

Independence

trustworthiness

accountability

vigilance

integrity

Public report into Police shooting of Shayne Richard Sime

June 2010



IPCA

Independent Police Conduct Authority
Whaia te pono, kia puawai ko te tika



June 2010

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Introduction

INDEPENDENT POLICE CONDUCT AUTHORITY

1. At about 10.35pm on Sunday 28 June 2009 Police officers acting in the execution of their duty fatally shot Shayne Richard Sime at his home address of 7 Wadhurst Place, Burnside, Christchurch City.
2. The Police notified the Independent Police Conduct Authority of the incident, and the Authority conducted an independent investigation.
3. The Police carried out a separate homicide investigation, to determine any criminal liability.
4. The Authority's investigation considered matters of Police conduct and compliance with relevant laws and policies. This report sets out the results of that investigation, and makes findings and recommendations.

NOTE: This report contains verbatim quotes featuring explicit language that may be offensive to some people.

Glossary of Officers

Officers	Roles	Comment
Duty Inspector	Incident Controller	On call Duty Inspector Called to scene and arrived 9.40pm Assumed overall command of operation from that point
Acting Senior Sergeant	(Initial) Incident Controller	On duty Shift Supervisor Coordinated initial Police action and responses Established SFP (Safe Forward Point) for arriving personnel
AOS Inspector	AOS Commander	On call AOS Commander Called at home and arrived at scene 8.37pm Took command of AOS operation
AOS Inspector	AOS Command 2 I/C	Arrived at the scene 8.55pm Set up command operations Managed AOS Command Centre
AOS Sergeant	AOS Forward Commander	Arrived at the scene 8.55pm with AOS teams Assumed forward command of AOS operations Coordinated evacuations and positions of AOS members
Officer A AOS	General Duty AOS	Part of AOS forward operations Fired upon Shayne Sime
Officer B AOS	General Duty AOS	Part of AOS forward operations Fired upon Shayne Sime
Officer C AOS	General Duty AOS	Part of AOS forward operations Fired upon Shayne Sime
Officer D AOS	General Duty AOS	Part of AOS forward operations Fired upon Shayne Sime
Officer E AOS	General Duty AOS	Part of AOS forward operations Injured by Shayne Sime
PNT Constable	Negotiator	Police Negotiating Team Member Engaged in conversation with Shayne Sime



Background

INDEPENDENT POLICE CONDUCT AUTHORITY

SUMMARY OF EVENTS

5. At about 8.00pm on Sunday 28 June 2009 Police responded to numerous calls from concerned members of the public, relating to the shooting of a firearm in the suburb of Burnside, Christchurch. Callers reported that numerous shots had been fired from a house around Wadhurst Place, a small cul-de-sac off Guilford Street, near Greers Road and Burnside High School.
6. The shots had been fired by Shayne Richard Sime of 7 Wadhurst Place, who had emerged from his house and, using two shotguns and a .308 rifle, had fired shot and bullets indiscriminately around the neighbourhood. He also fired specifically upon the house of a neighbour at 4 Wadhurst Place, causing considerable damage to the front of the house and two vehicles parked in the driveway. The owner of this house was struck by shotgun pellets when he went to investigate what was happening to his property, but his injuries were not life-threatening.
7. Another neighbour from 5 Wadhurst Place also emerged from his house to question Mr Sime about the shots but left immediately when ordered to do so by Mr Sime.
8. Police at the Southern Communications Centre immediately contacted the on-call Armed Offenders Squad (AOS) Commander. As further shots were being fired, on-call AOS members, including the Police Negotiating Team (PNT), were mobilised to respond.
9. The initial responses of Police were in line with their standard operating principles of contain, cordon and negotiation with the offender. Residents were evacuated from neighbouring properties while the PNT made contact with Mr Sime in an effort to dissuade him from shooting and to surrender to the officers who were beginning to surround him. Mr Sime made it clear that he would not surrender and would shoot any officer who approached him.
10. As Police moved forward in preparation to shoot tear gas into Mr Sime's house, he emerged once more and fired shots towards the house at 3 Wadhurst Place. Inside the

house were three AOS officers, one of whom was hit in the face by shotgun pellets fired by Mr Sime. Police positioned around the street returned fire at this point and Mr Sime was struck by bullets, resulting in instantaneous, fatal injuries.

Background of Shayne Richard Sime

11. Mr Sime was a 42 year old sickness beneficiary who used a wheelchair. His disability arose from a degenerative spinal disease called Brown-Sequard Syndrome that had left him increasingly reliant on the wheelchair from 2001. He had also suffered a head injury in a bar fight in 1990, when he was struck with a billiard cue. The injury culminated in a brain haemorrhage that, despite treatment and rehabilitation, was to affect him for the rest of his life.
12. In 1991 Mr Sime attempted suicide by drug overdose and shortly before the shooting he had again indicated to his family and friends again that he would rather die before becoming 'completely disabled'. However he had also indicated that he would not kill himself, as he had discovered religion and believed that suicide was a sin.
13. Friends and associates recalled Mr Sime's anger and frustration at his confinement, his increasing lack of mobility and his continuing loss of body function. He had previously been a fit young man and an exponent of karate. Despite regular exercise, the prognosis of his condition was poor and of increasing disability. He was on daily, pain-killing, morphine medication and whereas for a period he had been able to move using crutches, recent degeneration of his condition made this increasingly difficult.
14. Mr Sime was living alone at the time of the shooting, as he had been unable to establish a personal relationship since 2000 when he separated from his last partner, who was also the mother of his son. He was particularly frustrated and angered when his young son and stepson moved to Australia later that year, and he fell out with friends and family over this and other matters. He displayed irritability and intolerance over many things, including loud noises and barking dogs.
15. The Authority was advised that Mr Sime apparently had a difficult childhood. His parents separated when he was young, and he moved house and school a number of times, including a period at boarding school, before finally leaving school in Christchurch at the age of 15. Following this he became involved in drugs and petty crime and spent time in prison. He also appears to have had difficulty with people in positions of authority, and although his encounters with Police had been relatively minor, he is reported to have developed a particular dislike of them from an early age.
16. Mr Sime was unable to seek employment because of his disability. He visited a gym for exercise; and a modified motor vehicle gave him the ability to shop and move around the neighbourhood. Despite some regular contact with friends and family, he appears to have lived a rather solitary existence spending a lot of his time at home, listening to music and

watching DVDs. His major interest prior to his death appears to have been firearms, and shooting at a local gun club.

Events prior to 28 June 2009

17. In September 2006 Mr Sime applied for a firearms licence from Police. In the application he gave the names of a relative and a friend as referees. The application file contained serious deficiencies around non-disclosure of information. This was particularly so in relation to his head injury, both in the application form and during an interview by an Arms Officer. One of the referees raised doubt as to his suitability and Mr Sime also failed his first two attempts to pass the Firearms Safety Test. There was sufficient concern for an Arms Officer to prepare a draft report recommending that the application file be referred to the Area Commander for final approval. However, after discussion with another Arms Officer, this action was considered unnecessary and the licence was then issued to Mr Sime in December 2006.
18. After he had obtained his firearms licence, Mr Sime joined a gun club and became an active shooter. He bought and sold a number of firearms and at the time of the incident had two shotguns and the .308 rifle used by him on the evening of 28 June 2009. Family and friends describe his keen interest in his hobby and weapons.
19. Despite demonstrating appropriate responsibility at the gun club, the Authority has been advised Mr Sime was apparently less conscientious with the weapons at home. He told others that he feared burglary and robbery of the pain-killing drugs he was taking, and he routinely kept loaded firearms in his house, including near his bed while he slept. There were also recorded incidents in which he had emerged from his house and either presented a weapon or threatened people with a firearm. These incidents were not reported to Police at the time, however, and were accordingly not investigated.
20. After the shooting, neighbours told Police that on occasions Mr Sime would fire shots from his property. Up to 4 or 5 shots could be heard at a time, usually at night and from the rear of his house, and it was assumed that these had been fired up into the air. These incidents, aside from one exception, were also not reported to police.
21. On 8 February 2009 one incident was reported to Police by a friend of a neighbour who was too scared to report the matter herself. In the call to Police there were references to the previous shooting incidents, including one earlier in the day and the fact that another two shots had just occurred at Mr Sime's address in the previous 10 minutes. The call was recorded at 10.00pm and after assessment by on-duty supervisors, Police decided to wait until the following morning to attend.
22. The following day officers from Papanui Police Station visited Mr Sime. After making enquiries with neighbours, they spoke to Mr Sime who told them that he had been firing an

air pistol at a cardboard box in the rear garden. The box was found and after accepting this explanation, Police left the address. Mr Sime subsequently admitted to a neighbour that he had used one of his shotguns, rather than the air pistol; and that the guns were on his bed while Police were talking to him from outside the window. He also admitted shooting the guns on other occasions but none of this information was passed to Police before 28 June 2009.

23. Mr Sime mistakenly thought that the Police had been called by his neighbour at 4 Wadhurst Place, and later told others that the man was a 'nark.' He also made threats to shoot him if he called Police again.

