

# **Police Arrest and Prosecution of Troy Reuben**

*October 2014*

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## Introduction

1. At around 11.20pm on Thursday 29 December 2011 Police responded to a report of a domestic disturbance at a residential Timaru address.
2. When Police entered the house they found Troy Reuben in the bathroom with his partner and one of his children. Mr Reuben and his partner asked Police to leave. When they did not, an argument developed.
3. The argument continued until Police used OC spray and a Taser against Mr Reuben. Mr Reuben was arrested and charged with assaulting a Police officer.
4. Mr Reuben pleaded not guilty to the charge. On 5 July 2012, Her Honour Judge Maze found Mr Reuben not guilty of assault following a defended hearing in the Timaru District Court. Judge Maze found that Police had no lawful authority to remain inside the house and were not acting in the execution of their duty at the time of the alleged assault.
5. On 13 July 2012 Mr Reuben submitted a complaint to the Independent Police Conduct Authority, stating that: he was Tasered and pepper sprayed in front of his children; he was falsely charged with assaulting a Police officer; the Police made mistakes in their evidence; his children had been badly affected by what they had seen; and the Police would not leave the house when told to.
6. A Police investigation into the incident was initiated as a result of Mr Reuben's complaint. In January 2013 that investigation concluded that Police had acted lawfully during the incident and recommended no further action be taken regarding Mr Reuben's complaint.
7. The Authority conducted a simultaneous independent investigation. This report sets out the results of that investigation and the Authority's findings and recommendations.

## Background

### SUMMARY OF EVENTS

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#### Police Entry to Property

8. At about 11.16pm on Thursday 29 December 2011 the Police Southern Communications Centre (SouthComms) received a report of a domestic disturbance at a residential address in Timaru. The caller reported that:
  - They could hear a male and female shouting and a lot of swearing;
  - They could hear things being thrown around and a lot of banging;
  - They could not see anything but could hear the disturbance clearly from their property across the street;
  - They did not know how many people were at the address;
  - They did not personally know the occupants.
9. The SouthComms dispatcher directed two Police patrol units to respond to the incident, advising the officers that the caller could hear *“a male and female yelling and swearing at each other – it appears things have been thrown around – a lot of banging and crashing going on.”*
10. Officers A and B responded first and left Timaru Police station at 11.17pm. As they travelled to the address the dispatcher also advised *“there’s a bit of a rowdy dog that’s on the premises for you to be aware of.”*
11. Officers C and D were in a separate patrol car and advised SouthComms that they were en-route to the address at 11.20pm. They also notified SouthComms that they were carrying Tasers.
12. Both patrol units arrived at the property at 11.21pm.
13. Officers A and B went to the front door. Both officers noticed damage to the house. The front gate was lying on the ground, the front window was broken and the front door was detached and lying in the hallway.
14. Officers A and B entered the house and spoke to a young man (Mr X) in the hallway. Mr X told the officers that a person named ‘Johnny’ was responsible for the reported disturbance and the damage to the house, but he had left before Police arrived.
15. According to Officer B, as he spoke to Mr X, Mr Reuben appeared from the bathroom and demanded that the officers *“get the fuck out of his house.”* Shortly after this, as Officers A and B were still speaking to Mr X, Officers C and D walked past and entered the house. Officers A and B then moved with Mr X to speak to him outside the front door.

### Officers C's and D's version of Events

16. The account of the incident by Officers C and D, as described in the following paragraphs, is based on their Police notebook entries recorded immediately following the incident, job sheets, and written briefs of evidence provided to the District Court and Tactical Options Reports (see paragraphs 63–73). It also takes into account statements made by the officers to the Authority about the incident.
17. When Officers C and D arrived at the address, they initially inspected the rear of the house. According to both, upon returning to the front of the house they found Officers A and B speaking to Mr X. Mr X informed Officers C and D that he was the occupier of the house.
18. Both officers stated that they entered the house after informing Mr X that as a result of the information received by Police they needed to check the safety of any other occupants. The officers noticed the front door lying in the hallway with what appeared to be a recently formed hole in it.
19. Officer C later said that Police could not accept Mr X's explanation that 'Johnny' was responsible for the domestic disturbance and damage to the house. This was because Mr X did not provide any further information about 'Johnny', and because the damage outside and inside the house appeared consistent with the original report to Police of banging and objects being thrown around.
20. The officers saw that the bathroom door was open and the shower was running. From the shower a male yelled *"I'm in the fucking shower."* Officers C and D searched the rest of the house and found nobody. Officer C then heard a male yell from the bathroom, *"Get the fuck out."* In response Officer C looked in the bathroom and saw a man, Mr Reuben, wearing only a pair of shorts. Mr Reuben appeared agitated and repeated, *"Get the fuck out. Get the fuck out of my house."*
21. Officers C and D recognised Mr Reuben. Both said that Mr Reuben was known by local Police to be violent and unpredictable, and to have a significant prior criminal and domestic violence record. According to Officer C, he was also aware that it was not Mr Reuben's house.
22. Officer C said that Mr Reuben became demonstrative and vocal as soon as he saw the officers. Due to his knowledge of Mr Reuben, Officer C said that he was *"very wary of the way in which [Mr Reuben] would react to the Police presence."* Both officers said that their initial attempts to explain their presence and their requests for information concerning the reported disturbance could not be heard over Mr Reuben's shouting.
23. At this point they also noticed a young girl (Mr Reuben's daughter aged 11) and a woman (Ms Y) standing behind Mr Reuben in the shower. Officer C said that Ms Y was also *"shouting and swearing at us which kept hyping [Mr] Reuben up more."*
24. According to Officer C, Mr Reuben continued to scream at the officers and then lunged *"forward at Officer D, who raised his hands to guard against an attack."* Officer D described that:

*“At one stage [Mr Reuben] lunged forward at me and I put my guard up as I believed he was going to strike me in the face.”*

25. Officer C said that Mr Reuben was behaving in a volatile and unpredictable manner, and continued to shout at the officers as they tried to determine the cause of the domestic disturbance report and damage to the house.
26. A short time after they entered the bathroom, Officers C and D presented a Taser and OC spray against Mr Reuben.
27. In his Police notebook, Officer C recorded that he drew his Taser after Mr Reuben ripped the shower door from the cubicle and threw it across the bathroom at the officers. As discussed below, the footage from the camera in Officer C’s Taser shows that Mr Reuben did not in fact throw the shower door at Police. Officer C has subsequently told the Authority that, due to the volatile atmosphere in the bathroom, it was his honest belief following the incident that Mr Reuben had thrown the shower door.
28. Officer C stated that Mr Reuben *“was becoming more volatile and his threats were becoming more frequent and aggressive”*, and that he believed *“[Mr] Reuben was the aggressor in the domestic that we had been informed of.”* This belief was based on his knowledge of *“Mr Reuben’s propensity for violence against women and the Police.”*
29. Officer D similarly recorded in his Police notebook that he drew his OC spray because Mr Reuben *“pulled the glass door off the shower with the two females still inside and threw it a small distance across the room.”* In addition, no one in the house would provide an explanation for the reported disturbance and he had *“reasonable grounds to believe that [Mr] Reuben was the aggressive party in the [domestic incident] we had been called to”*.
30. Officer D said to the Authority that he drew his OC spray because he believed that Mr Reuben presented a threat to the officers, due to his size and aggressive behaviour and language.
31. The officers remained in the bathroom with their weapons presented against Mr Reuben. Officer C later told the Authority that without a clear explanation from the occupants for the damage to the house, and the reported domestic disturbance, the officers were not able to rule out domestic violence as the cause of the disturbance, and Mr Reuben as the perpetrator of that violence.
32. Officers C and D both acknowledged to the Authority that good policing practice would have been to separate and speak to Ms Y and Mr Reuben individually about what had occurred, and to determine the safety of Ms Y and the other occupants. However, they said that they were not presented with the opportunity to do this safely given Mr Reuben’s behaviour and the knowledge they had of Mr Reuben’s previous conduct. Officer C added that Ms Y and Mr Reuben refused to separate or explain what happened, other than to keep yelling that they had just returned from the beach.
33. About six minutes after Officers C and D drew their weapons Mr Reuben led his daughter from the bathroom to the lounge where his son aged 10 was seated on the couch. Both officers

reported that Mr Reuben moved his daughter by lifting and positioning her between himself and Officer C's Taser, as one would a shield. Officer C recorded in his notebook that:

