section 192(2) of the Crimes Act 1961

⁸ Section 120(1)(c) of the Crimes Act 1961

⁹ Section 69G of the Sentencing Act 2002

Police officers involved

102. Officer A had seven and a half years' service and was current in all certifications at the time of this incident. Officer A is experienced in supervising probationary Police officers.
103. Officers B and C were probationary constables having graduated from the Royal New Zealand Police College four weeks before this incident. They were current in all certifications.
104. Officer E had almost 30 years' service at the time of this incident, and is experienced in Police communications, and incident command and control.
105. Officer F also had almost 30 years' service at the time of this incident, and is experienced in frontline policing and strategy.

The Authority's Investigation

THE AUTHORITY'S ROLE

106. Under the Independent Police Conduct Authority Act 1988, the Authority's functions are to:
- receive complaints alleging misconduct or neglect of duty by any Police employee, or concerning any practice, policy or procedure of the Police affecting the person or body of persons making the complaint; and to
 - investigate, where it is satisfied there are reasonable grounds for doing so in the public interest, any incident in which a Police employee, acting in the course of his or her duty has caused or appears to have caused death or serious bodily harm.
107. The Authority's role on the completion of an investigation is to form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint.

THE AUTHORITY'S INVESTIGATION

108. As required under section 15 of the Independent Police Conduct Authority Act 1988, Police notified the Authority on 14 November 2013 that they had received a complaint about this incident. On 20 November 2013, the Authority received three letters of complaint from members of Mr X's family. Further heads of complaint were raised by family members during interviews with the Authority.
109. The family complained that:
- The actions of Officer A caused events to escalate on 7 November 2013;
 - Police were unjustified in using pepper spray on Mr X, Mr V and Mr Y;
 - Police unjustifiably shot at Mr V, Mr X and Ms W;
 - Police shot at a house which contained young children;
 - Police did not treat Ms V, Ms W and their children with consideration after they had been taken to Mangere East Library Carpark. Ms V and Ms W did not feel that they were free to leave the Police vehicles they were sitting in; or provide a statement to Police at a time that was suitable for them and their children.
 - The family has been traumatised by events on 7 November 2013.
110. In addition, on 16 January 2014 Mr X complained that he was assaulted and threatened by Police officers during his arrest on 8 December 2013.

111. The Authority commenced an independent investigation and spoke with Mr X and his family, and the Police officers involved. The Authority also visited the scene of the incident on 7 November 2013.
112. The Authority also monitored the Police investigation and reviewed all documentation obtained and produced by the Police investigation team.

ISSUES CONSIDERED

113. In relation to the incident on 7 November 2013, the Authority's investigation considered the following issues:
- 1) Did Police have lawful justification for arresting Mr X?
 - 2) Was Officer A justified in using OC spray against Mr X, Mr V and Mr Y?
 - 3) Was Officer A justified in shooting at Mr V?
 - 4) Were tactical options other than use of OC spray and firearms available and considered during the attempted arrest of Mr X?
 - 5) Was the deployment of the AOS justified in the circumstances and did they perform their duties in a manner consistent with Police policy?
 - 6) Was the entry and search of the family home for Mr X and a firearm by the AOS lawful?
 - 7) Were the house occupants lawfully detained at the scene of the shooting, the SFP and at Manukau Police Station?
 - 8) Did Police comply with all Policy requirements in respect of communications, and command and control during the incident?
 - 9) Did Police give due care and consideration to the welfare of the women and children during the time that they were detained and while providing witness statements at Manukau Police Station?
114. In relation to the incident on 8 December 2013, the Authority has considered whether Mr X was assaulted and threatened by Police during his arrest.

The Authority's Findings

INCIDENT ON 7 NOVEMBER 2013

Issue 1: Did Police have lawful justification for arresting Mr X?

115. On 7 November 2013, Mr X was serving home detention at his parents' house. Mr X was required to remain at that address at all times, unless he had permission to leave or in the case of an emergency. Mr X was also required to wear an electronic bracelet which would alert a security company if he went beyond set electronic boundaries at his address.
116. A constable is authorised to arrest a person without a warrant if they have reasonable grounds to believe a person has breached any of his home detention conditions¹⁰.
117. At 4:32pm the security company advised Police that they had detected that Mr X had left his home detention address. A security guard visited the address and had confirmed that Mr X was not there. The security company detected a return signal at 5:18pm and advised Police that Mr X had returned to his address. This information gave Police good reason to believe that Mr X had breached his home detention conditions.
118. Once Officer A had assigned the job to himself and Officers B and C, he read the information provided by the security company, and rang the security company to check whether Mr X had permission to leave the property. On arrival at the property, Officer B gave Mr X the opportunity to explain if he had an urgent reason to leave his address.
119. Mr X family's complained that Officer A behaved in an unprofessional manner towards them, and in so doing, caused the situation to escalate. However, their complaint was based on the mistaken belief that Police needed to produce a warrant or proof that Mr X had left the address in order to arrest him.
120. The Authority accepts that in hindsight there might have been better ways for Mr X's arrest to have been achieved, such as allowing Mr X to come with the officers when he told them that he would. However, it has concluded that Officer A's actions were not in breach of law or Police policy and cannot otherwise be characterised as unprofessional or inappropriate.