Events of 28 June 2009

24. At about 6.00pm on Sunday 28 June 2009, a young male neighbour and a friend were sitting in a vehicle parked outside Mr Sime's address, when Mr Sime emerged with a gun to confront them. Both young men were intoxicated, having consumed alcohol and drugs. The young neighbour got out of the car to reassure Mr Sime, before engaging in conversation and offering Mr Sime a ready-mixed, alcoholic drink.
25. The neighbour's friend described Mr Sime as both intoxicated and agitated, and said that he cursed Police and the neighbours at 4 Wadhurst Place. He recalled Mr Sime saying words similar to: *"If the Police come here I am going to shoot the bastards. I am going out like that dude up north. I'm sick of life. That guy had some mean toys."* His words were taken as an apparent reference to Napier man Jan Molenaar, involved in a Police siege the previous month. Mr Sime had both the .308 rifle and a shotgun with him.
26. The neighbour's friend drove away from the address shortly after, leaving the neighbour and Mr Sime talking and drinking together on the ramp in front of the house. Mr Sime showed off the recently purchased .308 rifle and the conversation centred on his weapons and shooting. When the young man made a suggestion to shoot the streetlight at the end of the street, Mr Sime responded by firing one round from the .308 rifle, albeit missing the light.
27. The noise of the discharge in the quiet suburban street drew immediate attention from the neighbours. Most remained in their homes but the occupant of 4 Wadhurst Place emerged to ask what was going on. After being told that the noise was the result of a car 'backfire' he went back inside his house. The shooting incident was not reported to Police.
28. The young man returned home, to reassure his mother that all was well and advise her to not call Police as she had previously done. He then returned to Mr Sime with more alcohol and the drinking and conversation continued. Mr Sime revealed at that point that he normally slept with his guns and had them with him when Police had called at his house earlier that year.

29. The conversation involved discussion of what would happen if Police arrived at the property. Mr Sime indicated to the young man that he should back away from the house as he (Mr Sime) would feign deafness, before going for his guns and opening fire. He also indicated that the young man's house would be under no threat but that other houses in the area would be. The young man believed Mr Sime was not really serious, as he had made similar threats in the past, and after further conversation he returned to his own home leaving Mr Sime alone, still drinking alcohol.
30. Between 7.30pm and 8.00pm the young man left his home with a visitor who was a tow truck driver and had been called out to attend a towing job.
31. At 8.01pm Police began to receive calls from residents in Guilford Street and Wadhurst Place reporting that they could hear numerous gunshots in the area. Six calls were received between 8.01pm and 8.10pm, reporting numerous shots in 3 separate volleys. One of the earliest calls identified the location as 7 Wadhurst Place, but others were more general in their descriptions and Police were not able to immediately determine the exact identity and location of the shooter.
32. At about 8.17pm further calls were received when a second series of shots were fired by Mr Sime. One of the callers was the owner of 4 Wadhurst Place who reported that a man was firing shots in the street, and that his house and a vehicle had been shot at and windows had been damaged. He said that when he had gone to investigate he had been injured by a shotgun blast and was now escaping his house over the back fence. A total of 14 further calls were received by Police between 8.17pm and 8.30pm. One was from an occupant of 5 Wadhurst Place who informed Police that he was listening to their radio communications on a scanner and that the correct address of the offender was 7 Wadhurst Place.
33. Mr Sime had emerged from his house during the episode to fire numerous shots around the neighbourhood. Most were shotgun blasts. However the scene examination completed later by Police and examiners from the Institute of Environmental Science & Research Limited (ESR) also recorded numerous rounds fired from the .308 rifle. The most serious damage was caused to the house and vehicles at 4 Wadhurst Place.
34. Police began to mobilise in response to the first calls. The on-duty supervisors and other units were advised and directed to the area, and a Safe Forward Point (SFP) was identified and established at the nearby Burnside High School. The SFP is a safe gathering point for briefings, allocation of roles and equipment. The Aurora Centre at the school was open and being used for a function at the time but was commandeered by Police for their operation. The first units were dispatched at 8.02pm and arrived at school between 8.10pm and 8.15pm.

35. At about 8.15pm the on-duty AOS Commander was contacted by the Southern Communications Centre Inspector and advised of the situation. After this discussion a pager alert was made for the on-call AOS members to report to their Squad room. Included in the call out were members of the Police Negotiating Team (PNT) and Advanced Paramedics from St John Ambulance.
36. The initial actions of Police were focused on containment of the area. Officers were issued with firearms and instructed in the associated 'Fire Orders' before being placed at various locations, to surround Wadhurst Place and prevent cars and people from entering the area. While awaiting the arrival of the AOS, the cordons were manned by uniformed officers.
37. Police General Instruction F061 (Fire Orders) instructs members of Police to always be aware of their personal responsibilities in the use of firearms, reminds them of the relevant sections of the Crimes Act and also sets out the circumstances in which the use of lethal force is justified. The Instruction is detailed later in this report.
38. The initial actions were directed by the senior officer on duty, an Acting Senior Sergeant, as the Incident Controller. An Acting Sergeant was also on duty as a Field Supervisor. A qualified, current member of the AOS, he was able to provide his expertise at this level before he and a Police Dog Handler moved forward to a position at 165 Greers Road in an attempt to observe the rear of the properties at Wadhurst Place. They arrived at this location at about 8.21pm.
39. As the Acting Sergeant and Dog Handler moved forward, Mr Sime fired further shots. While not aimed directly at them, they could hear the pellets hit trees and hear branches falling to the ground as a result. Because of the lack of available cover they moved from this first location and eventually found a more suitable observation point at 159 Greers Road. They remained at this location until later relieved by arriving AOS staff.
40. The AOS Commander in the meantime had made a decision to go to the Safe Forward Point directly. He assumed tactical command of the operation when he arrived there at 8.37pm. He confirmed the positions of the cordons put in place by the Acting Senior Sergeant and confirmed that the armed officers had received their 'Fire Orders' as required by Police General Instructions.
41. The Authority believes it is probable that Mr Sime was blasting into the air, knowing that Police would be called to his address by his neighbours. It is also likely that he targeted the house at number 4 in the mistaken belief that the occupant had called Police in February to report him for shooting a firearm. In between his volleys he had begun texting his family to advise them what was happening. The first text to his mother at 8.46pm read:

*"Luv u mum
Souround by cops
Wasted house nex door"*

42. This was followed by a blank text at 8.49pm and a further text at 8.52pm reading:

"Prob get shot"

These were the only texts to his mother who responded by text with questions that were not answered. She later left her address to go to her son's house but was intercepted at a Police cordon and taken to the Aurora Centre for interview. She was able to provide significant information to Police which was used by them in the conduct of their operation.

43. Mr Sime also sent a text message to his stepson in Australia, reading:

"Sorry man sayin sorry shot up neibors luv ya both heaps"

44. This message alarmed the stepson who rang Mr Sime in an effort to establish what was happening. He recalled that their conversation was not clear and Mr Sime was mumbling and slurring in his speech as if drunk. After the call cut out he rang his mother in Brisbane and further calls were made to family members in New Zealand to try to establish exactly what was happening. It was as a result of these and other contacts that Police were able to subsequently identify the cellphone being used by Mr Sime, allowing Police negotiators to make contact with him.

45. Mr Sime's stepson later made further calls to speak to him and urged him to put down the guns. Mr Sime's response was said to be:

"You're not the one in the chair, you're like a son to me. I love you both heaps, see you in the next world."

46. The first AOS members had begun arriving at their squad room at Christchurch Central Police Station at about 8.40pm. Police Communications had initially identified the shooter and his location incorrectly and the wrong details were provided to the AOS members who were arriving to don their equipment before going to the scene. This incorrect information was also broadcast over the radio channel to officers at the scene.

47. Police originally thought the shots were being fired by the neighbour at 5 Wadhurst Place. This information was overheard by the young man, who was monitoring events using the scanner in his friend's tow truck, and also by the occupants of 5 Wadhurst Place who were listening on another scanner. The young man immediately went to a Police cordon to identify himself and provide information on the correct identity of Mr Sime as the shooter. A phone call was also made from his house to the Communications Centre to confirm the same information. Ultimately the errors were corrected at an early stage and had no bearing on the overall conduct and outcome of the incident.