*"[Mr] Reuben then grabbed the young girl from the bathroom, held her in front of him and walked towards me. I again lowered the Taser so I wasn't painting the young girl.<sup>1</sup> He carried the girl into the lounge where there was a boy on the sofa. He kept the girl between himself whilst moving so I kept the Taser lowered but switched on."*

34. Officer D stated that Mr Reuben *"made sure that he kept his daughter in between himself and Police while he moved."*
35. In the lounge Mr Reuben crouched and placed his arms around his children. Officers C and D reported that Mr Reuben continued shouting at them as they stood on either side of Mr Reuben and his children. Both officers recommenced aiming their weapons at Mr Reuben and the parties continued shouting. This continued until an altercation occurred between Mr Reuben and Officer D, described by both officers as an assault by Mr Reuben.
36. In Officer C's job sheet, he recorded that he saw *"[Mr] Reuben suddenly stand up and lash out at Officer D"*. Officer C then fired his Taser at Mr Reuben's back, shouting *"Taser, Taser, Taser"*.
37. Officer C later told the Authority that he fired the Taser after he saw Mr Reuben stand, move towards and lash out at Officer D. He said that from his position standing behind Mr Reuben he believed that Mr Reuben attacked Officer D and fired the Taser in response.
38. Officer D recorded that Mr Reuben *"lashed out and struck my arm, at the same time grabbed it"*. Officer D said that after hearing the Taser fire and Officer C's warning, he deployed his OC spray against Mr Reuben. Some of the OC spray affected Mr Reuben's son.
39. Mr Reuben was arrested for assaulting Officer D and handcuffed. The OC spray had no effect on Mr Reuben and aftercare was not required. With Mr Reuben's consent Officer D removed the Taser barbs from his back.
40. Officers A and B were outside when the Taser was deployed. Officer A came back inside and treated Mr Reuben's son for the effects of the OC spray.

### Mr Reuben's Version of Events

41. In his evidence given before Judge Maze, Mr Reuben stated that he and his children, along with other occupants of the house, had just returned from the beach prior to the Police arrival at the address. He said that he was not involved in the disturbance that had been reported to Police, and denied responsibility for any of the damage to the house observed by the officers.

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<sup>1</sup> Painting is the term used by Police to describe the action of aiming a Taser at a person.

42. Mr Reuben stated that he would not leave the bathroom when asked by the officers because his daughter was crying in the shower. He denied using his daughter as a shield when moving to the lounge. In the District Court Mr Reuben stated that his daughter:

*“... jumped into my arms for comfort and that’s what I gave her and as I walked her out I had her on the shoulders and we walked out.”*

43. Mr Reuben stated that he could not recall precisely what occurred in the lounge prior to his being Tasered because he *“was too wound up, just wanted the Police to leave”*, but said that he stood up next to the couch in order to tell the officers to leave.
44. Concerning the alleged assault of Officer D, Mr Reuben denied attempting to strike Officer D. He said that after standing up he gestured with his left arm, as he had in the bathroom, only to tell the officers to leave. He denied lashing out at Officer D in the manner of an assault.

### Taser Cam footage

45. Footage taken from the camera in Officer C’s Taser (Taser Cam footage) records the events in the bathroom and the lounge. The footage begins at the point Officer C drew his Taser, about five minutes after he and Officer D entered the house (see paragraph 26).
46. At the start of the footage Mr Reuben is seen standing in the bathroom next to the shower. He is calm and speaking to his daughter and Ms Y, who are hidden from view behind the shower door. Ms Y can be heard telling Mr Reuben to go with Police despite his having not done anything wrong. Mr Reuben’s daughter can be heard becoming upset.
47. Outside of view, an unidentified male asks the officers to consider that this is occurring in front of Mr Reuben’s children. Officer C responds *“we’re not doing anything ... do you want to just go away right now. Go back in there for me.”* Officer D is heard taking the male into the lounge and states *“just stay there and look after them.”*
48. After one and half minutes Ms Y appears from behind the shower door. She is not visibly injured and appears calm but concerned at the Police presence. Ms Y tells the officers to go away and explains that they were taking a shower.
49. Officer C explains that Police are responding to a reported domestic disturbance and need to find out what was going on. Ms Y responds that they had just arrived home.
50. Mr Reuben then turns and yells at the officers, challenging Officer C to use the Taser. Ms Y, who is also becoming increasingly agitated, tells the officers, *“We have only just got fucking home.”* Mr Reuben then closes the shower door and it detaches from its top running track.
51. After Officer D asks Mr Reuben to come outside so that they *“can talk like adults”*, Mr Reuben responds *“Adults? Fuck off”* and tells the officers *“to get the fuck out of the house, you’re fucking trespassing.”* Officer D then states *“You’re not listening”*. Mr Reuben responds, *“I don’t care, you’re not fucking listening.”*

52. Mr Reuben then turns and apologises to his daughter, still behind the shower door, and then calmly states to the officers, *"Get out, please."* He then yells again and turns to Ms Y and his daughter.
53. After about three and a half minutes Mr Reuben enters the shower and holds his daughter, who can be heard becoming increasingly panicked. Mr Reuben's entry causes the shower door to fall to the ground.
54. Ms Y calmly asks the officers *"Can you just go?"* Mr Reuben and the officers resume yelling at each other, and Mr Reuben's daughter begins to scream. Ms Y then tells the officers *"to go away"* because they are upsetting Mr Reuben's daughter.
55. Ms Y then steps out of the shower and speaks to the officers alone for about 30 seconds while Mr Reuben is in the shower with his daughter. She states *"We've got a fucking kid in here, she's fucking crying."* Ms Y is not visibly distressed and asks how they could have been having a domestic if they just got home. After repeating a number of times they had just arrived home and asking Police to leave, Ms Y picks up the shower door which had earlier fallen to the bathroom floor.
56. Mr Reuben reappears from the shower box and he and Ms Y continue asking Police to leave, repeating that they have just arrived home. Mr Reuben's daughter can be heard screaming in the background. The shower door then falls a second time, across Ms Y and Mr Reuben in front of Officer C, and Mr Reuben pushes it aside as he speaks.
57. About six minutes into the Taser Cam footage Mr Reuben embraces his daughter as she steps out of the shower and Officer C lowers the Taser toward the floor. Ms Y is heard repeating multiple times that *"we have only just got fucking home."* Officer C responds at one point *"then someone needs to tell us why we've been called."*
58. About 40 seconds later, Officer C raises the Taser and Mr Reuben can be seen leading his daughter from the bathroom to the lounge. She walks in front of Mr Reuben so that his back is to the Taser once they turn left out of the bathroom.
59. The officers follow Mr Reuben and his daughter into the lounge where Mr Reuben places his daughter on the couch and crouches next to his children. Officer D stands next to Mr Reuben and can be seen to raise his right arm and step toward Mr Reuben before Mr Reuben stands, partially turns and waves his left arm at Officer D, telling him to *"fuck off"*. Mr Reuben's arm is lowered when Officer C deploys the Taser against him.
60. In summary, in the Authority's view the Taser Cam footage demonstrates that during the events in the bathroom Mr Reuben alternated between calmly and forcefully telling the officers to leave and asserting that they were trespassing. He and Ms Y both clearly advise the officers that they had just arrived home from the beach. Mr Reuben combined this with arm gestures that were emphatic but not assaultive or threatening.

61. The Taser Cam footage also shows that the officers' continued presence in the bathroom, as well as their use of raised voices and disregard for what Ms Y and Mr Reuben were saying, contributed in preventing the de-escalation of the situation.
62. The Authority has found the Taser Cam footage helpful in establishing that:
- contrary to Officer C's record above, Ms Y does not appear to be "hyping up" Mr Reuben (see paragraph 23);
  - contrary to Officer C's and D's assertions, Mr Reuben did not violently detach the shower door and throw it across the bathroom at the officers before Officer C drew his Taser. Rather, it became detached and twice fell to the ground after Officer C had drawn his Taser (see paragraphs 50, 53 and 56);
  - the Taser Cam footage contradicts the officers' account that Mr Reuben kept his daughter between himself and the Taser while moving to the lounge. Instead, when Officer C raises the Taser Mr Reuben's back is facing the Taser and his daughter is in front of Mr Reuben (see paragraph 58);
  - the officers followed Mr Reuben when he moved to the lounge, disregarding the opportunity to speak to Ms Y alone in order to ascertain why Police had been called by the neighbour (see paragraph 55); and
  - Mr Reuben's actions during the alleged assault on Officer D are similar to and largely a continuation of the gestures Mr Reuben used in the bathroom when telling Police to leave the house. Mr Reuben did strike Officer D in the manner of an assault, although this may not have been intentional (see paragraph 59).