FINDINGS

Police were justified in arresting Mr X because they had a reasonable belief that he had breached his home detention conditions.

Officer A acted in a lawful and professional manner while attempting to arrest Mr X.

¹⁰ Section 80V of the Sentencing Act 2002.

Issue 2: Was Officer A justified in using OC spray against Mr X, Mr V and Mr Y?

121. The Authority has considered whether the use of OC spray by Officer A was justified under section 39 or 48 of the Crimes Act 1961 (see paragraphs 202 to 203 for the relevant law).
122. Section 39 provides that Police can use reasonable force in the execution of their duties such as arrests, where the use of force is necessary to overcome any force used in resistance.
123. All Police officers receive training about the appropriate use of force when responding to an incident. Police officers have a range of tactical options available to them to help de-escalate a situation, effect an arrest or otherwise carry out their 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.
124. Police policy provides a framework to help officers to assess, reassess, manage and respond to an incident, ensuring that any force that they use in response to a threat is necessary and proportionate. An officer must carry out their assessment constantly, using all the information that they know about the situation and the behaviour of the people involved, including (amongst other things): the time of day; levels of intoxication; officer and subject abilities; and the presence of weapons (see paragraphs 204 to 208 for a more detailed explanation).
125. A key part of the 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. Police policy states that an officer may use OC spray when an offender becomes "*actively resistant*" (for example pulling, pushing or running away), and the situation cannot be resolved by less forceful means. OC spray may be used by an officer to defend themselves or another person (see paragraphs 209 to 212 for relevant policy). If practicable, the person should be warned that non-compliance with Police instructions will result in them being sprayed.
126. Mr X's family complained that Officer A sprayed Mr X, Mr V and Mr Y in their faces with no warning.
127. Officer A said that he felt that the three men's behaviour was escalating beyond active resistance and becoming assaultive when he was struggling with Mr X and Mr V on the porch steps. Mr V admits that he was angry and he tried to forcefully push Officer A away from his son.
128. Both Officers A and B said that the three men then advanced towards them in anger, and they feared that they were about to be assaulted. Officer B saw that the men had clenched fists. Officer A judged that the officers immediately needed to retreat from the address for their own safety. The men came within two metres and Officer A used his spray to stop them coming any closer so he and his colleagues could "*get out of there.*"

129. The Authority accepts that Officer A used OC spray to defend himself and the other officers because he believed that an assault was imminent. Given the close proximity of Mr X, Mr V and Mr Y to the officers at the time, the Authority also accepts that Officer A did not have a reasonable opportunity to warn the men to stay back and give them time to comply without compromising his safety and that of the other officers.

FINDING

Officer A was justified using OC spray against Mr X, Mr V and Mr Y. The circumstances meant that it was impracticable for Officer A to warn them and give them the opportunity to comply.

Issue 3: Was Officer A justified in shooting at Mr V?

130. Police policy provides that potentially lethal force may be used when an offender presents a threat of death or grievous bodily harm.
131. Officers must give an offender the opportunity to surrender if practicable, and employ less lethal tactical options to effect an arrest or disarm an offender if they are available. However, if further delay in apprehending the offender would be dangerous or impractical, officers are justified in firing at an offender (see paragraphs 213 to 218).
132. Mr X's family complained that Officer A was unjustified in shooting at Mr V, Mr X and Ms W, especially since there were small children in the house at the time.
133. Mr V also states that Officer A did not order him to drop his 'weapon' until after Officer A fired at him.
134. The Authority is satisfied that Officer A believed that Mr V posed an immediate threat of death or grievous bodily harm to himself and the other officers when he confronted them with what appeared to be a concealed shotgun.
135. Officer A's position by the Police car meant that he could not see Mr X and Ms W, because they were hidden behind the fence at the front of the property. He was also unaware that there were small children in the house at the time. However, he said that this knowledge would not have changed his decision to defend himself against the threat which he believed he faced.
136. Officer A's perception of the altercation with Mr X, Mr V and Mr Y prior to the officers' retreat from the property had caused Officer A to anticipate that the men might come back and confront them with weapons, and he had armed himself with a Glock pistol as a precaution. He did not have time to inform NorthComms of his decision to arm himself before Mr V reconfronted him again.
137. When Mr V appeared at the top of the driveway, he adopted a stance which made the officers believe that he was armed. During his interview with the Authority, Mr V acknowledges that he used the sledgehammer like a firearm.