48. The first four members of AOS were formed into a unit (Section 1) and after being briefed were sent to the SFP and the AOS Commander for assignment of duties. Included in this group were Constables B & D, and two other officers. Constable B was the officer in charge of the group and gave 'Fire Orders' to the other members en route to the SFP. These orders are normally given at the briefing but it is also a common and acceptable practice for Team Leaders to give them en route. Other Sections were formed and deployed as they arrived at their Squad Room and the AOS Command vehicle was driven to the area with another Inspector who assumed the second-in-command role to the AOS Commander at about 8.55pm.
49. The AOS Commander had formed a plan of action that involved using the arriving AOS Teams to contain the scene, establish inner cordons around the address, evacuate residents from danger and begin negotiations with the offender using the Police Negotiating Team. The first arriving Section were positioned at the entrance to Wadhurst Place and were directed to deal with any immediately arising contingency, such as the offender attempting to leave the area in his vehicle.
50. As part of the plan, the next members of the AOS to arrive took up positions around the property of 7 Wadhurst Place, which by that stage had been confirmed as the correct address. An AOS Team Leader Sergeant was appointed as the AOS Forward Commander. In the meantime Mr Sime had continued to fire volleys from his address and one resident had counted over 80 shots before he was evacuated.
51. A request was also made by the AOS Commander through Police National Headquarters to obtain the services of a Light Armoured Vehicle (LAV) from the nearby Burnham Military Camp. Some of the AOS members present had been deployed at Napier in the incident involving Jan Molenaar and were aware of the vehicle's capability in such situations. However, because of the logistical requirements involved, they were advised there would be a two-hour delay, and the vehicle did not in fact arrive before the incident was over.
52. While Police were evacuating residents, Mr Sime was firing volleys and taunting the Police officers surrounding his house. He used abusive language, calling them variously "*niggers*" and "*mother-fuckers*" while encouraging them "*to come out and show yourselves you cunts so I can shoot you.*"
53. At 9.10pm the AOS Commander requested the Communication Centre to make contact with the on-call Duty Inspector for the District. After being briefed by telephone, the Inspector went to the operation headquarters, arriving at about 9.40pm to assume overall operational command. He received updated briefings on the current situation and was also later briefed by the Officer in Charge of the PNT about the discussions with Mr Sime. The Duty Inspector is an experienced officer and former AOS Commander who was well placed to take control of the incident. He also correctly advised the District Commander of the events taking place.

54. At 9.30pm the officer in charge of the PNT advised the AOS Commander that he had obtained the number of the cellphone being used by Mr Sime. The Commander then directed that contact be made with Mr Sime, in order to distract Mr Sime and cause him to stop shooting while evacuations took place.
55. At about 9.37pm the AOS Commander repeated the 'Fire Orders' to all AOS members utilising the AOS encrypted radios. Those orders are outlined in Police General Instruction F061 and in part require that:

"Police members shall not use a firearm except ... to defend themselves or others if they fear death or grievous bodily harm to themselves or others and they cannot reasonably protect themselves, or others, in a less violent manner."

And also:

"the offender is not to be shot until he or she has first been called upon to surrender, unless in the circumstances it is impractical and unsafe to do so;

and it is clear that he or she cannot be disarmed or arrested without first being shot;

and in the circumstances further delay in apprehending him or her would be dangerous or impracticable."

The orders were not given verbatim by the Commander as he believed them to be well known to AOS members who are tested on them each year as part of their re-qualification procedures. He did however emphasise that if Mr Sime continued to fire from his house he posed a grave threat to members of Police and the public. He advised that Mr Sime could not be allowed to continue and that officers were expected to take necessary action to prevent death or grievous bodily harm.

56. The first Police contact with Mr Sime was via his cellphone, by a constable attached to the PNT at 9.34pm. The subsequent conversations were recorded and these indicate Mr Sime was angry and belligerent, inviting Police to come and get him so that he could shoot them. Concerted efforts were made by the officer to engage with Mr Sime, build a rapport and encourage him to calm down, but to no avail. The conversation in part was:

"Police I bet you've got a really good story to tell mate.

Sime Why, so you can talk to me.

Police Yeah.

Sime Why fucking I... and why fucking ... cunts jump into my house and fucking grab me.

Police No. No-one's going to be doing that, I can assure you of that.

Sime Naaahhh. They can try 'cause I'm fucking ready for them.

Police Yeah, no, well how do you mean you're ready for them?

Sime Oohh (inaudible) soon as they fucking come in the door I'm fucking ready for them.

Police Yeah. Oh, look they're not going to do that Shayne.

Sime So you send in anyone mate, they're fucking dead.

Police Yeah, no, no, that's the last thing we're going to do. I don't want to see anyone dead tonight.

Sime I got heaps of ammo and I've got fucking enough guns to fucking waste you mother-fuckers.

Police Yeah, yeah. So tell me, what's got you to this point mate?

Sime No, 'cause I felt like it.

Police Well, well there must be a reason.

Sime Is my mother with you?

Police No, What's her name?"

57. Mr Sime's frame of mind was further evident in this later part of the conversation:

"Sime I'm not. I'm not. Do you think I'm going to go to fucking jail in a wheelchair?

Police Well, why don't you come out then and we'll sort it all out before it gets any worse then?

Sime Oh yeah. I'll be carrying a gun though.

Police No, no, no. Don't be carrying a gun. If you come out in your wheelchair without any firearms mate, this can all finish then and no-one can get hurt and we can all go about our normal lives.

Sime Oh yeah. Fucking sure.

Police No, no.

Sime Oh and nothing's going to happen because I've fucking wasted, fuck I'll blow, I've spent, I've put fucking heaps of rounds in my neighbour's house.

Police Yeah, well look hey look there's obviously going to have to be, you're going to have to answer to that sort of thing but at the, but the big thing

Sime Yeah.

Police Yeah, but the big thing is, is no-one's been hurt. And that's the big thing mate.

Sime Oh fuck. Well that's a fucking shame then.

Police Well no, no, it's a good thing. And the good thing ...

Sime No, it's a fucking bad thing.

Police Well, why would you want to hurt anyone?

Sime Because, fucking enjoyment."

58. The exchange continued with later discussion of Mr Sime's family including his son in Australia:

"Sime My son's, I know, my son's not like me.

Police Yeah, but I mean, I'm sure that he doesn't want to see his dad do this.

Sime Probably not, but.

Police No, is there any way that

Sime (Inaudible)

Police Is there any way that, is there any way. Is there any way we could change your mind on what you're doing?

Sime Nah, I've made my ... I've made my mind up, I've had enough.

Police So there's ... so there's no ... there's no coming back. Are you saying there's no coming back?

Sime Nah.

Police So there's nothing that you want to live for?

Sime No."

And later still:

"Police No? You've done a really good job with your sons. I'm sure you'd want to be around for the grandchildren.

Sime You fucking don't understand.

Police Well...

Sime Why fucking ... why fucking live for other people when you're having a fucked life.

Police Well help me understand what's going on with you then Shayne. You tell me what's really ...

Sime Well what do you think. I'm in a fucking chair.

Police Yeah.

Sime Yeah, so ...

Police Yeah, but look, there's ... you're not the only person that's in a chair Shayne.

Sime I used to be fucking ... I used to be fucking going ... I was going for my black belt in karate ...

Police Yeah.

Sime I was fucking going to the gym, I was going swimming. I was fucking fit as, nearly 14/15 stone, you know. I was fucking ... and now I look like fucking skin and bone."

59. The final part of the conversation with the officer centred on the refusal of Mr Sime to surrender and be taken into custody:

"Police The main thing that I'm trying to do with you tonight, Shayne, is so that, so that you and I

Sime ... and talk, talk me out of it and bring me out like a nice little guy and

Police ... well hopefully I can ...

Sime ... arrest me and then take me to the fucking Police Station and fucking lock me up and then go to jail in a fucking wheelchair ...

Police No, I ...

Sime ... for fucking using firearms. Oh and shooting up a neighbour's place. What fun is that aye? Fuck off mate, there'll be no way I'm fucking doing that.

Police Well, we can't go away.

Sime Oh, that's what's going to happen.

Police Well no.

Sime If I give ... if I give myself up and come out and you fucking ... you ... you're going to fucking arrest me, you're going to take me down to the fucking cop station, lock me up, fucking go to court ... um ... you know, the next day and fucking ... and then I'll go to jail for firing firearms in the fucking neighbourhood. Blah, blah, blah just missing people ... blah, blah, blah attempted fucking murder or whatever shit and then I'll go to jail in a fucking wheelchair ...

Police The big thing ...

Sime And I know ... I know the fucking rules man. I've been to jail for assault before, if you (inaudible) ... that's going to fucking go ... really help me isn't it?"

60. The tenor of these conversations was relayed to the operation commanders and AOS members, and Mr Sime was deemed to have adopted an uncompromising attitude.
61. As the evacuations progressed, the AOS Forward Commander and AOS Commander began discussing a plan to fire CS Gas (tear gas) into the house. Police dogs were available but could not be used as they could not get close enough to be safely released. Police were aware of the lethal potential of Mr Sime's weaponry, particularly the .308 rifle, and were required to exercise extreme caution.
62. At 10.24pm the AOS Commander re-broadcast 'fire orders' to all AOS staff using their encrypted radio channel, as further AOS members had arrived and been deployed in the forward operational area. It is not unusual or uncommon for officers to be reminded of these orders, particularly as further officers join the operation and as the Commander considers it necessary or prudent to do so.

63. By 10.25pm the evacuation of residents had been completed apart from one elderly man who could not be moved. One of the parties evacuated was the injured man from 4 Wadhurst Place who had gone from his house to 23 Guilford Crescent and been evacuated from there to hospital for treatment of his injuries.