## SUBSEQUENT EVENTS

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63. Mr Reuben was charged with assaulting Police following the incident.
64. Officers C and D recorded their accounts of the incident in their Police notebooks and job sheets. Officer C said they did this after discussing the timing of events during the incident. As required by Police policy, Officers C and D also submitted Tactical Options Reports (TOR) in relation to their use of force.
65. Following this, Officer D completed both his and Officer C's briefs of evidence to be given at Mr Reuben's District Court hearing.
66. Ordinarily, Police would view the Taser Cam footage when preparing this documentation. Due to a technical error with the Taser Cam, the footage was only available to the officers in February 2012, about two months after the incident.

### Officer C's and D's Tactical Options Reports

67. In his TOR Officer C recorded that Police had entered the house at the invitation of an occupier. Officer C wrote that he drew his Taser after Mr Reuben *"ripped the shower door off and attempted to throw it across the room at Police."* Officer C recorded that he believed Mr Reuben presented a *"very real threat to Police"* and drew his Taser due to Mr Reuben's *"aggressive nature"*. This did not calm Mr Reuben down and Officer C recorded that the Taser was deployed at the same time as the OC spray after Mr Reuben assaulted Officer D.
68. Officer C also incorrectly recorded that he had used OC spray during the incident.
69. In his TOR, Officer D recorded that he had used his OC spray in self-defence pursuant to section 48 of the Crimes Act 1961 as he feared further assault by Mr Reuben and believed he was capable of a continued assault. Officer D also recorded that, as required by Police policy, he administered a warning prior to using the OC spray against Mr Reuben. However, no warning can be heard in the Taser Cam footage.
70. Officer D recorded in his TOR that Mr Reuben was compliant when handcuffed. This is contrary to what he recorded in his job sheet immediately following the incident and his evidence in the District Court, where Officer D stated that Mr Reuben continued to verbally abuse the officers.
71. The TORs of Officers C and D were then endorsed by their supervising officer and the Mid-South Area Canterbury Area Commander. Police policy required the supervising officer to endorse the TORs before the end of his shift, and the Area Commander within 7 days of the incident.
72. The supervising officer and Mid-South Area Canterbury Area Commander endorsed both TORs without viewing the Taser Cam footage, as required by Police policy (see paragraphs 205–211). This was due to the unavailability of the Taser Cam footage, as noted above. Both officers have subsequently told the Authority that they decided to endorse the TORs because they understood that the Taser Cam footage would not be available before they were required to submit the endorsed TORs.
73. The supervising officer added that he had visited the scene after the incident and witnessed the damage to the house and shower door. He was also aware of Mr Reuben's aggressive nature and criminal history. Based on these factors, he said that had no reason to doubt the account of the incident given by Officers C and D.

### Events Preceding Mr Reuben's District Court Hearing

74. Officer D prepared his and Officer C's briefs of evidence to be given at Mr Reuben's hearing. He used his and Officer C's notebook entries and job sheets to prepare the evidence briefs. This occurred before the Taser Cam footage was available.
75. The Taser Cam footage became available on 2 February 2012. This was a little over four months before Mr Reuben's trial.

76. Officer D viewed the Taser Cam footage before Mr Reuben's trial. He identified that aspects of his and Officer C's account of the incident, as recorded in their briefs of evidence, were in error and inconsistent with the Taser Cam footage. Officer D did not alter the briefs to accord with the Taser Cam footage because he believed that if he did so the District Court would draw adverse inferences regarding his and Officer C's evidence.
77. By 20 February 2012, the Police material to be used in Mr Reuben's hearing was disclosed to Mr Reuben's lawyer.
78. On 29 June 2012, six days before Mr Reuben's defended hearing in the District Court, the Timaru Police prosecutor notified the Senior Sergeant in charge of Timaru Police station that, due to the inconsistencies in the version of events to be given by Officers C and D, he did not consider that the prosecution should proceed. Specifically, he pointed to the discrepancy in the officers' allegation that Mr Reuben threw the shower door, and his concern about the officers' authority to remain on the property in light of the numerous requests to leave that can be heard on the Taser Cam footage.
79. The Police prosecutor later told the Authority that he considered that there was sufficient evidence to proceed, but was *"concerned with the way that the evidence was presented in the file and that if presented as given to me it would reflect badly on the Police."*
80. On 2 July 2012, the Timaru Senior Sergeant, having reviewed the prosecution file and Taser Cam footage, discussed the matter with the Police prosecutor. The Timaru Senior Sergeant and the prosecutor said that the Mid-South Area Commander was also present during the discussion.
81. In an interview with the Authority, the Police prosecutor said that he was told by the two senior officers to proceed with Mr Reuben's prosecution, despite the discrepancies. The Police prosecutor later told the Authority that he *"was not sure that this was the right decision but continued as per the advice and opinion of the two most Senior Officers in the South Canterbury area."* He also said that he *"did not recall thinking I had much choice."*
82. The Mid-South Area Commander said to the Authority that he did not recall whether any discussion took place. However, in previous written documentation he has told the Authority that neither he nor the Senior Sergeant had the authority to direct the prosecutor to proceed, as the prosecutor reported directly to the Christchurch Police Prosecutions Service Centre.
83. When asked by the Authority whether he was directly responsible to the Police Prosecutions Service, the Police prosecutor stated that he *"didn't really know."* He said that as a Police Sergeant he was rotated through the Police Prosecutions Service for two years, and he considered that *"my boss was still [the Mid-South Area Commander], but I'm linked to Prosecutions."* The Police prosecutor later told the Authority that he spoke to the Senior Sergeant because of the Senior Sergeant's prior prosecution experience, and because the Police Prosecutions supervisor was on sick leave.
84. In an interview with the Authority, the Timaru Senior Sergeant said that the Police prosecutor was told to carry on with Mr Reuben's prosecution, and to be open and honest and comment

on any inconsistencies. He said that in instances like Mr Reuben's hearing, where a brief of evidence is inconsistent with other evidence, it is better to *"lead it, [and] get an explanation from [Officers C and D] as to why."*

85. The Senior Sergeant considered that the discrepancy in the officers' recollection of Mr Reuben throwing the shower door was not unusual or dishonest, and that Officers C and D needed to explain the discrepancy in Court. Although there might have been an issue concerning the authority to remain inside the house, Mr Reuben's hearing should continue so that the officers could explain to the Court why they believed that they were justified in remaining on the property.
86. In interview with the Authority, the Police prosecutor stated that following the meeting he *"thought there were some discrepancies but it was put down that the officers could explain, like they did in Court."*
87. Accordingly, Officers C and D did not alter their briefs of evidence to accord with the Taser Cam footage. When asked by the Authority whether he discussed with Officers C and D how they would deal with the discrepancies in the briefs, the Police prosecutor said that prior to the hearing he told them that, *"they had to be honest and open about what happened, and answer any questions"*.

#### **District Court Hearing 5 July 2012**

88. Mr Reuben pleaded not guilty to the charge of assaulting Officer D. His defended hearing was held before Her Honour Judge Maze at the Timaru District Court on 5 July 2012. All four officers present at the address gave evidence for the prosecution.
89. As discussed above, Officer D prepared both his and Officer C's written briefs of evidence and these largely reflected the officers' account of events given in their Police notebooks and job sheets.
90. In the District Court, the Police prosecutor began by playing the Taser Cam footage. Following this, and after Officers A and B had given evidence on behalf of the prosecution, Officers C and D read their briefs of evidence when called to give evidence on behalf of the prosecution. They did not mention the inconsistencies between their evidence and the Taser Cam footage, nor did the Police prosecutor lead this issue when questioning the officers. The inconsistencies were only raised by Mr Reuben's defence counsel, during his cross-examinations of Officers C and D, and by the Court.
91. During cross-examination regarding Mr Reuben's alleged throwing of the shower door, Officer C said *"That's the way it appeared to me, he either pushed it or threw it towards us. I don't recall which."* Officer D however accepted that he had been mistaken about the time at which the shower door became detached.
92. Both officers reaffirmed their allegations that Mr Reuben used his daughter as a shield, but stated that this only occurred in the bathroom. Officer C said that Mr Reuben held his

daughter in front of himself until *“he got into the hallway and then started walking towards the lounge when his back was then presented to me.”* Officer D said that upon exiting the bathroom with his daughter Mr Reuben *“continued past us and exposed his back as he went past.”*