138. Officer A said he drew his Glock pistol from its holster and pointed it at Mr V, urgently challenging him twice to drop his weapon. Officer B said that he heard Officer A yell at Mr V prior to discharging his weapon. The Authority is satisfied that this is the correct sequence of events.
139. Officer A had no immediate cover and Mr V did not comply with Officer A's instructions but instead appeared to raise the barrel of a gun to shoot at Officer A. At this point, Officer A felt that discharging his firearm was the only way to protect himself and his colleagues, and disarm Mr V.
140. Officer A said that he did not specifically turn his mind to Police Fire Orders when he armed himself or before he fired at Mr V. The Authority accepts that the rapid sequence of events gave him limited opportunity to do so. However, Officer A did consider the key elements of the Fire Orders, including whether he could fire with minimal risk of hitting another person should his shot miss.
141. Officer A's single shot missed Mr V but was sufficient to cause Mr V to disengage and retreat back down the driveway.
142. In the circumstances, Officer A was lawfully justified in using a firearm to protect himself and his colleagues. This was the only viable tactical option available to Officer A to protect himself and the other officers from death or grievous bodily harm.

FINDINGS

Officer A was justified under section 48 of the Crimes Act 1961 and Police policy in shooting at Mr V.

The Authority is satisfied that Officer A warned Mr V to drop his weapon before firing.

Officer A assessed whether there was a risk of harm to any bystanders before he fired at Mr V. He could not see Mr X and Ms W, and did not intend to fire in their direction.

Issue 4: Were tactical options other than the use of OC spray and firearms available and considered during the attempted arrest of Mr X?

143. Officer C was armed with a Taser when she approached the address. Officer C did not draw her Taser until she and the other officers were retreating from the address after Officer A had fired his Glock.
144. Officer C said she thought about her tactical options, but did not take out her Taser in the initial stages of the confrontation because she believed that the men's behaviour was argumentative rather than assaultive. After that *"everything kicked off and I didn't take my Taser out."* Soon after this she was punched, retreated from the property and was no longer in a position where she could deploy the Taser.

FINDING

Officer C considered taking out her Taser but decided the circumstances at that point in the confrontation did not justify it. When the situation escalated, Officer C was no longer in a position where she could deploy it. Thus no tactical options were realistically available other than the use of OC spray and the firearm.

Issue 5: Was the deployment of the AOS justified in the circumstances and did they perform their duties in a manner consistent with Police policy?

145. Police policy requires that, when time and circumstances permit, all forward operations against armed offenders must be carried out by the AOS and the Police Negotiation Team (see paragraphs 219 to 220). Officer A and the other officers present at the address all had a reasonable belief that Mr V could be holding a concealed firearm. It was therefore appropriate for the AOS to be called to deal with this incident.
146. The AOS commander briefed the AOS at the SFP, outlining:
- that Police were looking for Mr X, who might have fled the property;
 - what was believed to be a firearm had been presented at Police by Mr V, but it was possible that the object was a hammer or a pipe¹¹;
 - the officers were to use a standard cordon, contain and appeal tactical approach, by which they would call on the occupants of the house to come out in a controlled manner;
 - the house contained multiple people;
 - after the house had been cleared of occupants, the officers were to execute a warrantless search of the address pursuant to section 8 of the Search and Surveillance Act 2012¹²; and
 - the circumstances in which lethal force could be used as per the Police General Instructions F061 (Fire Orders).
147. The AOS officers used approved Police tactics to remove the family members from the house, and to ensure neither Mr Y nor Mr Z presented a threat, or was the offender that they were searching for. The AOS officers were aware that they were looking for a male offender, so they focussed on the males and questioned them more assertively than the females who had been in the house.

¹¹ Mr V surrendered to Police at 7:41pm and told them that he had been holding a sledgehammer under his sweatshirt, rather than a firearm.

¹² Section 8 of the Search and Surveillance Act 2012 permits Police to enter a place without a warrant, search for and arrest a person in specific circumstances: where Police have reasonable grounds to suspect that a person who has committed an offence punishable by imprisonment for which they may be arrested without a warrant; is at a particular location; and the person will either leave that location or conceal, alter or damage evidence if Police do not enter the place immediately.

148. The Authority considers that it is highly regrettable that the young children at the address were exposed to an AOS operation. However, the house urgently needed to be searched and cleared of threats and it was necessary in the circumstances to remove the occupants from the house in a manner that was safe for the attending AOS officers.

FINDING

The deployment of the AOS to attend this incident was justified. The AOS performed their duties in a manner consistent with Police policy.

Issue 6: Was the entry and search of the address for Mr X and a firearm by the AOS lawful?

149. Following the removal of the occupants, the AOS officers entered the address pursuant to the Search and Surveillance Act 2012¹³ to look for Mr X and to secure any firearms on the property.
150. The Authority finds that Police were legally justified in entering and searching the address as the officers had reasonable grounds to believe that Mr X, who had committed an offence punishable by imprisonment by breaching his home detention conditions, might be at the address but may try to flee.
151. The AOS officers had reasonable grounds to believe that Mr V had a firearm in his possession and that he had committed an arrestable offence by presenting that weapon at Officer A. Therefore, Police were also legally justified to enter the property to search for and seize the firearm that Officer A believed had been presented at him.

FINDING

The entry and search of the address by the AOS was lawful.