THE SHOOTING

64. At 10.33pm Mr Sime was observed by AOS Constable E to emerge from his house holding something to his head, thought at the time to be possibly a set of binoculars or a night scope. No such item was later found and it is reasonable to assume that what he was in fact holding was the cellphone that he was using to talk with the PNT constable. Although the night was clear, the front of the house was illuminated only by street lighting, which left the porch area shadowed and dimly lit. Mr Sime was on the landing area by his front door, partly shielded from the view of any officer by a double wooden railing on the wheelchair ramp leading to his front door.
65. By this time AOS members had taken up positions around Mr Sime's house, as they were preparing to shoot tear gas into the house. Constable A, Constable E and another AOS officer were inside the house at 3 Wadhurst Place. Constable B, Constable C and three other AOS officers were across the road outside the house at 4 Wadhurst Place while Constable D, an AOS marksman, was in cover behind an electricity transformer immediately adjacent to number 4. Other officers were also positioned at the front and rear of the house.
66. The Authority believes it is probable that as Mr Sime was talking, he noted that a window had been opened by the officers at 3 Wadhurst Place. Taking an automatic shotgun, he fired twice at the window of the house, and two pellets struck Constable E in the face.
67. After Mr Sime had fired, Constable A stood and returned fire from his position inside the bedroom window. Constable A then dropped to take cover and radioed to request medical assistance for Constable E. Neither Constable E nor the third officer fired their weapons at Mr Sime.
68. Constable B was near 4 Wadhurst Place, considering the use of tear gas, when Mr Sime appeared on the landing. Constable C and three other officers were also there. Having determined a suitable location next to the house from where to fire the gas, Constable B advised the AOS Forward Commander and awaited further instructions. As the plan was being confirmed with other Sections, Constable E called over the radio that Mr Sime had emerged from his house, and radio silence was called for.
69. Constable B raised his semi-automatic rifle into the 'ready' position and aimed it at Mr Sime who was partly concealed behind the wooden railing of the ramp at the front of the house. As he watched, Mr Sime brought up his weapon and fired in the direction of

3 Wadhurst Place, across the road from Constable B's position. The first discharge by Mr Sime was quickly followed by a second. As Mr Sime fired, Constable B recalls firing 4 rounds and then after hearing the second shot and believing that Mr Sime was still a threat, recalls firing a further 4 rounds to the same location. Because of the subdued lighting and the fact that he was 40 metres away, and also because of the muzzle flashes from his own weapon, Constable B reports that he was unable to immediately observe the effects of the first shots he fired.

70. Constable C was alongside Constable B at 4 Wadhurst Place at the time the shots were fired, having previously collected the gas gun. He was familiarising himself with the plan to fire tear gas as it was intended he would provide cover for the operator of the gun. He heard the call for radio silence and the following commentary from Constable E about Mr Sime's movements at the front of the property. He was adjacent to Constable B and also raised his weapon to the 'aim' position.
71. Constable C heard the challenges by Mr Sime before Mr Sime fired the shotgun in the direction of 3 Wadhurst Place, where AOS officers were located. He was then aware of Constable B shooting at Mr Sime and was about to shoot himself when Constable B moved slightly in his direction. Constable C repositioned himself and recalls then firing a group of three rounds. When he saw Mr Sime still moving and therefore still to be regarded as a possible threat, he recalls following with a second group of three rounds.
72. Constable D had taken a position alongside a transformer located at the rear of 15 Guilford Place and adjacent to 4 Wadhurst Place. He was approximately 45 metres from 7 Wadhurst Place but had a direct line of sight to the front of the house. From this position he could see Mr Sime when he emerged to the porch landing, although he was partially obscured by the ramp railing,
73. A Forensic Scene Examination Report prepared by the ESR records that two .223 calibre shots were fired from 3 Wadhurst Place. These passed through the wooden paling fence between the properties at 5 and 7 Wadhurst Place but did not strike Mr Sime or the house at number 7. Two .308 calibre shots were fired from Constable D's position at the transformer, one striking the hand rail prior to striking the house and the other striking the frame of Mr Sime's wheelchair.
74. Fourteen .223 calibre shots were fired from the direction of 4 Wadhurst Place. Four of these struck Mr Sime directly and another struck his head after passing through the front of the house into the landing. The remaining shots struck the house. Paint and metal fragments together with facial injuries suggested that Mr Sime's face had been adjacent to the frame of his chair when the .308 bullet struck it.
75. At the time he was shot, Mr Sime was holding a loaded automatic shotgun. His other pump-action shotgun was later found unloaded in the lounge along with the .308 rifle

which had one live round in the chamber and another six live rounds in the magazine. Also in the lounge were a box of shotgun cartridges containing 25 live rounds and a box of .308 ammunition containing 40 live rounds. A further half-box of shotgun cartridges containing 10 live rounds was in the kitchen and two boxes of .22 ammunition were in the spare room.

76. The ESR Report also recorded that during the night Mr Sime had fired approximately 98 shotgun cartridges from the front and rear of his property and that at least 12 shots had been fired from the .308 rifle. Considerable damage had been inflicted by some of these and the Authority believes it is fortunate that only two people, the neighbour at 4 Wadhurst Place and Constable E, suffered injury. Both required hospital treatment. Significant damage had been inflicted on the house at 4 Wadhurst Place and bullet holes and shotgun pellets were located at houses on Guilford Street and in buildings in the Nursery Centre at the rear of the property.

EVENTS IMMEDIATELY AFTER THE SHOOTING

77. Once the shooting had ceased, an AOS Section under the control of the AOS Forward Commander moved towards Mr Sime's position using ballistic shields as cover and keeping their weapons trained on him at all times. It was not absolutely clear that Mr Sime had been disarmed and it was necessary for them to exercise extreme caution as they approached. When they arrived, Mr Sime was slumped in his wheelchair and still holding his weapon.
78. When they reached Mr Sime, one of the group pulled him to the ground and moved his weapon out of his reach. This was done as a safety measure because Mr Sime's injuries were not immediately apparent and the officers could not be sure he was no longer a danger to them. The serious nature of his injuries was then observed and a call made for a paramedic to move forward to examine and assist Mr Sime.
79. As the AOS group were moving forward the other officers remained in their positions but kept weapons trained on Mr Sime. A paramedic was already at 3 Wadhurst Place having been called to assist the injured Constable E. He moved forward to examine Mr Sime and pronounced him dead at 10.39pm. The information was relayed to the Operation Commanders, who in turn advised the District Commander and Police National Headquarters of the situation.
80. In accordance with standard procedures, the officers involved in firing on Mr Sime remained in their positions while the scene was secured. Constable E was however removed for immediate medical assistance and later taken to hospital for surgery. Houses in the area were again checked to ensure they had been cleared and while this was happening calls were made to organise the attendance of the on-call investigators from the

Criminal Investigation Branch (CIB), who would lead the initial phase of the Police criminal investigations. Eventually the AOS officers were stood down by the AOS Commander and returned to their squad room for an operational debriefing.

OFFICER PROFILES

81. Constable A joined Police in 1985 and became a member of the AOS and Special Tactics Group (STG) in 1992, becoming a full time officer assigned to the Group in 2003. He is a firearms instructor for both AOS and STG and has a range of responsibilities within the groups. He is a senior member on the squad, is very experienced operationally, and was assigned the team leader role for the first section deployed from the station to Wadhurst place. He is fully qualified in all mandatory Police requirements for his role on AOS. He did not know Mr Sime and had no previous contact with him. He was equipped with standard AOS issue equipment and weaponry that included an M4 rifle.
82. Constable B joined Police in 1996 and the AOS in 2002. In 2007 he joined the STG and remains a full time member of this group, where he has received advanced special training, including low light shooting. He is a firearms instructor and was fully qualified in all mandatory areas and weaponry on the 28 June 2009. He did not know Mr Sime and had no prior contact or dealings with him. He is fully qualified in all mandatory Police certifications for his role in AOS. He was equipped with standard AOS issue equipment and weaponry, including an M4 rifle.
83. Constable C joined the Police in 2002 and has been a member of the AOS since 2004. In 2005 he was assigned to the Special Tactics Group (STG) and has a number of advanced qualifications in this area. His certifications were current at the time of the shooting and he had recently completed a training camp and STG training and certification. He did not know Mr Sime and had no previous dealings with him. He is fully qualified in all mandatory Police certifications for his role on AOS. He was equipped with standard AOS issue equipment and weaponry, including an M4 rifle.
84. Constable D joined Police in 2003 and has completed duties in the General Duties Branch. He joined the AOS on 2006 and is a sniper marksman and firearms instructor. At the time of the incident he was fully qualified in all mandatory qualifications and the weapons carried by him. He had not previously been involved in any shooting incident and had no prior dealings with Mr Sime. He is fully qualified in all mandatory Police certifications for his role on AOS. Included in the equipment carried by him was an AOS issue .308 Ruger sniper rifle.

POLICE INVESTIGATION

85. Following the shooting of Mr Sime, Police began a homicide investigation. The inquiry was headed by a detective superintendent from Police National Headquarters. A separate inquiry examining aspects of policy and practice was conducted by an Inspector, also from Police National Headquarters.
86. While many local Christchurch officers were involved in conducting various aspects of the homicide investigation, the critical interviews of Constable A, B, C, & D were conducted by investigators from out of the District. Constable E had not been involved in firing upon Mr Sime and accordingly it was not necessary for him to be interviewed by an independent investigator. The Authority endorses the approach Police took in the conduct of the interviews of the officers.

Scene examination

87. The area around 7 Wadhurst Place was evacuated by the AOS and was immediately secured by officers from the CIB. Residents were unable to return to their homes for several days, while specialists from Police and ESR conducted a detailed scene examination. While the disruption to the lives of those residents is regrettable, the Authority endorses the care and precision taken by the agencies in managing a large scene and achieving a considered reconstruction of events.