93. Officer C said that he did not recall Ms Y telling Police that they had just gotten home but Officer D accepted that by the time he had drawn the pepper spray he had been told to leave a number of times. Officer D maintained that Mr Reuben deliberately struck and then grabbed his arm.
94. On 5 July 2012 Judge Maze found Mr Reuben not guilty of assaulting Officer D. In her judgment, she made the following findings of fact:
- Mr Reuben, Ms Y and the children had just returned from a family outing at the beach. They were in the process of having a shower and going to bed.
  - Mr X told the first officer to leave when he went to the door.
  - The Police officers did not accept that and some went inside the house.
  - The Police officers inside the house established that they could find no one in physical danger, or distress, except for those in the bathroom.
  - Those in the bathroom plainly indicated their distress at the Police remaining, and the two adults were clearly telling the Police that there was no need for them to remain, that no one was in danger, and that the Police were required to leave.
  - Mr Reuben did not throw or push the shower door, or any part of it at anyone. It did collapse several times later in the footage, but the circumstances are clear, it was not deliberate.
  - Officer D complained that Mr Reuben lunged at him in the bathroom. However, Mr Reuben was simply using forceful language and gesturing with his arm that they were to go, as he had done from the outset of the incident. As far as Mr Reuben was concerned, the Police were intruders.
  - Ms Y clearly told the officers before they left the bathroom that they were not needed, there was no trouble, and no one was in distress.
  - Mr Reuben did not use his daughter as a shield.
  - Mr Reuben did not grab Officer D. Though he did strike Officer D, Judge Maze was satisfied beyond reasonable doubt that this was accidental. She based this on the Taser Cam footage, Officer D’s admission that he stepped toward Mr Reuben, and the clear indication that Mr Reuben’s action was a continuation of the gestures he had been making in the bathroom.
95. Judge Maze found that Police were acting in the execution of their duty when they first entered the house but that this authority to remain expired after the officers searched the

house, found nobody in distress except the bathroom occupants, and were aware Ms Y was telling them to leave. Judge Maze stated:

*“There was nothing further for them to investigate and they could obviously see that there was no one with any injury or immediate harm. That being the case, I am satisfied that these officers remained at their peril. They were not acting within their authority or duty. They had no right or licence to be there, long before the incident in the living room occurred. They had ample time to withdraw once they had satisfied themselves as to the state of the people in the shower.”*

96. In the course of her judgment, Judge Maze also commented on the quality of Officer C’s and D’s evidence, stating:

*“... the evidence of the two eye witness officers is very much called into question as a result of it being wrong on two major points. I do not accept that they can be relied upon on the crucial issues, given what they had to say about the bathroom door, and the child being used as a shield.”*

97. Judge Maze held that the charge of assaulting Officer D had not been established and dismissed the charge.

### **Police Investigation into the Officers’ Actions**

98. Following his acquittal Mr Reuben filed a complaint with the Independent Police Conduct Authority (see paragraphs 110–111). As required by statute, the Authority notified Police of this complaint. As a result Police commenced an investigation into the legality of the attending officers’ actions during the incident.
99. The Police investigation was initially assigned to a Detective Senior Sergeant at Police Professional Standards in Christchurch. On 9 August 2012 he spoke to the Timaru Police prosecutor responsible for Mr Reuben’s hearing. The prosecutor stated that he had made known his view that Mr Reuben’s prosecution should not have continued due to the inconsistencies in the evidence of Officers C and D, but was instructed to proceed by the Timaru Senior Sergeant and Mid-South Area Commander.
100. When the Detective Senior Sergeant returned the file to the Timaru Area Controller, he noted in his report that the evidence of Officers C and D and a number of the Police documents were inconsistent with the Taser Cam footage; that the Police file had been poorly prepared; and *“that it is questionable that the prosecution should have gone ahead at all given these concerns.”*
101. The Detective Senior Sergeant made recommendations that: a legal opinion be obtained; all the officers involved in the incident submit detailed reports; and Mr Reuben’s complaint be urgently considered (particularly in relation to his request that his children be offered counselling).

102. In August 2012 a Timaru Senior Sergeant was assigned to investigate the matter. He called for reports from Officers C and D. These were received on 19 and 26 September 2012. The following paragraphs summarise their reports:

- Officer C reported that *“No one within the property would communicate with us in a calm manner or explain the circumstances within the house.”* He stated that when the officers entered the house Mr Reuben was *“immediately aggressive, volatile, obstructive and uncooperative.”*
- He explained that Mr Reuben’s increasingly aggressive demeanour and uncooperative behaviour caused him to draw his Taser. As well, Mr Reuben’s behaviour had prevented Police from establishing what had occurred at the house or resolving the incident prior to *“the point where [Mr] Reuben demonstrated his assaultive behaviour and I deployed the Taser.”*
- Officer C stated that from his position he saw Mr Reuben stand and lunge at Officer D. Based on Mr Reuben’s preceding behaviour Officer C believed he intended to attack Officer D. Officer C said that his deployment of the Taser was consistent with the Police Tactical Options Framework.
- Officer C acknowledged the discrepancies between his evidence and the Taser Cam footage, but said his evidence reflected his contemporary recollection of the incident without having viewed the footage. He felt that it would have been inappropriate to change his evidence brief in the District Court after Mr Reuben’s prosecution file had been prepared.
- In his report Officer D said that he lawfully entered and remained inside the house based on the reasonable belief that it was necessary to prevent an offence. He said that this belief was based on the information received in the initial emergency report, the damage to the house and Mr Reuben’s conduct, which prevented Police establishing the safety of Ms Y and the children. He said that Mr Reuben’s shouting prevented his hearing Ms Y’s requests for the officers to leave.
- Officer D acknowledged that the Taser Cam footage demonstrated that Mr Reuben did not throw the shower door. Officer D nevertheless asserted that it was understandable that he believed this occurred given Mr Reuben’s aggressive behaviour. Officer D reaffirmed his belief that Mr Reuben used his daughter as a shield when moving to the lounge.
- Officer D stated that he drew his OC spray because Mr Reuben’s agitated and aggressive demeanour caused him to fear assault. He used the OC spray because Mr Reuben moved toward him in *“an aggressive manner striking my right arm and then grabbing it.”* He disagreed that Mr Reuben had been falsely charged with assault. He maintained his belief that Mr Reuben had deliberately struck him and the use of the OC spray prevented a more serious assault.

103. An independent opinion was not sought from the District Staff Safety Training officer regarding Officers C's and D's use of the Taser and OC spray.

#### Police Conclusions and Recommendations

104. In his report of 10 January 2013, the investigating officer came to the following conclusions:

- Officers C and D had acted lawfully during the incident.
- They had been entitled to hold the reasonable belief that the situation in the house presented a threat of assault and had correctly acted on that belief. The presence of children did not lessen the perceived risk.
- Their evidence was true to the best of their knowledge and the discrepancies with the Taser Cam footage were due to the natural mistakes made by witnesses when recounting an event.

105. The investigating officer recommended that no further action be taken regarding their use of force and that no compensation be offered to Mr Reuben.

106. The investigating officer did not form any conclusions regarding the standard of the Police prosecution file prepared for Mr Reuben's hearing, but referred to the earlier concerns of other Police staff (see paragraphs 99–100). The investigating officer recommended that Officers C and D, and their supervisors, be reminded of their obligations regarding the requisite standard of Police prosecution files.

107. On 7 March 2013, the Mid-South Canterbury Area Commander wrote to Mr Reuben. He advised Mr Reuben that the investigation had concluded that the officers' actions were justified, and that the officers' mistakes were not an attempt to pervert the course of justice. Finally, he informed Mr Reuben that action had been taken to rectify the mistakes made by Officer D (Officer C having by then resigned from the Police).

## The Authority's Investigation

### THE AUTHORITY'S ROLE

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108. 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.
109. The Authority's role on the completion of an investigation is to determine whether Police actions were contrary to law, unreasonable, unjustified, unfair, or undesirable.