Issue 7: Were Ms V and Ms W lawfully detained at the scene of the shooting, the SFP and at Manukau Police Station?

152. Section 118 of the Search and Surveillance Act 2012 permits Police, when exercising a search power in relation to a place, to detain any person to determine whether there is a connection between them and what Police are searching for. In this case, the AOS were searching the address for Mr X and the firearm that they believed had been presented at Police by Mr V.

¹³ Sections 8 and 18 of the Search and Surveillance Act 2012. Amongst other things, section 18 permits Police, without a warrant, to enter a place to search a person or anything under his or her control: if they have reasonable grounds to believe that the person is carrying or in possession of firearms; and has breached the Arms Act 1983.

153. The detention starts when Police tell the person to stay, or when the actions of Police officers cause them to reasonably believe that they are not free to leave. It does not end until the person is told they are free to go.
154. This form of detention is specific and limited. It does not authorise the general detention of those at a search scene until the search has been concluded. A Police officer must take active steps to determine if there is a connection between the detained person and what Police are searching for.
155. Ms V and Ms W told the Authority that as soon as they were instructed to come out of the scene of the shooting by AOS officers, they were asked a series of questions including who else was in the house, and where Mr X was. They were then instructed to sit in Police vehicles before being taken to the SFP.
156. Once at the SFP, both Ms V and Ms W said that they were told that they had to stay in the Police vehicles until they were taken to the Police station to be questioned. Both told the Authority that they didn't want to be there, primarily because of their concern for the welfare of the children; but they felt that they had no choice given the presence of Police officers close to the vehicles.
157. While at the SFP, Ms V and Ms W were not asked any further questions about the incident. They were told to make arrangements for the care of the children so that they could be taken to the Police station to make a statement. At about 9pm, the women were then transported to Manukau Police station and spoken to by Police for almost three hours.
158. It is clear to the Authority that the actions of Police towards Ms V and Ms W at the scene of the shooting and later at the SFP caused Ms V and Ms W to think that they had been detained and could not leave Police's presence if they wished. Because Police did not tell either of the women that they were not detained and were in fact free to leave if they wished, the ongoing conduct of Police meant that the detention continued while they were at Manukau Police station.
159. It is not clear from section 118 of the Search and Surveillance Act how long a detention may reasonably continue, although it must be for no longer than the duration of the search. The AOS cleared the address at approximately 8:30pm.
160. Police had an obligation to take active steps to determine whether there was a connection between Ms V and Ms W and the offender and firearm that they were searching for. The AOS officers who removed the women from the house did this by establishing that neither Ms V or Ms W was the person they were looking for (Mr X), and by questioning Ms V and Ms W straight away.
161. However, once the women arrived at the SFP, officers did not take any further active steps to speak to them. It seems clear from this point onwards that Police did not think there was any need for them to collect information at the scene about the connection between the women and Mr X or a firearm. Senior officers in command at the SFP should have realised that, unless

enquiries were still being made about the women and their connection to the offending, it was not justifiable to detain them any longer under section 118.

162. The Authority's view is that from the time they were transported to the SFP until they completed providing witness statements at Manukau Police station, Ms V and Ms W were unlawfully detained. Police were apparently satisfied that the women were witnesses when they arrived at the SFP because Police made no further attempts to determine the nature of the connection between them, Mr X and the offending at the address.
163. As witnesses, Ms V and Ms W could have reasonably been spoken to at another time. Since it was late in the evening and the women had young children with them, this would have been a better option. Issues that relate to the welfare of the women and children during the time that they were detained will be discussed in Issue 10.

FINDINGS

The actions of Police at the scene of the shooting, the SFP, and at Manukau Police Station led Ms V and Ms W to reasonably believe that they were being detained, and were not free to go.

It was incumbent on Police to actively determine whether there was a connection between the women and the offending while they were being detained. Since Police did not question Ms V and Ms W once they arrived at the SFP, there was no apparent need to speak to them further for this purpose. Consequently, there was no lawful justification for detaining Ms V and Ms W from this point onwards.

Issue 8: Did Police comply with all policy requirements in respect of communications, and command and control during the incident?

164. Command and control is widely and variously described in the context of military and Police operations. In essence, command is the exercise of authority and direction by a properly designated commander for the purpose of accomplishing a task – and includes responsibility for effectively controlling the available resources for that purpose.
165. The 'Radio Protocols' chapter of the Police Manual sets out Police communication requirements and incident control responsibilities (see paragraphs 221 to 225). That policy makes clear that the communications centre shift commander is responsible for leading the overall Police response until such time as incident control is formally handed over to a suitable officer in the field.
166. It is then the Incident Controller's role to stand back and have oversight of the entire incident so that resources can be managed effectively and risks properly assessed. The Incident Controller has ultimate responsibility for all actions and decisions during the incident.