Ballistics

88. The ESR ballistic examiner conducted a scene examination and also attended the post-mortem examination of Mr Sime. In his report he records that Mr Sime was struck by five .223 Remington calibre bullets. These are the type used by the AOS. The examiner was able to map the path and trajectory of some of the shots fired by Police at Mr Sime as well as the numerous shots fired by Mr Sime during the course of the evening.
89. The ballistic report details the damage Mr Sime inflicted to various houses and buildings from shots fired from both the front and rear of his property. The examiner concluded that:

"There was evidence that approximately ninety-eight shotgun cartridges had been fired from the front and back landings of 7 Wadhurst Place. Thirty-two shots had been fired from the back landing towards the Rabbit Patch Nursery Centre. The other sixty-six shots had been fired from the front landing.

There was evidence of at least 12 shots having been fired from 7 Wadhurst Place using a .308 Winchester calibre rifle. Seven of these shots have been fired from the master bedroom toward the vehicle at 4 Wadhurst Place. The

other five shots would have been fired from the front door landing toward 15 Wadhurst Place (Guilford Street).

There were two .223 calibre shots fired from the bedroom at 3 Wadhurst Place. The bullets passed through the wooden paling fence between the properties of 5 and 7 Wadhurst place. These bullets have not struck 7 Wadhurst Place.

There were fourteen .223 calibre shots fired from 4 Wadhurst Place. Four of these shots have struck Mr Sime directly and another has struck his head after the bullet had passed through the front of the house into the landing. The remaining shots have struck the house at 7 Wadhurst Place without striking Mr Sime.

There were two .308 Winchester calibre shots fired from the area of the transformer. One of these has passed through the handrail then through the front door frame. The other bullet has struck the wheelchair frame.”

Toxicology

90. Toxicology analysis showed modest concentrations of alcohol and drugs in Mr Sime’s blood. An identified alcohol level of 25 mg alcohol per 100 ml of blood may be compared with the adult legal driving limit of 80 mg/100 ml. Prescribed drugs (clonazepam and morphine) were also detected but at levels determined to be compatible with normal therapeutic use.

Pathologist’s report

91. The post mortem examination of Mr Sime was conducted by the regional forensic pathologist. His report confirms that Mr Sime was struck by five small-calibre, high velocity gunshots. Two shots struck him in the left thigh and may have been lethal whether or not immediate medical treatment was provided. A third shot struck Mr Sime’s left forefinger and a fourth to the left chest causing instantaneous, lethal injury.
92. A fifth shot struck Mr Sime in the head after first hitting or being deflected from some ‘intermediate target’ such as the left hand entry ramp or wall. The bullet penetrated the scalp inflicting a lethal brain injury. On his face, left wrist and right shoulder were located small impacts from the fragments of other bullets which had disintegrated after first striking another object.
93. The pathologist concluded that:

“Shayne Sime died at Christchurch on the evening of 28 June 2009 as a result of gunshot wounds. He has been struck by five high-energy small calibre rifle bullets and further fragments of other disintegrating projectiles. The bullet wounds to the head and chest were each independently,

inevitably and virtually immediately lethal and the bullets to his left thigh were a very serious threat to life. All bullet wounds are from a 'distant range' and none are from close range."

Consideration of criminal liability

94. The Police have carried out a separate homicide investigation, to determine if any criminal liability rests with any officer.

CORONER'S INQUIRY

95. The Coroner has not yet conducted an Inquest into the shooting.



The Authority's Investigation

INDEPENDENT POLICE CONDUCT AUTHORITY

THE AUTHORITY'S ROLE

96. 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, incidents in which members of the Police acting in the course of their duty have caused or appear to have caused death or serious bodily harm.
97. The Authority's role on completion of an investigation is to form an opinion whether Police actions were contrary to law, unreasonable, unjustified, unfair, or undesirable under Section 27, Independent Police Conduct Authority Act 1988.

THE AUTHORITY'S INVESTIGATION

98. As required under section 13 of the Independent Police Conduct Authority Act 1988, the Police notified the Authority on 29 June 2009 of the shooting of Shayne Richard Sime.
99. The Authority commenced an investigation in accordance with the Act. 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.
100. The Authority's investigator attended the initial Police investigation briefings, visited the scene at Wadhurst Place, monitored the Police investigations throughout and reviewed documentation produced by the Police investigation team and ESR. Interviews were separately conducted with the AOS Commander and Incident Controller.

ISSUES CONSIDERED

101. The Authority considered the following issues:

Carriage and Firearms

- Issue 1: Were the Police justified in arming themselves in response to this incident, and were all procedures for arming complied with?

Use of Force

- Issue 2: Was the force used in shooting Shayne Richard Sime justified and reasonable? Was the number of shots fired justified?

Other Tactical Options

- Issue 3: Were other tactical options available and considered?

Command and Control

- Issue 4: Did the Police comply with all requirements in respect of communications, and command and control; if not, did any failings contribute to the outcome?

Medical Care

- Issue 5: Was all reasonable assistance given to Shayne Richard Sime after he was shot?

Other issues

- Issue 6: Did the Police err in giving Mr Sime a Firearms Licence?
- Issue 7: Did Police appropriately investigate the report of Mr Sime firing guns on 8 February 2009? If not, could more appropriate investigation and action have prevented the events of 28 June 2009?

APPLICABLE LAWS AND POLICIES

Crimes Act 1961

102. Section 39 of the Crimes Act 1961 provides that law enforcement officers may use force in the execution of their duties, for instance when making arrests or executing warrants. Specifically, it provides for them to use *“such force as may be necessary to overcome any force used in resisting”*, and applies only if the arrest or process *“cannot be executed by reasonable means in a less violent manner”*.

103. Section 62 of the Crimes Act renders law enforcement officers criminally liable for any excess use of force.
104. Section 48 of the Crimes Act 1961 provides that: *“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.”*

Police policies

105. The Crimes Act provisions are mirrored in Police General Instructions¹, which restrict the circumstances in which Police can issue, carry and discharge firearms. General Instruction F061 Use of Firearms by Police provides additional guidance for officers. GI F061 (1) states:

“(1) Members must always be aware of their personal responsibilities in the use of firearms. Under section 62 of the Crimes Act 1961 a member is criminally liable for any excess force used. An overriding requirement in law is that minimum force must be applied to effect the purpose. Where practical Police should not use a firearm unless it can be done without endangering other persons.”

106. GI F061 (2)(a) directs that Police shall not use a firearm except:

“(a) ...to defend themselves or others under section 48 of the Crimes Act 1961, or if they fear death or grievous bodily harm to themselves or others, and they cannot reasonably protect themselves or others in a less violent manner;”

107. GI F061(3) directs that an offender is not to be shot:

“(a) until he or she has first been called upon to surrender, unless in the circumstances it is impracticable and unsafe to do so;

AND

(b) it is clear that he or she cannot be disarmed or arrested without first being shot;

AND

(c) in the circumstances further delay in apprehending him or her would be dangerous or impracticable.”

¹ On 21 October 2009 the Police General Instructions on Firearms were replaced by the chapter on ‘Police Firearms’ in the Police Manual; however in June 2009 the General Instructions applied.

108. GI F061 also requires that fire orders be given “if time and circumstances permit”. The fire orders printed on the inside cover of Officer A’s notebook are:

“SHOOTING AN OFFENDER

Police members should not use a firearm except in the following circumstances:

***To defend** themselves or others if they fear death or GBH and cannot protect themselves or others in a less violent manner.*

***To arrest a person** if it is believed the person poses a threat of death or GBH and the arrest cannot be made in a less violent manner.*

***To prevent the escape of a person** and it is believed the offender poses a threat of death or GBH to any person and the escape cannot be prevented in a less violent manner.*

*The offender should be **called upon to surrender** unless in the circumstances it is impracticable or unsafe to do so.*

*Regardless of previous actions, there is no legal justification to shoot a person who is **no longer a threat to life.***

***Warning shots** should not be made except in exceptional circumstances. They must be clearly aimed so it is clear that it is a warning shot.” [bold & underline emphasis is that of Police]*

109. GI F060(6) authorises the issue of firearms to members in any of the circumstances prescribed in General Instruction F061 above.
110. GI F059 requires that whenever a firearm is issued, the details must be recorded in the firearms register.
111. GI F066 authorises the deliberate discharging of a firearm in any of the circumstances in General Instruction F061.
112. Further guidance is provided in the Police Manual of Best Practice, which reinforces the Crimes Act 1961 and reminds staff that there is no justification for shooting a person who is not at that moment a threat to life.
113. The manual also sets out approaches to responding to violent offenders, including tactics to be used. In essence, it outlines an approach in which such offenders should be contained if possible using a “wait and appeal” approach. However, if the offender is acting in a way that makes casualties likely, Police must act to prevent this.