### NOTIFICATION AND COMPLAINT

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110. On 13 July 2012 Mr Reuben complained to the Authority, alleging that:
- He was tasered and pepper sprayed in front of his children;
  - He was falsely charged with assaulting a Police officer;
  - The Police made mistakes in their evidence;
  - The Police would not leave his address after they were told to go.
111. On 23 July 2012, Mr Reuben's barrister forwarded a copy of Mr Reuben's complaint to the Authority. The barrister's covering letter to the Authority advised that:
- Mr Reuben was concerned with the effect the incident had on his children, especially in regard to their witnessing the use of the Taser and OC spray against Mr Reuben. They had begun to display worrying anti-social behaviour.
  - Police should provide some form of reparation to Mr Reuben, such as some form of professional treatment for Mr Reuben's children, an apology and some means of presenting the Police in a positive light to Mr Reuben's children.

### THE AUTHORITY'S INVESTIGATION

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112. On 26 July 2012, the Authority notified Police that it had assigned an investigator to independently investigate this incident pursuant to section 17(1)(a) of the Independent Police Conduct Authority Act 1988.

113. The purpose of this investigation was to determine whether there had been misconduct or neglect of duty on the part of any member of the Police, and to examine the relevant Police practices, policies and procedures. The investigation was separate from and independent of any Police criminal and disciplinary investigations.
114. The Authority's findings, detailed below, are reached on the civil standard of the 'balance of probabilities'. This is a lesser standard than that required for criminal liability, which requires evidence sufficient to demonstrate guilt 'beyond reasonable doubt'. Therefore, a finding by the Authority that an officer has acted unlawfully does not necessarily mean that the evidential threshold for criminal prosecution has been met.
115. The Authority was unable to conclude its report until it received the Police investigation file on 16 April 2013.

## ISSUES CONSIDERED

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

### Execution of Duty

- 1) Were the actions of Officers C and D during the incident consistent with good policing practice?
- 2) Were Police justified in entering the house?
- 3) Were Officers C and D justified in remaining inside the house?

### Use of Force

- 4) Was Officer C justified in presenting the Taser at Mr Reuben?
- 5) Was Officer D justified in presenting the OC spray at Mr Reuben?
- 6) Was Officer C's use of the Taser against Mr Reuben justified and reasonable in the circumstances, and did it comply with Police policy?
- 7) Was Officer D's use of the OC spray against Mr Reuben justified and reasonable in the circumstances, and did it comply with Police policy?
- 8) Was Police action following the use of force lawful and in accordance with Police policy?

### Officers' Evidence

- 9) Did Officers C and D give accurate evidence before the District Court?

## The Authority's Findings

### EXECUTION OF POLICE DUTY

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#### 1. Did the conduct of Officers C and D during this incident accord with good policing practice?

117. In this incident Police attended an address in response to a domestic disturbance report from a member of the public. At the scene, officers saw damage to the house that appeared consistent with the emergency report. Police were also confronted by a man, Mr Reuben, who they knew had a significant history of family violence and violence against others, including Police.
118. These factors informed the officers' perception of the situation and the threat posed by Mr Reuben and, according to them, led them to believe that Mr Reuben had been responsible for the damage to the house and reported disturbance.
119. However, it is evident that Officers C and D did not adopt a strategy that allowed them to effectively deal with the occupants of the house and de-escalate the situation. Instead, the actions of the officers had the potential to escalate the situation, and to increase the likelihood that force would need to be used. The particular actions of the officers in this respect include:
- their failure to gain all information available prior to entering the address, including their failure to speak with Officers A and B;
  - their use of poor verbal communication tactics, in particular raising their voices in response to Ms Y and Mr Reuben;
  - their failure to separate Ms Y and Mr Reuben in order to communicate with each individually; and
  - their standing in close proximity to Mr Reuben and his children, with their weapons still drawn, in the lounge.
120. It was also predictable that a man with a prior history of violence would react badly when confronted by Police officers refusing to leave his bathroom when they found him having a shower with his partner and daughter. They had the option of telling him that they would wait outside the door or in the lounge to talk to him after he had finished showering and got dressed. Instead, they stayed in the bathroom while the situation progressively deteriorated. They should not have done so. Their continued presence did nothing to calm Mr Reuben or Ms Y or assist them in finding out what had happened.
121. Accordingly, while most of their actions during the incident were lawful on an individual basis, they were not in accordance with good policing practice. It is also evident that the officers' approach negated the use of other, less violent, tactical options. The Authority has taken this into account in reaching its findings, detailed in the following paragraphs.

## FINDING

The actions taken by Officers C and D to deal with the situation did not accord with good policing practice.

### 2. Were Police justified in entering the house?

122. The report received by Police was that the neighbour could hear a female and male yelling and swearing, objects being thrown around and a lot of banging. The officers were advised of this when they were dispatched to the incident.
123. All the officers that attended the incident also noted the damage to the house when they arrived.
124. Based on this information, Officers C and D were justified under section 317 of the Crimes Act 1961 in entering the house and checking the safety of the occupants, on the basis that they had a reasonable belief that an offence likely to cause immediate and serious injury was about to be committed.

## FINDING

Police were justified under s 317 of the Crimes Act 1961 in entering the house in order to check the safety of the occupants.

### 3. Were Officers C and D justified in remaining inside the house?

125. Under section 317 of the Crimes Act 1961 Police were authorised to remain inside the house for the period necessary to prevent any offence which they believed on reasonable and probable grounds was about to be committed.
126. The common law authority of necessity (see paragraph 179 below) authorised the officers to remain inside the house for the period necessary to prevent what they believed, on objectively reasonable grounds, was a risk to human life or a threat of serious physical harm.
127. Shortly after their arrival, Police were told by Mr X, Ms Y and Mr Reuben that the domestic disturbance had involved other people, and that it had ended before Mr Reuben and his family had arrived home. The Taser Cam footage shows that, following this, Mr Reuben and Ms Y repeatedly asked the officers to leave the house.
128. Officers C and D both explained that they remained inside the house because Mr Reuben's aggressive behaviour and the other occupants' refusal to cooperate prevented them from ascertaining the safety of all persons at the address. Both believed that Mr Reuben was the aggressor in the domestic disturbance they had been called to, and had not been satisfied to the contrary. This belief was based on their knowledge of Mr Reuben's prior history of family

violence and the damage to the house, which appeared to confirm the report of a domestic disturbance.

129. Good policing practice required the officers to separate and speak to Ms Y and Mr Reuben individually to determine the safety of the occupants and the cause of the domestic disturbance. Officers C and D accepted this, but said that based on Mr Reuben's behaviour and prior history of violent conduct, they believed that this could not be accomplished safely in the circumstances.
130. The Authority considers that the officers' belief that Mr Reuben was responsible for the domestic disturbance was reasonable, and accepts that the officers remained because they were not satisfied that the occupants were safe. The continued Police presence inside the house had not reached the point where it had become unjustified.

## FINDING

The continued Police presence inside the house was justified on the basis that the officers reasonably believed that not all the occupants were safe.

## USE OF FORCE

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### 4. Was Officer C justified in presenting the Taser at Mr Reuben?

131. Police policy states that Tasers may only be used on a person who is assaultive or acts in a manner intended to cause or likely to cause death or grievous bodily harm (see paragraph 201), but may not be used on a person who offers passive resistance against Police. Officers may also present a Taser (but not use it) against a person whose behaviour the officer believes *"has the potential to escalate within or beyond the assaultive range."*
132. The Authority acknowledges that the Taser device, when presented in accordance with policy, is an effective deterrent that enables Police to de-escalate potentially violent situations.
133. Officer C stated that he drew his Taser and aimed it at Mr Reuben because Mr Reuben continued shouting at the officers and had lunged at Officer D in the bathroom before detaching and throwing the shower door at the officers. Officer C also stated that Mr Reuben became increasingly volatile and aggressive and that, due to this behaviour and his knowledge of Mr Reuben's prior history, he believed Mr Reuben was responsible for the domestic disturbance.
134. As noted above, aspects of Officer C's explanation for presenting his Taser and aiming it at Mr Reuben are inconsistent with the Taser Cam footage (see paragraph 62). Primarily, Mr Reuben did not detach and throw the shower door at Officers C and D. As well, the Taser Cam footage does not show Mr Reuben verbally threatening the officers (see paragraph 60). Accordingly, the Authority does not accept that Officer C was justified in presenting the Taser against Mr Reuben on this basis.