167. The Authority considers the incident was well controlled by the NorthComms shift commander until Officer E arrived at the SFP. However, it finds that Officer E did not adequately exercise leadership and control of the staff and other resources available to him when he assumed control of the incident.
168. Officer E told the Authority that he was satisfied that the AOS were able to handle the next phase of the incident response without his direct input. He also told the Authority that he was involved in facilitating key tasks undertaken by non-AOS staff at the SFP, as set out in paragraph 65.
169. The Authority accepts that Officer E may well have played a role in ensuring key tasks were carried out at the SFP. However, it also accepts comments made by Officer F and other officers that there was a certain amount of confusion at the SFP. The Authority considers that this was because Officer E did not ensure that adequate information was reaching the staff under his command to enable them to remain up to date with incident progress, and carry out their roles effectively.
170. The Authority's view is that one of the Incident Controller's command priorities is to establish a good communications network. Officer E was aware that he was not able to communicate effectively using the digital radio network, and used his mobile phone instead. However, this made it difficult for other officers at the SFP to follow his command of the incident over the Police radio channel. Rather than waiting for staff to come to him with questions, Officer E should have been proactive in updating Officer F in person, so that relevant information could be passed down to other officers at the SFP.
171. Officer E also told the Authority that he was comfortable relying on the record of events and decisions kept by NorthComms because he knew that it was detailed. He said that this was common practice amongst senior staff in incident command roles.
172. Current Police policy is specific about the need for the Incident Controller to ensure that a detailed chronological record of key events and decisions is kept during an operation (a decision log). This policy was not adopted until after this incident. Policy at that time did not specifically refer to a decision log. However, as set out in paragraph 227, there was nevertheless a general expectation that decisions made during an operation would be recorded in a timely manner.
173. The Authority concludes that there was a reasonable expectation upon Officer E to keep a record of his decisions and orders once he assumed command at the SFP, rather than relying on NorthComms to do so.
174. In addition, because radio was not Officer E's primary form of communication with other officers, the NorthComms log would not provide a complete record of information communicated and decisions made. The Authority therefore finds that it was even more important in these circumstances for Officer E to maintain his own log.

FINDINGS

The incident was well controlled by the NorthComms shift commander until Officer E arrived at the SFP.

In the circumstances, Officer E did not take adequate steps to ensure that staff at the SFP received sufficient information to remain informed about the incident's progress, and carry out their roles effectively.

Officer E should have maintained his own record of decisions and orders once he became Incident Commander at the SFP. It was insufficient to rely on the log maintained by NorthComms.

Issue 9: Did Police give due care and consideration to the welfare of the women and children during the time that they were detained and while providing witness statements at Manukau Police Station?

175. Police have a duty of care to vulnerable people, especially children, under their control.
176. In the Authority's view, Police should have realised that the women and children were in a vulnerable position when they were brought to the SFP. They were all upset and frightened following their ordeal. Ms V and Ms W did not have a clear understanding of what was happening and why, and the children needed care and comforting as an urgent priority. Ms V also said that her baby was unwell, distressed and crying, and she had made it clear to the officers at the SFP that her baby needed essential items such as a clean nappy and a bottle as soon as possible.
177. In light of their duty of care, the Authority considers that it would have been good Policing practice for a senior officer to have checked on the welfare of the women and children at an early stage after they arrived at the SFP, to ensure that their basic needs were met and to explain what was happening (to the degree possible at the time).
178. An officer could also have been assigned to retrieve the baby's items from the address as soon as it had been cleared by the AOS at approximately 8:30pm. Alternatively, efforts could have been made to obtain essential items from the nearby supermarket. It was unreasonable to require Ms V to wait at the SFP for over an hour before she could properly attend to her distressed and unwell baby.
179. Officer E, as the Incident Controller, must take ultimate responsibility for these failings. Officer E said that he was not aware that Ms V, Ms W and their children had been waiting for a significant period of time, and assumed that someone would have taken care of them. Had Officer E established a stronger communication network at the SFP, the situation of the women and children may have come to his attention.

Interviewing of Ms V and Ms W

180. As has been noted above, Police were not entitled to detain the women for the purpose of witness statements and should have explored other options.
181. Police had a responsibility to balance the importance of obtaining timely information from Ms V and Ms W about a critical incident and an offender still at large with the welfare of those women and children who had been through a traumatic event.
182. The Authority's view is that Police gave very little consideration to the welfare of the women and children. Police decided to take the women to the Police station and speak to them immediately. While this satisfied the need for Police to obtain timely information about Mr X, it placed greater stress on Ms V and Ms W, and meant that the children had to be separated from their mothers for several hours late in the evening. After earlier events, it was unlikely that the children would settle to sleep without their mothers with them.
183. It was not the responsibility of Ms V and Ms W to advocate for the welfare of their children or themselves while under Police control at the SFP. Experienced senior officers should have realised that separating children from their mothers in such circumstances was not ideal, and considered what alternative options about providing witness statements could be put forward to Ms V and Ms W. For example:
- 1) Ms V and Ms W could have spoken to Police the following morning; or
 - 2) If speaking to Ms V and Ms W was considered urgent, officers could have spoken to them at a friend's or family member's house, so that the children did not need to be separated from their mothers.
184. The Authority spoke to the officers who interviewed Ms V and Ms W. Both officers said that the women seemed happy to come to the Police station and give a witness statement. Ms V was given the opportunity to return to her house to gather the baby's nappy bag and bottle before she was driven to Manukau Police Station. Both women were given breaks during their statements, and Ms V was given time to comfort the baby when necessary.
185. The Authority considers that the women's apparent willingness and compliance was based on the assumption that they did not have a choice but to sit in the back of a Police vehicle for an hour and then accompany the officers to the Police station to provide an immediate statement.
186. The women did not have a clear understanding of their rights because these were not fully explained to Ms V or Ms W. There were plenty of senior Police officers at the SFP who, due to their position and experience, should have recognised this and made sure that officers were proactive in telling Ms V and Ms W what their rights were when they were spoken to at the SFP about providing a statement, and later when they were interviewed.