Instructions relating to the Armed Offenders Squad

114. GI AO93 regulates the deployment of Armed Offenders Squads. It specifies that AOS members are trained for the express purpose of carrying out forward operations against armed offenders.
115. The Manual of Best Practice: Use of Firearms by Police: contains a section on the Armed Offenders Squad. It says that *“Armed Offenders Squads are maintained in each District to deal with persons who are, or who are believed to be, armed and a danger to themselves, the public or police.”*
116. The Manual sets out the procedures to be used in an AOS emergency. It regulates the establishing of an AOS base, Fire Orders, weapon readiness, the rules of safety, immediate action drills, patrolling, searching and entry, as well as containing the suspect, the use of weapons and communications.
117. The Manual lists the duties and responsibilities of the various members of the AOS, including the O/C (officer in charge) Armed Offenders Squad and the first member(s) to arrive at the scene. These are:

“O/C Armed Offenders Squad

The O/C AOS is responsible for commanding and directing the AOS in the forward area. This includes making decisions on:

- *Fire Orders.*
- *Negotiation.*
- *Deception.*
- *Evacuation.*
- *Arrest procedures.*
- *CS gas.*
- *Using police dogs.*
- *Distraction devices.*
- *OC Spray.*
- *Health and safety issues.”*

“When first notified of a potential AOS situation:

- *Obtain all relevant information from the station or Communications Centre supervisor.*

- *Send an AOS advance team to the arrival point, if urgent deployment is necessary. Do not do this until the Section O/C is briefed and given Fire Orders.*
- *Ensure that squad members are correctly dressed, equipped and allocated to sections.*
- *Assess the situation and issue Operation Orders, including Fire Orders.*
- *Establish communications between the AOS base and the Communications Centre or base station, and ensure that they are maintained.*
- *Check that the arrival point is adequate.*
- *Check that the immediate situation is contained and:*
 - *take any immediate action necessary and make a reconnaissance when possible;*
 - *consult the Operations Commander to establish boundaries for the inner and outer cordons and confirm tactics in the forward area.*
- *Direct operations within the inner cordon.*
- *Appoint an AOS log keeper.”*

“First to arrive

The first member(s) of the squad to arrive must:

- *Immediately prepare to deploy, and act as the circumstances dictate.*
- *Establish liaison with the O/C Scene and communication with the O/C AOS.*
- *Check the arrival point and confirm the approach route.*
- *Carry out reconnaissance and be prepared to brief the O/C AOS when he or she arrives.*
- *Replace GDB [General Duties Branch] members who are in close proximity to the suspect, as further squad members arrive.”*



The Authority's Findings

INDEPENDENT POLICE CONDUCT AUTHORITY

CARRIAGE AND USE OF ARMS

Issue 1: Were the Police justified in arming themselves in response to this incident, and were all procedures for arming complied with?

118. Police responded to numerous calls from concerned members of the public regarding the firing of shotguns and a .308 rifle by Mr Sime. This included the report from a neighbour about the significant damage done to the neighbour's house and vehicle and the injury sustained by him when he moved forward to investigate. Given the nature of the reports, officers were correctly sent to the area and the AOS Commander was notified of the situation.
119. Officers arriving in the Burnside area heard for themselves the volleys of shots being fired and took immediate steps to arm themselves. They were unaware at that stage of the identity and location of Mr Sime and unsure whether or not they would be placed in the position of having to confront him and use a firearm to protect themselves or others.
120. Officers at cordons were wearing protective equipment and issued with firearms. They were given 'fire orders' as required by Police General Instructions and specifically positioned to protect members of the public in accordance with standard police operating procedures.
121. Mr Sime fired at least 98 shotgun cartridges and 12 .308 rounds indiscriminately around the neighbourhood over a period of 2 ½ hours. Numerous shots were fired by him before and after the arrival of Police and clearly placed anyone in the area at immediate risk of death or injury.
122. The AOS was correctly mobilised and took up the forward positions around Mr Sime's house. The weapons and the way they were being used by Mr Sime required these officers to exercise extreme caution as they evacuated residents and moved around the area.

FINDING

In the Authority's opinion the Police were justified in arming themselves and deploying the Armed Offenders Squad to deal with the situation. There is no evidence that the actions of Police were contrary to law, unreasonable, unjustified, unfair or undesirable.

USE OF FORCE**Issue 2: Was the force used in shooting Shayne Richard Sime justified and reasonable? Was the number of shots fired justified?**

123. For relevant law and policy refer to paragraphs 102 - 116.

124. The Authority has considered whether the force used by Officers A, B, C, and D was justified under sections 39 and 62 of the Crimes Act 1961 and, if that force was not justified under those provisions, whether the force was nevertheless lawfully justified under section 48 of the Crimes Act 1961.

125. Section 39 gives the Police power to use force in certain circumstances. Section 62 provides that Police are criminally responsible for any excessive use of force.

126. The Officers would be justified under section 48 in using force so long as:

- The force he used was in defence of himself or another; and
- The level of force used by each officer was reasonable *in the circumstances as he believed them to be* (Authority's italics).

127. The starting point for consideration of self-defence is to assess what each Officer believed the circumstances to be from his subjective point of view at the time he shot at Mr Sime. The second matter to be considered is whether, bearing in mind each Officer's belief about what was happening, was he acting in self-defence or in the defence of another, again to be considered from his point of view. The third step is to ask whether, given the Officer's belief, the force he used was reasonable. In other words, whether the degree of force was proportionate to the level of threat as each Officer perceived it. The essential balancing requirement is for both the subjective and objective elements of the test to be assessed in light of the circumstances as the person responding to the threat saw them.

128. The General Instructions reflect and reinforce the Crimes Act requirements relating to use of force (see paragraphs 105-107).

What were the circumstances as the officers believed them to be when they shot at Shayne Richard Sime?

129. Mr Sime had fired over 100 shot and bullets from his weapons over a period of 2 ½ hours. Although the officers were not aware of these exact numbers, they were aware there had been numerous shots and that Mr Sime had inflicted significant damage to houses and injured one man already. Officers were also aware that Mr Sime had shotguns and a .308 in his possession but were unsure of the amount of ammunition he had with him. The officers were required to exercise extreme caution in approaching the address because of the potential danger, particularly from the .308 which was capable of penetrating houses. They were unable to get close to the house because of the risk to their personal safety.
130. The AOS officers were aware Police had made contact with Mr Sime by mobile phone and in discussion with him had made concerted efforts to dissuade him from shooting and to surrender. For his part, Mr Sime had demonstrated a clear determination that he would not surrender and that he would shoot any Police officer that approached him.
131. When he finally emerged from the house and began firing his weapon again, Mr Sime placed Police Officers and members of the public in grave risk of death or grievous bodily injury. One officer, Constable E, was injured by his actions and it was the duty of officers to respond to the threat that Mr Sime posed.
132. Officers had been made aware of their 'fire orders' and were aware Mr Sime could not be allowed to shoot his weapons indiscriminately in the neighbourhood and thereby place Police and members of the public at continued risk of death or serious bodily injury.

At the time they fired at Shayne Richard Sime, did the officers believe that they were acting in self-defence or the defence of another?

133. Constable A said on interview that at the time fired he believed Mr Sime to represent an immediate threat to himself and other officers because he had fired on their position. He feared death or grievous bodily harm as evidenced by the injury to Constable E. He said there was no opportunity to call upon Mr Sime to surrender and there was no less violent means of stopping or arresting him. At interview he said:

"I feared death or grievous bodily harm due to the fact that he was shooting at me. Obviously, and again this was all in a very short space of time, clearly he'd hit Constable E who was standing directly behind me. There was no opportunity to ask him to surrender as he was a threat to my life ...

... I didn't have too much time to think but what was in my mind at the time was, okay, is all the, certainly all the previous actions, leading up to that critical moment, you know. I knew that he had shot someone, he'd fired a large number of rounds while I'd been there, you know, I certainly, I thought that if and when he came out

and was manoeuvring around and said his spiel, could there have been an opportunity to tell him to surrender. I was conscious of not indicating where my position was because clearly earlier on in the piece a man here at number 4 had inadvertently exposed himself to him and had been shot. He had already previously said, and I know he said, 'Anyone enters my address and I'm gonna shoot them.'"

134. At the time he fired his weapon at Mr Sime, Constable B said that he believed that Mr Sime was a serious threat to the lives of the officers at 3 Wadhurst Place. It was apparent that Mr Sime would continue shooting when he fired a second shot from his shotgun. He did not consider it possible to call upon him to surrender, or to arrest or stop Mr Sime from continuing to shoot, in a less violent manner. At interview he outlined his actions:

"I fired 4 rounds, they were quick but they were you know I was trying to take my time to be as accurate as I could. I've taken my finger off the trigger, lowered my gun again to see, to look across, stock my gun to reassess the situation to see if he still presented a threat or not. At this point I was still seeing movement and I have also heard another loud bang, coming from what I thought was the offender, although I didn't see a muzzle flash or anything but I definitely heard another loud bang.

... I believed he was still a threat that he'd fired another shot, I didn't know which direction that was going at that point ...

... as a result of his actions still moving and firing another round I believed he was still a threat to any of the AOS members that you know that had been on white (3 Wadhurst Place) so I fired another 4 rounds as per earlier into the same point of aim that I'd been looking at earlier, into what I believe would be the centre of where the partial silhouette was.