135. However, the Authority accepts that Officer C perceived that Mr Reuben was behaving in an aggressive and volatile manner towards Police, and that he presented the Taser in response. Accordingly, the Authority considers that this was justified as a deterrent based on Officer C's belief that Mr Reuben could react violently to the Police presence, as informed by his knowledge of Mr Reuben's prior history.

#### FINDING

Officer C was justified in presenting his Taser at Mr Reuben.

#### 5. Was Officer D justified in presenting the OC spray at Mr Reuben?

136. Police policy states that officers may draw OC spray as a preventive measure. In line with this, Police training also encourages officers to be proactive and to draw OC spray in situations where there is potential for physical confrontation.
137. Officer D said that he drew his OC spray after Mr Reuben threw the shower door across the bathroom, and because he had reasonable grounds to believe Mr Reuben was responsible for the reported domestic disturbance and presented a threat to him and Officer C.
138. As discussed above, the incident that Officer D gave as the primary reason for drawing his OC spray – Mr Reuben throwing the shower door – did not actually occur (see paragraph 62). However, the Authority accepts that Officer D drew the OC spray as a preventive measure. This conclusion is reached on the basis that Officer D's knowledge of Mr Reuben's prior history led him to reasonably believe that Mr Reuben presented a threat of assault to Police.

#### FINDING

Officer D was justified in presenting his OC spray at Mr Reuben.

#### 6. Was Officer C justified in using the Taser against Mr Reuben?

139. The Authority has considered whether the force used by Officer C was justified under section 39 or 48 of the Crimes Act 1961 and, if that force was justified under those provisions, whether the force used by Officer C was nevertheless excessive under section 62 of the Crimes Act 1961.
140. Section 39 of the Crimes Act 1961 gives Police the power to use force when making an arrest, unless the arrest can be made *"by reasonable means in a less violent manner"*. Section 62 provides that Police are criminally responsible for the use of any excessive force.
141. Officer C would also have been justified in using force under section 48 of the Crimes Act 1961, so long as:

- The force he used was in defence of himself or another; and
  - The level of force used was reasonable in the circumstances as he believed them to be.
142. As noted above, Police policy states that Tasers may only be used on a person who is assaultive or acts in a manner intended to cause or likely to cause death or grievous bodily harm (see paragraphs 131 or 201), but may not be used on a person who offers passive resistance against Police.
143. Officer C described Mr Reuben’s alleged assault as “*I saw Mr Reuben suddenly stand up and lash out at [Officer D].*” He said that due to his position behind Mr Reuben, he believed that Mr Reuben attacked Officer D.
144. The Authority considers that Mr Reuben did make contact with Officer D’s arm but that this was accidental and in part caused by Officer D stepping towards Mr Reuben as Mr Reuben was gesturing. As a result, the Authority accepts that Officer C may have had reasonable cause to suspect that Mr Reuben had committed the offence of assault on Officer D.
145. Accordingly, section 39 of the Crimes Act 1961 authorised Officer C to use reasonable force to arrest Mr Reuben. As well, Officer C would have been justified under section 48 in using a degree of force, in defence of Officer D, that was proportionate to the level of threat Officer C perceived Mr Reuben to present.
146. The Authority has concluded that given the minor nature of the assault Officer C believed he had witnessed, the force used by Officer C was disproportionate and cannot be justified. This was exacerbated by the proximity of Mr Reuben’s children. Officer C exceeded his lawful authority to use force pursuant to sections 39 and 48 of the Crimes Act 1961 and his deployment of the Taser constituted an excessive use of force.
147. As discussed above, this conclusion has been reached on the civil standard of the ‘*balance of probabilities*’. This standard sets a lower threshold for proof than that required for criminal liability, the threshold for which requires evidence sufficient to demonstrate guilt ‘*beyond reasonable doubt*’. Therefore, the Authority’s finding does not necessarily mean that the threshold for criminal prosecution has been met in this case.

## FINDINGS

Officer C was entitled to use reasonable force to arrest Mr Reuben or, in the circumstances as he believed them to be, to defend Officer D.

However, Officer C’s use of force was disproportionate to the minor nature of the suspected assault by Mr Reuben and was unjustified, particularly given the extremely close proximity of Mr Reuben’s children.

## 7. Was Officer D justified in using the OC spray against Mr Reuben?

148. Police policy states that OC spray may only be used on a person who is actively resisting Police and only in circumstances where its use is proportionate. Officers may therefore deploy OC spray against a person who presents a lesser perceived threat than must be present for them to use a Taser. The policy also obliges Police to provide a warning and reasonable opportunity to comply with that warning prior to the use of OC spray (see paragraphs 206–210 below).
149. Officer D recorded in his TOR that he warned Mr Reuben prior to using the OC spray (see paragraph 69). However, no warning can be heard on the Taser Cam footage.
150. Officer D stated that he deployed his OC spray in response to Mr Reuben’s alleged assault, which he described as “[Mr] Reuben lashed out and struck my arm at the same time grabbing it”, and immediately after he heard Officer C give the Taser warning. In his TOR he recorded that he used OC spray in self-defence under section 48 of the Crimes Act 1961, as he feared further assault by Mr Reuben.
151. As discussed in relation to Officer C, the Authority considers that, based on the Taser Cam footage, Mr Reuben did make contact with Officer D’s arm but this was accidental and in part due to Officer D stepping toward Mr Reuben. As a result, the Authority accepts that Officer D had reasonable cause to suspect that Mr Reuben had intended to assault him, despite the minor nature of the alleged assault described by Officer D.
152. Accordingly, section 39 of the Crimes Act 1961 entitled Officer D to use reasonable force to arrest Mr Reuben. Officer D would also have been justified under section 48 of the Crimes Act 1961 in using a degree of force, in defence of himself, that was proportionate to the level of threat Officer D perceived Mr Reuben to present.
153. The Authority considers that Officer D’s use of OC spray, a tactical option which may be used in circumstances which do not warrant the use of a Taser, was justified on the basis that it was deployed at the same time as the Taser deployment, and because it was an immediate reaction to the perceived assault by Mr Reuben. Officer D’s deployment of the OC spray would not have been justified had he not used it close in time to the alleged assault.

### FINDINGS

Officer D was entitled to use reasonable force to arrest Mr Reuben or, in the circumstances as he believed them to be, to defend himself.

Officer D’s use of force was justified on the basis that it was an immediate response to the perceived assault by Mr Reuben.

## 8. Was Police action following the use of force lawful and in accordance with Police policy?

154. Police policy on the use of force establishes certain procedural requirements that must be adhered to following any use of force by Police. Tactical Options Reports (TORs) must be

reviewed by a supervising officer and Inspector. Such reviews provide accountability for the use and reporting of force.

155. Police policy required Officer C's supervising officer and the Mid-South Canterbury Area Commander to view the Taser Cam footage when reviewing Officer C's TOR. As discussed above, the Authority has found that the Taser Cam footage was not available for viewing following the incident (see above paragraph 66).
156. As a result, the TORs of Officers C and D were endorsed by their supervising officer and the Mid-South Canterbury Area Commander despite numerous inconsistencies between their written accounts of the incident and the available evidence (see paragraph 62 above).
157. However, the Authority accepts that, due to the unavailability of the Taser footage, the supervising officer and the Mid-South Canterbury Area Commander were not able to comply with Police policy. They were forced either to endorse the TORs without viewing the Taser Cam footage, or not to endorse them within the required period of time.
158. In the Authority's view, they should not have chosen the former option until they had clarified whether or not the Taser Cam footage could be retrieved.

#### FINDING

The supervising officer and Mid-South Canterbury Area Commander should not have endorsed the TORs until they had clarified whether or not the Taser Cam footage could be retrieved.

#### OFFICERS' EVIDENCE

##### 9. Did Officers C and D give accurate evidence before the District Court?

###### *(i) Documentation following the incident*

159. Following Mr Reuben's arrest, Officers C and D recorded their account of the incident in their Police notebooks and job sheets. They also subsequently prepared documentation necessary for Mr Reuben's prosecution.
160. During the course of its investigation the Authority has found that the separate descriptions of the incident recorded by Officers C and D in their Police notebooks and job sheets are almost identical. There are also significant inconsistencies between the account given by Officers C and D in their notebooks and job sheets, and the Taser Cam footage. Specifically, Mr Reuben did not throw the shower door at Police, or carry his daughter in front of Officer C's aimed Taser, and both he and Ms Y clearly and repeatedly advised Police that they had just returned from the beach prior to the incident.
161. Officers C and D said that they prepared their job sheets together, and that their account of the incident was recorded without the benefit of the Taser Cam footage.