FINDINGS

Police did not adequately consider the welfare of Ms V, Ms W and the children when they were taken to the SFP and while providing witness statements at the Manukau Police Station.

Police were not proactive in providing Ms V and Ms W with an explanation of their rights and options.

Inadequate command and control is likely to have contributed to the poor treatment of Ms V, Ms W and their children at the SFP.

Issue 10: Was Mr X assaulted and threatened by Police during his arrest on 8 December 2013?

187. Mr X complained that while he was being walked towards the road he was verbally abused and threatened by the officers. He also said he was dragged through dog faeces and kicked.
188. The Authority has spoken to Mr X and Mr Z and the three officers who attended the address on 8 December 2013.
189. Mr Z said that he didn't leave the house so he didn't see if the officers abused, threatened or kicked Mr X. Mr X told him about the way the officers had treated him after he returned to Mr Z's house.
190. Officer G said that Officers H and I were in his sight throughout the incident, and he did not see the officers act aggressively towards Mr X. Officers H and I deny threatening or kicking Mr X, and said that they assisted Mr X to sit on the pavement because he didn't want to sit in the back of the Police car while Officer G was checking whether he had permission to be away from the address. Officer I said that the only reference to dog faeces during this incident was when he discovered he had stepped in some by mistake.
191. There are conflicting versions of events provided by Mr X and Police, and no independent corroborating evidence. However, the Authority found the officers gave consistent and credible evidence during interview, while Mr X's version of events lacked credibility.
192. Consequently, on the balance of probabilities, the Authority prefers the evidence of the officers, and is satisfied that Mr X was not assaulted or threatened during his brief arrest.

FINDING

Police did not assault and threaten Mr X during his brief arrest on 8 December 2013.

Subsequent Police Action

193. A Detective Inspector carried out a criminal investigation into the actions of Police on 7 November 2013, leading to Officer A firing a shot from his Glock pistol at Mr V.
194. The Police investigation concluded that Officer A was not criminally liable for using OC spray or shooting at Mr V because Officer A reasonably believed that he or his fellow officers might be seriously hurt or killed during the incident.
195. Police also conducted a review of the incident. The review concluded that the attempted arrest of Mr X on 7 November 2013 was not handled well. The review was also critical of the way that vulnerable witnesses were treated. Police have advised that the relevant officers will be spoken to in relation to their actions.

Conclusions

196. The events of 7 November 2013 were stressful and traumatic for Mr X's family, especially for the women and children who were exposed to an armed Police response through no fault of their own. The Authority understands that this experience has significantly adversely affected the most vulnerable members of this family.
197. What happened was also stressful and traumatic for the three officers who went to the address to speak to Mr X.
198. Because of their actions on that day, Mr X and Mr V must take responsibility for the armed Police response.
199. However, inadequate command and communication by the Incident Commander, and a general lack of consideration towards the women and children from the time that they arrived at the SFP, unnecessarily prolonged their discomfort and trauma. It is essential that Police turn their mind to the practicalities of the duty of care that they have towards vulnerable people who are inadvertently caught up in critical incidents.
200. The Authority has concluded on the balance of probabilities that:
 - 1) Police were justified in arresting Mr X because they had a reasonable belief that he had breached his home detention conditions.
 - 2) Officer A acted in a lawful and professional manner while attempting to arrest Mr X.
 - 3) Officer A was justified using OC spray against Mr X, Mr V and Mr Y. The circumstances meant that it was impracticable for Officer A to warn them and give them the opportunity to comply.
 - 4) Officer A was justified under section 48 of the Crimes Act 1961 and Police policy in shooting at Mr V.
 - 5) Officer A warned Mr V to drop his weapon before firing.
 - 6) Officer A assessed whether there was a risk of harm to any bystanders before he fired at Mr V. He could not see Mr X and Ms W, and did not intend to fire in their direction.
 - 7) Officer C considered taking out her Taser but decided the circumstances at that point in the confrontation did not justify it. When the situation escalated, Officer C was no longer in a position where she could deploy it. Thus no tactical options were realistically available other than the use of OC spray and the firearm.
 - 8) The deployment of the AOS to attend this incident was justified. The AOS performed their duties in a manner consistent with Police policy.
 - 9) The entry and search of the address by the AOS was lawful.