Due to obviously the distance away we were at, the partial lighting, the muzzle flash that is created by my own weapon, you couldn't really see any reaction of the offender as to whether he was hit or not and obviously given the fact that he was in a seated position he wasn't exactly gonna fall down or fall any further than maybe slump. I couldn't tell whether my first 4 rounds or my second 4 rounds had actually hit him."

135. When he fired at Mr Sime, Constable C had formed the view that Mr Sime presented a grave risk of death or grievous bodily harm to Police and members of the public. He said that this view was based on Mr Sime's indiscriminate firing around the neighbourhood, the injury already sustained by a member of the public, the stated intention of Mr Sime that he would not surrender and the danger associated with his renewed shots. He made the decision to fire independently from the decisions of other officers and did so when it was safe for him to do so. In his interview he said:

“Believing that members of Police staff were in danger of death or grievous bodily harm, I removed the safety catch on my weapon and was about to fire. However Constable B had already started to move to his right and it was unsafe for me to do so.

I quickly safety’d my weapon, lowered it from the aim and rolled on to Constable B’s left shoulder whilst at the same time shouting “on your left” as I brought my weapon back into the aim and reassessed the situation.

While I was moving to my new fire position the offender let out a second shot.

I could see the offender was still sitting in his chair on the porch, as previously discussed in the shadows, and he was moving.

Believing that he was still a threat of causing death or GBH to Police members present and being aware that Constable B had fired from our position and he would now know we were there, I removed my safety catch and fired a group of three rounds at the offender.

I made a quick reassessment and seeing he was still moving and also being mindful that the rounds I had fired might have impacted the wooden railing on his paraplegic access ramp, fired a second three round group at the offender.

I then safety’d my weapon and reassessed.”

136. When he saw Mr Sime fire a shot from his shotgun in the direction of what he believed to be 5 Wadhurst Place, Constable D raised his own weapon, a .308 rifle, and fired at Mr Sime who by that stage was firing a second shotgun blast. Constable D said that at the time he fired his weapon he believed that Mr Sime was a danger to the life of another person, and specifically the officers at 3 Wadhurst Place, and that he could not be apprehended less violently. He said he then saw further movement low down and fired a second shot in that direction. He did so believing Mr Sime still posed a threat to the officers he was firing at. Constable D fired 2 rounds in response to the threat the he directly observed and being the action he believed necessary to take. He recorded at interview:

“... as I was bringing my weapon up into the aim, to me it looked like a shotgun, definitely a shotgun as such. It was at this stage as I brought up into the aim I could see the guy fired a shot, I released the safety catch of my weapon and put my trigger finger, operated basically from ... flicked my safety off, finger onto the trigger and just thought to myself, brought the crosshairs down on to him and squeezed and fired a shot. I distinctly remember seeing the muzzle flash and I think at the same time I fired the guy fired another shot.

I operated the bolt on my weapon and chambered a second round into it and again I reassessed the situation from there.

From there I could still see movement below the railing and at that stage I deemed that he was a threat and I fired a second shot to where the movement was. I again chambered a third round and reassessed the situation. I could see that he wasn't moving ...

Initially when he brought the weapon up and that I thought he's either got, he's either gonna shoot at someone, whether it was one of our own members or a member of the public and was bringing it up just in case he was either gonna, you know, I believed that he was gonna take the shot and I instantly thought well this is my time in order to prevent further life, or anyone else being killed or shot or wounded and yeah, no, I took the shot basically.. ."

137. In general terms members of the AOS are trained to fire until the offender is incapacitated and no longer poses a threat. The difficulties faced by these officers in making their threat assessments included the distance that they were firing at, the low lighting around Mr Sime and the obstructions that obscured their view

Was the degree of force used by the officers proportionate to the level of threat perceived by them?

138. Constable A fired two rounds together at Mr Sime in response to the threat he posed. Mr Sime had fired directly at his position twice and the officer responded by returning fire. He then attended to the injured Constable E. The ESR Report confirms that his bullets struck the wooden fence between the two properties.
139. Constable B recalled firing 8 rounds in two volleys of 4 each. He recalled firing 4 rounds initially but could not be certain of the effect of these and after assessing the situation and observing Mr Sime move, deemed it necessary to fire the further 4 rounds to counter the continued danger presented by him.
140. Constable C recalled firing 6 rounds in 2 volleys of 3 each. After firing his first 3 rounds and assessing the situation, Constable C believed Mr Sime was still a threat because he was moving and recalled firing a further 3 rounds. Like Constable B he was also firing from a distance and in low light and could also not be certain of the impact of his initial shots. After the second round of shots, he assessed the situation and observed that Mr Sime was now not moving. Although adjacent in position to Constable B, each officer separately formed the view that it was necessary to fire their weapons at Mr Sime to stop the threat he posed.
141. Constable D fired two shots from his .308 rifle. He fired his first shot at Mr Sime when he observed Mr Sime shooting at Police. He was required to operate the bolt of his weapon in

order to chamber a second cartridge and fired again when he observed Mr Sime was still moving. His position was slightly further away than that of Constable B and C but otherwise similar in the view he had of the property and Mr Sime.

142. The four AOS officers who were involved in shooting at Mr Sime separately and independently made an assessment of the threat posed by him whilst he was firing his shotgun and each officer took immediate and similar action. It is apparent that the officers could not have been certain whether Mr Sime was armed with a shotgun or the .308 rifle at the time and that he could not be allowed to continue firing at their location or indiscriminately in the area. Mr Sime could not be called upon to surrender by the officers firing at him. At the time he was armed and shooting at them and it was dangerous and impracticable for the officers to have attempted to do this. It is apparent that the arrest of Mr Sime could not have been effected in a less violent manner.
143. Mr Sime was positioned in an area of low light, partially obscured from the officer's view by the wooden railing of the ramp to his house. Police fired 18 times at Mr Sime, striking him with 5 bullets. They fired their second volleys after witnessing further movement by Mr Sime and believing that he was still armed and therefore a continuing threat to them or members of the public. When the officers made the decision to shoot at him, they could not be certain of the impact of their bullets and, as they are trained to do, continued firing until they believed that the threat they were dealing with had been removed. The actions of Mr Sime made this response by Police both necessary and unavoidable.
144. Based on the number of rounds remaining in each of the magazines when their weapons were later examined by the Police Armourer, it is possible that Officers B and C fired seven shots each, rather than eight and six as they respectively recollected. The Authority accepts that, if this is the case, it is not unusual in such circumstances and the disparity does not materially affect the Authority's findings.

FINDING

In accordance with Section 27, Independent Police Conduct Authority Act 1988, the Authority has formed the opinion that, under the circumstances as they believed them to be, Constables A, B, C, and D were justified (under Sections 39 & 48 of the Crimes Act 1961) in using lethal force to defend themselves, other members of Police and the public generally and also that the officers concerned were justified in firing the additional shots fired by them. There is no evidence that the actions of the officers were contrary to law, unreasonable, unjustified, unfair or undesirable.

OTHER TACTICAL OPTIONS

Issue 3: Were other tactical options available and considered?

145. Other than use of firearms, options that can be considered by the Police when dealing with a violent offender include:

- Cordon, containment and negotiation
- retreat or delaying an arrest
- using Taser, oleorosin capsicum (OC) spray and/or a baton;
- using Police dogs.

146. 'Cordon and containment' involves setting up a 'cordon' to restrict movement into or out of the area in order to contain the offender and protect the public. This was the primary thrust of the plan of action by the AOS Commander to resolve this incident, and much of the initial Police activity surrounded cordon, containment and negotiation with Mr Sime. Although Mr Sime had access to a vehicle, he made no attempt to leave his address and this afforded Police the time to mobilise their resources and put them in places where they would be most effective.

147. The AOS Commander was prepared to delay any attempt to confront Mr Sime, and evacuation of residents to areas of safety became his initial objective once cordons had been put in place. By his continued shooting Mr Sime posed a significant and continued risk to Police and public and the evacuation of residents in the area was conducted in dangerous and risky circumstances. The Commander could not be certain how much ammunition Mr Sime had in his possession and the known existence of the .308 rifle added significant risk to the execution of the operation.

148. Tasers, OC Spray and batons were not able to be deployed as no officer could approach Mr Sime. A Police dog was available and considered but the Police were never in a position to deploy it safely. The use of a Light Armoured Vehicle (LAV) was also considered and a request was made to the New Zealand Army for these to be made available, however the operation ended before they arrived.

149. At the time Mr Sime emerged from his house, Police were preparing to use tear gas. AOS officers armed with gas guns had been placed around the property at great risk to their safety since gas projectiles can only be discharged with any degree of accuracy from a range of 30 to 40 metres. Before the gas could be used Mr Sime emerged from his address and began firing upon the officers.

FINDING

In accordance with Section 27, Independent Police Conduct Authority Act 1988, the Authority has formed the opinion that the Police adopted sound procedures and tactics in an endeavour to achieve a peaceful resolution of the incident. All tactical options were considered and immediately before Mr Sime confronted the officers and began firing on them, Police were preparing to execute a gas plan that, at some risk to their personal safety, may have achieved this result. There is no evidence that any of the actions of Police were contrary to law, unreasonable, unjustified, unfair or undesirable.

