



Police actions during the arrest of John Bennett

INDEPENDENT POLICE CONDUCT AUTHORITY

INTRODUCTION

1. The Independent Police Conduct Authority (the Authority) received a complaint from Mr John Bennett's legal counsel about an incident which occurred at Mr Bennett's home in Christchurch on 16 December 2011, during which he was arrested.
2. The Authority can either independently investigate complaints or, as happened here, refer a complaint to Police for them to undertake an investigation. In such circumstances the Authority then independently reviews the Police investigation. In accordance with section 28 of the Independent Police Conduct Authority Act 1988 (the Act), the Authority must *"form an opinion on whether or not any decision, recommendation, act, omission, conduct, policy, practice, or procedure which was the subject matter of the investigation was contrary to law, unreasonable, unjustified, unfair, or undesirable"*. This report sets out the Authority's independent review of the Police investigation and its findings.

BACKGROUND

Summary of events

3. In the early hours of 16 December 2011, Police were actively searching for an assailant who was tracked to the suburb of Burwood where Mr Bennett lived. The area was largely deserted of residents following the city's February 2011 earthquake. Mr Bennett was woken by the sound of an intruder on his property and, given a recent spate of burglaries and looting in the vicinity, went outside (wearing only a t-shirt and underwear) to investigate further. Mr Bennett went inside to call Police but, after hearing further noises, returned outside armed with an air pistol and tee-ball bat.

4. Officer A was in Mr Bennett's driveway having been called to assist the officer who had apprehended the assailant sought by Police. After being challenged by Mr Bennett, Officer A identified himself and admonished Mr Bennett for coming outside with the weapons. Officer A instructed Mr Bennett to place the weapons on the ground. Mr Bennett did so, and then moved away from the weapons as requested and unlocked the gate that separated them.
5. Mr Bennett was being spoken to by Officer A, when Mrs Bennett came outside to see what was occurring, and Officers B and C then arrived on the scene. While there are conflicting accounts about whether Mr Bennett was pushed up against a fence by Officer B and searched in the first instance, it is not disputed that Mr Bennett was directed by Officer B to lie, face down, on the ground. Officer B held Mr Bennett, pushing his face into the ground, and applying pressure with his knee and foot across his back and shoulder blades to keep him prone, until Officer C assisted him by handcuffing Mr Bennett. Mr Bennett had difficulty lying prone due to having a pacemaker and being concerned not to damage it.
6. Mr Bennett was arrested by Officer B for unlawfully carrying a firearm and possession of an offensive weapon. He was transported to Christchurch Central Police Station, where he was charged and then detained for approximately two hours before being released on bail to appear in Court at a later date. Following submissions from Mr Bennett's lawyer, the charges were withdrawn by Police on 15 February 2012.

Complaint

7. On 19 March 2012, the Authority received a letter with four heads of complaint:
 - 7.1 Police officers failed to identify themselves as Police when confronted by Mr Bennett on his property.
 - 7.2 Unnecessary and excessive force was used on Mr Bennett during the arrest process.
 - 7.3 The arrest of Mr Bennett, in the circumstances, was unwarranted.
 - 7.4 Aspects of Mr Bennett's treatment at the hands of Police subsequent to his arrest were unnecessary, unwarranted, and humiliating.

Police investigation and findings

8. Police determined that there was insufficient evidence to provide a reasonable prospect of conviction for assault by Officer B and, indeed, that the force used by Officer B on Mr Bennett was reasonable under the circumstances. Accordingly, Police determined that no further action was required. Mr Bennett's complaints were not upheld by Police.

THE AUTHORITY'S REVIEW AND FINDINGS

9. The Authority's findings differ from those of Police. Dealing with each particular complaint in turn:

Police officers failed to identify themselves as Police when confronted by Mr Bennett on his property.

10. Officer A shone his torch on himself so it could be seen that he was a member of Police, identified himself as such, and stated his business. The Authority has no reason to question the information provided by Officer A. It is conceivable that Mr Bennett may not have initially heard Officer A. Mr Bennett indicated that he began acting on the premise that he was facing a Police officer after being directed to put down the weapons. That being the case, it was reasonable for Officer A to assume he had been heard and there would have been no cause to identify himself again.

FINDING

Officer A identified himself when confronted by Mr Bennett. This aspect of the complaint by Mr Bennett is NOT UPHELD.

Unnecessary and excessive force was used on Mr Bennett during the arrest process.

11. Police are required under policy to use the minimum force required in the circumstances. On the basis of information provided, the Authority is not satisfied that Officer B attempted to communicate with Mr Bennett or, indeed, Officer A to ascertain what had occurred. Officer B did not step through any other tactical option before physically engaging with Mr Bennett. The Authority considers that Officer B acted prematurely and without an adequate appreciation for the situation. His actions were unnecessary and disproportionate to the situation. The force used was excessive.

FINDING

Officer B's actions during the arrest of Mr Bennett were unjustified, unreasonable, and amounted to excessive force. This aspect of the complaint by Mr Bennett is UPHELD.

The arrest of Mr Bennett, in the circumstances, was unwarranted.

12. Mr Bennett's arrest was not, under the circumstances, reasonable or justified. Officers B and C arrived at the scene after Officer A and failed to ascertain the facts of the situation before acting. Had they done so a number of other, proportionate, options for resolving the matter could have been used. Further, Officer A should have ensured that Officers B and C were apprised of his account of the incident before he left the scene.

FINDING

Mr Bennett's arrest was unjustified and unreasonable. This aspect of the complaint by Mr Bennett is UPHELD.

The failure of all three officers to adequately communicate with each other and consider the circumstances of the incident was unjustified and unreasonable.

Aspects of Mr Bennett's treatment at the hands of Police subsequent to his arrest were unnecessary, unwarranted, and humiliating.

13. Certain actions of Police were unnecessary and unwarranted, and failed to have regard or respect for Mr Bennett's dignity. In particular, Officers B and C should have ensured Mr Bennett was able to access appropriate clothing and footwear from his home before taking him to the Police station.

FINDING

The treatment of Mr Bennett by Officer C, Officer B, and Watchhouse staff subsequent to his arrest was unjustified and unreasonable. This aspect of the complaint by Mr Bennett is UPHELD.

14. In accordance with the Authority's obligations under the Act, the issues of concern have been brought to the attention of the Commissioner for Police to determine what action should be taken in respect of the officers involved.



JUDGE SIR DAVID CARRUTHERS

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

20 August 2013



IPCA

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