- 10) The actions of Police at the scene of the shooting, the SFP, and at Manukau Police Station led Ms V and Ms W to reasonably believe that they were being detained, and were not free to go.
- 11) It was incumbent on Police to actively determine whether there was a connection between the women and the offending while they were being detained. Since Police did not question Ms V and Ms W once they arrived at the SFP, there was no apparent need to speak to them further for this purpose. Consequently, there was no lawful justification for detaining Ms V and Ms W from this point onwards.
- 12) The incident was well controlled by the NorthComms shift commander until Officer E arrived at the SFP.
- 13) In the circumstances, Officer E did not take adequate steps to ensure that staff at the SFP received sufficient information to remain informed about the incident's progress, and carry out their roles effectively.
- 14) Officer E should have maintained his own record of decisions and orders once he became Incident Commander at the SFP. It was insufficient to rely on the log maintained by NorthComms.
- 15) Police did not adequately consider the welfare of Ms V, Ms W and the children when they were taken to the SFP and while providing witness statements at the Manukau Police Station.
- 16) Police were not proactive in providing Ms V and Ms W with an explanation of their rights and options.
- 17) Inadequate command and control is likely to have contributed to the poor treatment of Ms V, Ms W and their children at the SFP.
- 18) Police did not assault and threaten Mr X during his brief arrest on 8 December 2013.

Recommendations

201. Pursuant to section 27(2) of the Act, the Authority recommends that Police should amend Search and Surveillance Act policy to require officers dealing with people in circumstances and in a manner which might reasonably cause them to believe that they are not free to go, to specifically inform that person whether or not they have been detained and why.

A handwritten signature in black ink, appearing to read 'David Carruthers', written in a cursive style.

Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

30 July 2015

Applicable Laws and Policies

USE OF FORCE

Law on the use of force

Use of force by Police officers

202. Section 39 of the Crimes Act 1961 provides for law enforcement officers 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.”*

Use of force for self-defence or defence of others

203. Section 48 of the Crimes Act states: *“Everyone is justified in using, in the defence of himself or another, such force as, in the circumstances as he believes them to be, it is reasonable to use.”*

General guidance on the use of force

204. The Police 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.

205. 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.

206. 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)**.

207. 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.

208. 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.

Oleoresin Capsicum spray

209. Oleoresin Capsicum (OC) spray is used by Police to subdue people; it causes a stinging sensation and generally makes people very compliant so as to avoid further aggressive behaviour.

210. The Police Manual states that an officer only use OC spray when it is *"lawful and reasonable i.e. necessary, proportionate to the situation, and with minimum risk to the public, police and the subject."*

211. The policy states that OC spray may only be used on someone who is actively resisting and then only when the situation cannot be resolved by less forceful means. Active resistance includes physical actions such as pulling, pushing or running away – that is, *“more than verbal defiance”*.
212. The policy requires that, before OC spray is used on a person, the person is warned that non-compliance will result in them being sprayed, the person is given a reasonable opportunity to comply, and other people nearby are warned that spray will be used.

CARRIAGE AND USE OF FIREARMS

Authorisation to carry firearms

213. The Police Manual provides that a Police constable may carry firearms when their perceived cumulative assessment of a situation is that it is in, or likely to escalate to be within, the death/grievous bodily harm range.

Use of firearms

214. Police General Instruction F061 (Fire Orders) provides for the use of firearms by Police officers to defend themselves or others if they fear death or grievous bodily harm and cannot reasonably protect themselves or others in a less violent manner.
215. The Crimes Act provisions are mirrored in General Instruction F061 in the ‘Police Firearms’ chapter of the Police Manual. General Instruction F061 instructs members of the Police to always be aware of their personal responsibilities in the use of firearms, reminds them of the relevant sections of the Crimes Act and also sets out the circumstances in which the use of lethal force is justified.
216. General Instruction F061 directs that an offender is not to be shot until all of the following conditions have been satisfied:
- *“they have first been asked to surrender (unless it is impractical and unsafe to ask them)*
 - *it is clear that cannot be disarmed or arrested without first being shot*
 - *further delay in apprehending the offender would be dangerous or impractical.”*
217. In operational situations where firearms are issued, General Instruction F061 also requires that an officer’s attention is drawn to the fire orders printed in their notebook *“if time and circumstances permit.”*
218. Police policy also requires officers to notify their immediate supervisor and the Police Communications Centre of their decision to deploy with firearms.

Responding to armed offenders

- 219. The Police Manual outlines the role of AOS in an armed incident. Where time and the offender's actions permit it, all forward operations against armed offenders, particularly any direct approaches to the offender, must be carried out by AOS members assisted by a Police Negotiations Team (PNT).
- 220. During an AOS incident, the AOS commander is responsible for establishing an AOS base and commanding and directing the AOS in the forward area.