COMMUNICATIONS/COMMAND AND CONTROL

Issue 4: Did the Police comply with all requirements in respect of communications, and command and control; if not, did any failings contribute to the outcome?

150. Police responded to the developing situation appropriately from the outset. At a very early stage the AOS Commander was notified and he went to the SFP directly rather than attend at the AOS Squad Room as he normally would. This provided leadership and experience at a very high level that was essential to conduct of their operation. The Commander later received support from the Duty Inspector, another senior and experienced officer.
151. Although the Acting Senior Sergeant remained as Incident Controller until the arrival of the Duty Inspector, the tactical decisions were made by the AOS Commander in accordance with Standard Operating Procedures and the Police Manual of Best Practice for dealing with armed offenders. The decisions of the Commander to cordon and contain the offender whilst negotiating surrender with him provided the best opportunity for the matter to be resolved peacefully had Mr Sime elected to co-operate. The recordings of conversation between him and Police clearly indicate an unwillingness to do so.
152. While the main operation was conducted on an open Police radio channel, AOS members operated on an encrypted channel only available to them. Because of the logistical difficulties involved, this channel is not recorded and there are also no recordings of any actions and orders in their Command Centre aside from a manual log written by one of their officers. There are serious limitations with such methods, not the least of which is the ability of the log keeper to write accurately and quickly in periods of high activity.
153. Since the shooting the Christchurch AOS have developed a capability of recording their channel but this is unregulated, there exists no national Police policy on how this should be managed, and no other District has followed this lead.
154. When Mr Sime failed to respond to Police requests for surrender, Police attempted to resolve the situation without the necessity to resort to firearms. The actions of Mr Sime in

shooting at Police prompted their responses and forced them to return fire. Separately and independently four officers concluded that shooting at Mr Sime was a necessary action to deal with the immediate threat he posed.

FINDING

In accordance with Section 27, Independent Police Conduct Authority Act 1988, the Authority has formed the opinion that the Police did comply with all relevant policies and best practice in relation to communication, and in relation to command and control. A significant level of experience was available and utilised from the outset of the incident. There is no evidence that the actions of Police were contrary to law, unreasonable, unjustified, unfair or undesirable.

MEDICAL CARE

Issue 5: Was all reasonable assistance given to Shayne Richard Sime after he was shot?

155. It is standard practice in Canterbury District that Advanced Paramedics receive the same pager alert as AOS officer and respond to the incident. Two paramedics were immediately available when the shooting occurred.
156. After Police stopped shooting, a Section of AOS officers not involved in firing upon Mr Sime immediately moved forward under the direction of the Forward Commander. When the injuries of Mr Sime were noted a paramedic was called forward to render assistance however he was pronounced dead at the scene.

FINDING

In accordance with Section 27, Independent Police Conduct Authority Act 1988, the Authority has formed the opinion that all reasonable medical assistance was arranged and given to Shayne Richard Sime after he was shot and there is no evidence that the actions of Police were contrary to law, unreasonable, unjustified, unfair or undesirable.

OTHER ISSUES

Issue 6: Did Police err by giving Mr Sime a Firearms Licence?

157. An examination of the Police Firearms Licence application file reveals that Mr Sime applied for his licence in September 2006. He therefore held his licence 2 ½ years before the shooting took place. In his application there are non-disclosures of relevant information and a minimising of his disability and head injury. One of his referees expressed some

concern about his suitability and recommended his mother be interviewed but this did not happen. The interview conducted with him confirmed the head injury and the medication taken by him but this did not raise sufficient concerns with the Arms Officer for him to request more medical information on Mr Sime's condition, as he should have.

158. While the fact that Mr Sime used a wheelchair would not preclude his obtaining such a licence, the nature of his head injury should have raised sufficient concern for his application to have warranted closer inspection. On the face of it there are serious doubts as to his suitability to have been granted the licence and therefore the ability to gain access to firearms, but insufficient inquiry was made to address these issues.
159. The decision to grant the Firearms Licence was made by a District Arms Officer, an acceptable practice in routine applications given the level of knowledge and expertise such officers generally bring to their role and decision-making. However cases where the suitability of the applicant is brought into question necessitate a higher level of accountability given the increased risks involved. The Police have robust processes in place whereby such cases are referred to a Senior Officer, normally the Area Commander, for final adjudication, as a decision to decline may be appealed, forcing Police to defend their decision in court. Had the file been referred there is a likelihood that the licence may have been declined or notice would have been given to Mr Sime who would then have been required to provide further information before any final decision was made.
160. In Mr Sime's case, the initial doubt expressed by the Arms Officer through his preparation of a report that referred the application to the Area Commander, appears to have been reconsidered following further discussion. While this does not represent misconduct or neglect of duty on the part of the officer, the doubts raised were serious and should have been taken further. Explicit guidelines detailing the limitations around such decisions are required and Arms Officers must be trained to have a clear understanding of these.

FINDING

In accordance with Section 27, Independent Police Conduct Authority Act 1988, the Authority has formed the opinion that Police records indicate some doubt that Mr Sime was a suitable person to have been granted a Firearms Licence and more intensive inquiry may have prevented the licence being issued to him. This does not however represent misconduct or neglect of duty on the part of any Police employee and there is no evidence that the actions of Police were contrary to law, unreasonable, unjustified, unfair or undesirable.

Issue 7: Did Police appropriately investigate the report of Mr Sime firing guns on 8 February 2009?

161. Police responded to the call made by a neighbour through a friend, that Mr Sime had fired a shotgun late at night, and had fired several other shots during the course of the evening. The call was received at 10.00pm at the Communications Centre and left until the following morning for local Police to attend. The following morning officers responded by first endeavouring to locate and interview witnesses before speaking with Mr Sime.
162. The Police file on the incident records that Mr Sime told them he had been using an air pistol at a target in the rear of his section and when the damaged target was located they appear to have accepted this explanation and left. They did not examine his licence or weapons and inspect his arms safe.
163. There is considerable disparity between the noise and effects of a shotgun discharge and that of an air pistol. The neighbour who complained was unfamiliar with firearms however and there was unfortunately no corroboration of her complaint from any other witness. Nor was any reference made at that time to the numerous other incidents that emerged during the later Police inquiry regarding Mr Sime's propensity for firing his gun at night. The officers were therefore dealing with limited information on which to base any further action.
164. Mr Sime is alleged to have later admitted to another neighbour that he had used a shotgun but that information is also uncorroborated and was clearly not available to the investigating officers at that time. In the light of the only information that was available to them, the officers appear to have acted appropriately in their resolution of this incident.

FINDING

In accordance with Section 27, Independent Police Conduct Authority Act 1988, the Authority has formed the opinion that Police responding to the reported incident of Mr Sime discharging a shotgun on 8 February 2009 investigated but did not discover further evidence that would have enabled them to take prosecution action or remove the weapons from Mr Sime's possession. The unsubstantiated information that he had used a shotgun rather than an air pistol did not emerge until after he had been shot on 28 June 2009. There is no evidence that the actions of Police were contrary to law, unreasonable, unjustified, unfair or undesirable.



Conclusion

INDEPENDENT POLICE CONDUCT AUTHORITY

165. In shooting Shayne Richard Sime at Christchurch on 28 June 2009, Police acted lawfully in the execution of their duty, in the defence of themselves and others. There was no evidence of misconduct or neglect of duty on the part of those involved, and no decision, act or conduct was contrary to law, unreasonable, unfair or unjustified. While Police made concerted efforts to resolve the incident without the need to fire upon Mr Sime, his actions and determination rendered this an unavoidable and inevitable conclusion.
166. Greater assurance and transparency in the review of incidents involving the deployment of AOS would be possible if there was an ability to record their communications and orders on their encrypted radio channel and in their Command Centre. This does not bring into question the actions and decisions taken in respect of this incident.
167. Based on his background and medical history, there is some doubt that Mr Sime should ever have been granted a Firearms Licence by Police. On the basis of the information that was provided in the application file, more diligent inquiries into his medical condition and background should have been made, and the decision on his suitability should have been escalated to a senior officer for final assessment.

Recommendations

INDEPENDENT POLICE CONDUCT AUTHORITY

168. The Authority recommends:

- 1) That communications on encrypted radio channels used by the Armed Offenders Squad and Special Tactics Group should be recorded.
- 2) That the training and guidelines provided to Arms Officers should be reviewed to ensure that there is clear understanding of the levels at which firearms licences may be routinely issued, and more clearly determine the point where applications should be referred to senior officers for adjudication.
- 3) That there be independent, random auditing of firearms licence application files to ensure that the guidelines are consistently and accurately followed.



HON JUSTICE L P GODDARD

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

JUNE 2010

About the Authority

WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

The Independent Police Conduct Authority is an independent body set up by Parliament to provide civilian oversight of Police conduct.

It is not part of the Police – the law requires it to be fully independent. The Authority is chaired by a High Court Judge and has two other members.

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 has two investigating teams, made up of highly experienced investigators who have worked in a range of law enforcement roles in New Zealand and overseas.

WHAT ARE THE AUTHORITY'S FUNCTIONS?

Under the Independent Police Conduct Authority Act 1988, the Authority:

- Receives complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant;
- 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 can make findings and recommendations about Police conduct.



IPCA

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