162. Police officers may coordinate their note taking in order to produce a factually accurate record of an incident. However, the similarities in the language used in the notebooks and job sheets of the two officers are such that one appears to have been directly copied from the other.
163. The Authority has considered whether the multiple discrepancies between their record of the incident and that provided by the Taser Cam footage indicates that the officers colluded to produce a deliberately inaccurate record of the event. However, the available evidence is insufficient for the Authority to determine this issue.
164. The Authority accepts that an alternative explanation for the similarities is that the officers discussed the incident and reached mistaken views about what occurred during a volatile situation. Due to the unavailability of the Taser footage they were unable to correct their recollections of the incident and, following their earlier discussion, used very similar language when preparing their notebooks and job sheets.

*(ii) Evidence in the District Court*

165. Officer D used his and Officer C's Police notebook entries and job sheets to prepare their briefs of evidence for Mr Reuben's prosecution. At this time the Taser Cam footage was still unavailable, and the evidence briefs repeated the factual assertions that are contradicted by the Taser Cam footage.
166. The Taser Cam footage was available on 2 February 2012, at least four months before Mr Reuben's trial. The Police documentation, which included the briefs of evidence and Taser Cam footage, was disclosed to Mr Reuben's lawyer by 20 February 2012.
167. After it became available, Officer D viewed the Taser Cam footage and identified that aspects of his and Officer C's evidence briefs were in error and inconsistent with the Taser Cam footage.
168. In the week before Mr Reuben's hearing the Timaru Police prosecutor identified the same inconsistencies and brought these to the attention of the Timaru Senior Sergeant. The Police prosecutor was subsequently told by the Senior Sergeant to continue with Mr Reuben's prosecution. When asked about this and the discrepancies in the briefs of evidence, the Senior Sergeant said to the Authority investigator that he thought it was better to *"lead it, [and] get an explanation from [Officers C and D] as to why."*
169. The Timaru Police prosecutor, having identified the discrepancies in the officers' briefs of evidence, should have sought the advice and direction of his supervisor, the Police Prosecutions Senior Sergeant in Christchurch. This was required by Police policy. The prosecutor should have known that he was responsible to the Christchurch Police Prosecutions Service, as opposed to senior Timaru Police staff.
170. In addition to this, the Timaru Senior Sergeant should have told the prosecutor to seek advice from his supervisor in the Police Prosecutions Service. The Senior Sergeant had no authority to direct the prosecutor to continue with the prosecution.

171. Officers C and D did not alter their briefs of evidence. The Police prosecutor said to the Authority investigator that despite the discrepancies, *“it was put down that the officers could explain, like they did in Court”*, and that prior to Mr Reuben’s hearing he said to Officers C and D that, *“they had to be honest and open about what happened, and answer any questions.”* Subsequently, Officers C and D did not alter their sworn evidence in Court from that provided in their briefs of evidence.
172. The Authority accepts that to continue with the prosecution without having Officers C and D alter their briefs of evidence, on the basis that they would explain the discrepancies when giving evidence in Court, was a possible course of action open to the officers involved.
173. However, the Police prosecutor subsequently acted improperly by allowing them to give evidence contrary to the Taser Cam footage, by not drawing the Court’s attention to the discrepancies in the account of events given by Officers C and D.
174. As a result, Officers C and D gave evidence in the District Court which they, their supervising officer and Timaru Police Prosecutor knew to be contradicted by the Taser Cam footage, and to be incorrect. Although the Authority was told that the supervisor and prosecutor agreed to this on the basis that the officers would explain the discrepancy in Court (see paragraph 85 and 168), and the Taser Cam footage was played in Court, it is significant that the discrepancy was not discussed during examination-in-chief, and only emerged during cross-examination by defence counsel.

## FINDINGS

The Authority is unable to form a view on the available evidence that Officers C and D colluded to produce deliberately inaccurate records of the incident in their notebooks and job sheets.

The Police prosecutor should have sought the advice of and taken direction from his line supervisor, who was the Police Prosecutions Service Senior Sergeant in Christchurch. He failed to do so.

The Timaru Senior Sergeant did not have the authority to direct the prosecutor, and should have told him to seek advice from his supervisor at the Police Prosecutions Service.

Officers C and D did not alter the briefs of evidence that had been earlier prepared, nor did they add to their sworn evidence in Court, and as a result gave evidence they knew to be incorrect in Court.

The Police prosecutor failed in his duty to ensure that accurate evidence was presented to the Court.

## Conclusions

175. The Authority has concluded on the balance of probabilities that:

- 1) Police were lawfully justified under section 317 of the Crimes Act 1961 to enter the house in order to ensure the safety of the occupants.
- 2) Mr Reuben and Ms Y, at different points, calmly and repeatedly asked Police to leave the property. Both together and individually they also advised Police that they had not been involved in a domestic incident prior to the arrival of Police but had recently returned from the beach.
- 3) Officers C and D reasonably believed that Mr Reuben was responsible for the domestic disturbance, based on their knowledge of his prior history, and were not satisfied that the occupants of the house were safe. Based on this their continued presence inside the house was justified.
- 4) The strategy adopted by Officers C and D to deal with incident was not in accordance with good policing practice. While most of the officers' actions were lawful, the strategy they adopted did not allow the situation to effectively de-escalate and negated the use of other, less violent tactical options.
- 5) The presentation of the Taser and OC spray against Mr Reuben by Officers C and D was in accordance with Police policy and justified.
- 6) The continued close proximity of Police inside the bathroom and lounge prompted Mr Reuben to gesticulate repeatedly while trying to get Police to leave. In doing so in the lounge, Mr Reuben's arm made contact with Officer D's arm.
- 7) The Authority accepts that Officers C and D may have had reasonable cause to suspect that Mr Reuben had assaulted Officer D in the lounge.
- 8) Officer C's use of the Taser was not an appropriate response to Mr Reuben's suspected assault and was disproportionate, especially in the presence of Mr Reuben's children. Officer C's conduct amounted to excessive force and was contrary to law.
- 9) Officer D's use of the OC spray was justified on the basis it immediately followed what he believed was an assault on him by Mr Reuben.
- 10) Due to circumstance, supervising Police staff were not able to view the Taser Cam footage when reviewing Officer C's and D's Tactical Options Report forms, as required by Police policy, but should have delayed endorsing them until they had clarified that the Taser Cam footage was unavailable.
- 11) The available evidence does not allow the Authority to form a view about whether Officers C and D colluded to produce deliberately inaccurate records of the incident in their notebooks and job sheets.

- 12) Officers C and D did not alter their briefs of evidence or add to their sworn evidence in Court and as a result gave evidence they knew to be incorrect in Court.
- 13) The Timaru Police prosecutor should have sought advice and direction from his line supervisor, the Police Prosecutions Service Senior Sergeant in Christchurch.
- 14) The Timaru Senior Sergeant did not have the authority to direct the prosecutor, and should have told him to seek advice from the Police Prosecutions Service supervisor.
- 15) The Timaru Police prosecutor failed in his duty to ensure that accurate evidence was presented to the Court.

176. In light of the above conclusions, the Authority recommends that the Commissioner of Police commence an investigation into the actions of all the officers involved.

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

9 October 2014

## Applicable Laws and Policies

### APPLICABLE LAW

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#### Police power of entry onto property

177. At the time, section 317 of the Crimes Act 1961<sup>2</sup> authorised Police to enter on any premises, by force if necessary, to prevent the commission of any offence they believed on reasonable grounds was about to be committed. That offence must have been such as would be likely to cause immediate and serious injury to any person or property.
178. In addition to the above statutory authority, Police are lawfully authorised to enter property in the following circumstances: with the express or implied consent of the owner or occupier; under an implied authorisation to enter in order to communicate with the occupier, who may then revoke that authority; and in circumstances of emergency under the authority of necessity.
179. At the time, Police were authorised by the common law power of necessity to enter a property in circumstances that would have otherwise amounted to trespass if they believed in good faith and on objectively reasonable grounds that it was necessary to enter in order to: preserve human life; prevent serious physical harm to another person; or to render assistance to another person that has suffered serious physical harm.<sup>3</sup>

#### Law on the use of force

##### *Use of force by Police officers*

180. Section 39 of the Crimes Act 1961 provides for Police 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 in self-defence or in defence of others*

181. 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.*”

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<sup>2</sup> Section 317 was repealed and replaced by section 14 of the Search and Surveillance Act 2012, but was applicable at the time of this incident.