INCIDENT CONTROL AND COMMUNICATION

- 221. The 'Radio Protocols' chapter of the Police Manual sets out communication requirements and incident control responsibilities when Police are responding to incidents. The policy states that: *"An efficient and effective Police response to incidents requires that everyone involved in the process clearly understands their own role and responsibilities, and those of the other participants."*

Incident control

- 222. Under the policy, the communications centre is responsible for the initial Police response to an incident. This responsibility to act as the 'Incident Controller' formally lies with the communications centre shift commander; although in practice a team leader or dispatcher is often delegated to take this role.
- 223. For as long as the communications centre retains the responsibility for incident control, officers at the scene must comply with the directives given by the shift commander (or by the delegated team leader or dispatcher). The shift commander makes the final decision on operational matters and *"is expected to actively manage, direct and supervise those staff responding to the incident, including initial tactics to be utilised"*.
- 224. The policy provides that the communications centre retains the responsibility for incident control until that role is formally passed to a suitable Officer in the field, preferably ranked sergeant or above, who is willing to assume command. The policy sets out formal procedures for handing over this responsibility, and states that incident control will not be handed over to a field supervisor until he or she has arrived at a safe forward point, been fully briefed, and formed a tactical response plan.
- 225. Once incident control has passed to a field unit, the shift commander is still required to maintain active oversight of the Police response. This may include engagement with the Incident Controller over tactics and timing, peer support and mentoring, and advice about legislative powers.

Record of decisions

226. The 'Planning and command' chapter of the Police Manual sets out the basic functions of command during an operation.
227. With respect to orders and instructions given during an operation, the policy states that: *"It is desirable for orders and instructions to be written. If they are oral, they must be documented or recorded as soon as possible."*

Search and Surveillance Act 2012

Section 8: Entry without warrant to avoid loss of offender or evidential material

(1) In the circumstances set out in subsection (2), a constable may—

- (a) enter a place or vehicle without a warrant; and*
- (b) search for and arrest a person that the constable suspects has committed the offence.*

(2) The circumstances are that the constable has reasonable grounds—

- (a) to suspect that the person has committed an offence that is punishable by imprisonment and for which he or she may be arrested without warrant; and*
- (b) to believe that the person is there; and*
- (c) to believe that, if entry is not effected immediately, either or both of the following may occur:
 - (i) the person will leave there to avoid arrest:*
 - (ii) evidential material relating to the offence for which the person is to be arrested will be destroyed, concealed, altered, or damaged.**

Section 18: Warrantless searches associated with arms

(1) A constable who has reasonable grounds to suspect that any 1 or more of the circumstances in subsection (2) exist in relation to a person may, without a warrant, do any or all of the following:

- (a) search the person:*
- (b) search any thing in the person's possession or under his or her control (including a vehicle):*
- (c) enter a place or vehicle to carry out any activity under paragraph (a) or (b):*
- (d) seize and detain any arms found:*
- (e) seize and detain any licence under the Arms Act 1983 that is found.*

(2) The circumstances are that the person is carrying arms, or is in possession of them, or has them under his or her control, and—

(a) he or she is in breach of the Arms Act 1983; or

(b) he or she, by reason of his or her physical or mental condition (however caused),—

(i) is incapable of having proper control of the arms; or

(ii) may kill or cause bodily injury to any person; or

(c) that, under the Domestic Violence Act 1995,—

(i) a protection order or a police safety order is in force against the person; or

(ii) there are grounds to make an application against him or her for a protection order.

(3) A constable may, without a warrant, enter a place or vehicle, search it, seize any arms or any licence under the Arms Act 1983 found there, and detain the arms or licence if he or she has reasonable grounds to suspect that there are arms in the place or vehicle—

(a) in respect of which a category 3 offence, a category 4 offence, or an offence against the Arms Act 1983 has been committed, or is being committed, or is about to be committed; or

(b) that may be evidential material in relation to a category 3 offence, a category 4 offence, or an offence against the Arms Act 1983.

Section 118: Powers of detention incidental to powers to search places and vehicles

(1) If any constable or other person, or a person assisting any constable or other person, exercises a search power in relation to a place or vehicle, that constable or other person may, for the purposes of determining whether there is any connection between a person at the place or in or on the vehicle and the object of the search, detain any person—

(a) who is at the place or in or on the vehicle at the commencement of the search; or

(b) who arrives at the place or stops at, or enters, or tries to enter, the vehicle while the search is being carried out.

(2) A person may be detained under subsection (1) for any period that is reasonable, but not for longer than the duration of the search.

(3) A detention of any person commences under subsection (1) when the constable or other person exercising the search power directs that person to remain at the place or in or on the vehicle and ends when that person is told by the constable or other person, or a person assisting the constable or other person, exercising the search power that he or she is free to leave the place or vehicle.

(4) Reasonable force may be used for the purpose of effecting and continuing any detention under subsection (1).

(5) For the purposes of subsection (1), other person means a person to whom section 115(2) applies.

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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