<sup>3</sup> Section 14(2)(b) of the Search and Surveillance Act 2012 incorporates the common law power of necessity. Unlike the common law standard of belief, section 14(2)(b) requires that officers have reasonable grounds to suspect.

### *Excess force*

182. Section 62 of the Crimes Act makes anyone who is authorised by law to use force criminally responsible for the use of any excessive force.

### **Law on misleading justice**

#### *Corrupting juries and witnesses*

183. The offence of wilfully attempting to pervert the course of justice is contained in section 117 of the Crimes Act 1961. It captures conduct by which a person *“wilfully attempts ... to obstruct, prevent, pervert, or defeat the course of justice”*.
184. Broadly speaking, the offence constitutes adversely influencing the course of justice and captures acts intended to bring about a wrong or unjust result, including those intended to ensure that a person is found wrongly guilty of an offence.

## **APPLICABLE POLICE POLICIES**

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### **General guidance on the use of force**

185. The Police have a range of tactical options available to them to help restrain a person, effect an arrest or otherwise carry out lawful duties. These range from handcuffing and use of open hand tactics to use of batons, OC spray, Tasers, carotid holds and firearms.

#### *Manual of Best Practice*

186. The Police Manual of Best Practice sets out the circumstances in which the use of force by Police is legally justified. This includes executing a process (such as a search warrant) or arrest, preventing escape, preventing suicide or injury, preventing breach of the peace, taking fingerprints, self-defence and defence of others, and a range of other lawfully justified circumstances. The Manual notes that an officer who uses excessive force may be civilly or criminally liable.
187. It also notes that, except in the case of self-defence, ‘reasonableness’ must be assessed objectively, *“that is, by the standards of the person on the street, and not the person using the force”*.
188. The Manual advises staff to *“remember that physical action taken too early may precipitate an even more violent situation”*.

#### *Tactical Options Framework*

189. The Tactical Options Framework sets out a range of options available to Police in responding to a situation, depending on the actions of the offender. Officers may engage the offender (either immediately or later), or disengage, as appropriate in the circumstances.

190. If the offender is engaged, options range from communication to ‘empty hand’ tactics (such as escorting or distracting the offender, or kicking, punching or using a carotid hold) to ‘intermediate options’ (i.e. those unlikely to cause death or serious injury such as OC spray or baton) to use of lethal force (including firearms, baton strikes to head or neck, or empty hand strikes to the trachea, and intentional dislocations and breaks).
191. Which option is appropriate depends on whether the offender is:
- cooperative;
  - resisting passively (i.e. *“refuses, with little or no physical action, to cooperate with the officer’s lawful direction”*);
  - resisting actively (for example, pulling away, pushing, or running);
  - ‘assaultive’ (defined as *“actively hostile behaviour accompanied by physical actions or intent, expressed either verbally and/or through body language, to cause physical harm”* – examples include kicking, punching or aggressive body language signalling an intent to assault; or
  - Presents a threat of death or grievous bodily harm (i.e. exhibiting actions *“that the officer believes are intended to, or likely to, cause grievous bodily harm or death to any person”* – for example, assault with a knife, blunt instrument or firearm).
192. Disengagement may be appropriate when *“the consequences of continued police intervention seriously increase the danger to anyone”*.
193. The framework’s guiding principles include: use of minimum force to reach an objective; and reduction of risk/maximising safety of Police staff.

### Use of Tasers

194. A Taser uses an electrical discharge to incapacitate a suspect. It works by preventing the suspect from controlling his or her muscles and motor functions.
195. The Police Manual of Best Practice states that a Taser is a *“less lethal”* weapon and is classed as an intermediate option according to the Tactical Options Framework.
196. According to the Taser manual, the likely result from using a Taser is that the suspect will immediately collapse to the ground and remain incapacitated as long as the Taser is being used. The Manual also states that there are no known long-term after-effects, and that recovery from a Taser stun should be almost instantaneous.

### Use as a deterrent

197. In addition to their deployment to incapacitate violent or assaultive persons, officers often present a Taser to de-escalate situations before violence occurs. The presentation of a Taser in this manner is an effective deterrent that more often than not allows Police to affect their

required purpose, for instance the arrest of a person, without the use of force and before a situation has escalated.

#### *Before use*

198. The manual states that, when presenting and before using a Taser, an officer should verbally warn the suspect unless it is impracticable or unsafe to do so. This is to encourage the de-escalation of a situation and to warn people nearby.
199. The Police manual states that a Taser may be presented as a visual deterrent, in conjunction with a verbal warning, as a de-escalation method. A second method of de-escalation is to overlay the laser sighting system of the Taser on a person as a visual deterrent, again with a verbal warning.

#### *Circumstances in which a Taser may be used*

200. The Manual states that use of a Taser must be reasonable, proportionate, necessary and justified under relevant sections (31, 32, 39, 40, 41, or 48) of the Crimes Act 1961.
201. As a matter of principle, a Taser can only be used on a person who is 'assaultive' (see paragraph 188 for definition), or who is acting in a way that is intended or likely to cause death or grievous bodily harm. A Taser may not under any circumstances be used on a person who is uncooperative but otherwise non-aggressive, or who is using passive resistance.
202. The Manual also states that the Taser can only be used if the officer honestly believes the person is capable of carrying out the threat to cause harm, and furthermore may only be used for self-defence or defence of others, to arrest an offender, to resolve an incident in which a person is likely to injure themselves, or to prevent escape, and then only if the matter cannot be resolved through less forceful means.
203. The Manual cautions against using Taser on anyone who might fall from an elevated position or drown as a result of being incapacitated, or on pregnant women, or where there is a risk of the Taser igniting accelerants or flammable liquids or explosives.
204. Tasers must not be carried during crowd demonstrations and should not generally be used in crowd situations.

#### *After use*

205. After a Taser is used to stun a person:
  - Taser probes should be removed at the first opportunity, with the person's consent. If he or she wants a medical practitioner to remove the probes, they should be left in place and care should be taken to minimise discomfort.
  - Police should apply normal first aid procedures, seek immediate medical assistance if the person's safety appears to be at risk, and monitor the subject until he or she has

been examined by a medical practitioner. Anyone who is stunned using a Taser must be examined by a medical practitioner at the earliest opportunity.

- A supervisor must be notified as soon as practical and the supervisor must attend the scene, ensure appropriate care is provided and that evidence is preserved, and investigate whether the use of the Taser was appropriate.

### Oleoresin capsicum spray

206. 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.
207. 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.”*
208. 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”*.
209. The policy also states that OC spray is not to be used on a person in custody in a police station unless there are exceptional circumstances, which include:
- the person cannot be controlled by less forceful means;
  - timely assistance is not available;
  - there is risk of injury to the person or another person;
  - the prisoner is in possession of a previously unknown weapon; or
  - you need to take immediate action to resolve a situation or prevent a situation continuing.
210. The policy requires that, before capsicum spray is used on a person, the person is warned that non-compliance will result in them being capsicum sprayed, the person is given a reasonable opportunity to comply, and other people nearby are warned that spray will be used.

### Action following use of force

#### *Use of force report*

211. The policy states that any officer who uses force on another person must submit a tactical options report to his or her supervisor at the first opportunity, except (a) where the force is trifling and (b) where the force is used to arrest, search or otherwise deal with a prisoner and is moderate and causes no injury.

### *Medical examination*

212. The policy requires that, where force is used and results in injury that is not minor, the injured person must be medically examined at the first opportunity unless this is impractical or inappropriate.

### **Police Prosecution Service**

#### *Statement of Policy and Practice*

213. The Statement of Policy and Practice provides that in each case it is the responsibility of the Police prosecutor to assess whether charges are appropriate and there is sufficient evidence and public interest to prosecute, and whether to amend, add or withdraw charges.
214. Where the prosecutor is considering modifying, adding or withdrawing charges they should, whenever practicable, consult with the officer in charge of the case or that officer's supervisor.

#### *Charging Decisions*

215. The policy states that the final responsibility for the decision whether or not a case should go ahead rests with Police Prosecution Service. Where practicable, prosecutors may talk to the officer in charge if they are considering amending or withdrawing any charges.



## About the Authority

### WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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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?

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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 on whether any Police conduct, policy, practice or procedure (which was the subject of the complaint) was contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority may make recommendations to the Commissioner.



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