

REPORT OF THE POLICE COMPLAINTS AUTHORITY INTO THE FATAL SHOOTING OF HAIDAR EBBADI MAHDI AT AUCKLAND ON 14 AUGUST 2004

INTRODUCTION

On August 14th 2004 Haidar Ebbadi Mahdi ("Mr Mahdi"), an Iraqi national aged 37, was shot and killed by an on-duty Police officer at his home in Dale Crescent, Pakuranga, Auckland.

Attending Police were responding to telephone requests for help made by both Mr Mahdi and his wife, Maryam Abed ("Ms Abed"). They had conversations with dispatchers from both St. John Ambulance Service and the Police Northern Communications Centre. Despite language problems, the information obtained during that series of calls suggested that Mr Mahdi was suffering from a mental illness, that he was armed with a knife and that he had cut Ms Abed several times.

The incident was reported to the Authority on the day of its occurrence. The Authority immediately began an investigation using its own investigators.

BACKGROUND

Mr Mahdi was from a Shi'a Muslim family in southern Iraq. It appears that members of his family were tortured by Saddam Hussein's administration and it is reported that two of his brothers were killed by the regime. Due to this persecution Mr Mahdi and Ms Abed, who had married in Iraq in July 1990, fled from Iraq to Iran in October 1999 and then through Malaysia to Indonesia. They arrived in Indonesia towards the end of 1999 and stayed there until 2002.

Mr Mahdi and Ms Abed came to New Zealand as refugees in October 2002. On 24 October 2002 Mr Mahdi and Ms Abed were granted residence permits and became permanent residents of New Zealand under the Refugee Quota Programme.

On arrival in New Zealand both Mr Mahdi and Ms Abed had a rudimentary grasp of English, sufficient to exchange pleasantries.

They participated in English language classes, which resulted in an improvement in their ability to interact with English-speaking people; however, Mr Mahdi required an interpreter when involved in discussion with officials and medical staff.

Shortly after his arrival in New Zealand, in November 2002, he was seen in Auckland by a psychiatrist who found that he presented with low mood, poor concentration and memory, weakness and lethargy, poor sleep and was occasionally hearing voices to tell him to do "*bad things*". Mr Mahdi gave a background that included information of a hospital admission for psychiatric reasons while in Indonesia and for which he was prescribed anti-psychotic medication.

Mr Mahdi was prescribed medication by the Auckland psychiatrist.

In December 2002 Mr Mahdi and Ms Abed moved from Auckland to Wellington.

During 2003 and until May 2004 Mr Mahdi was seen regularly by both a counsellor and a psychiatrist associated with the Wellington Refugees as Survivors Centre. He was initially assessed as having post-traumatic stress symptoms and having a past history of psychotic symptoms for which he was still on medication. It is apparent that Mr Mahdi periodically stopped taking his medication or reduced the dose himself throughout his time in New Zealand. On several occasions Mr Mahdi reported that he had been hearing someone talking to him in "*Persian*"; he said they spoke in "*provocative language, maybe to destroy my nerves*". On other occasions he advised his psychiatrist that "*wicked Iraqis*" or "*undercover*" people had been ordered to follow him. He felt that he was being monitored by the New Zealand Government and that "*all of New Zealand*" were angry with him. In April 2004 Mr Mahdi was assessed as having "*marked paranoid beliefs*" and his psychiatrist reported that she was concerned that "*Haidar will get seriously off-side with WINZ or other official agencies, maybe end up coming to Police*".

attention". Mr Mahdi did not fill a prescription that was given to him in mid April 2004 and it does not appear that he took any medication from this date.

Mr Mahdi's Wellington psychiatrist last saw him on 27 May 2004, the day before he and Ms Abed were due to move to Auckland. He appeared well and relaxed but disclosed that he had not taken any medication for the previous month. He was again advised to restart it. The psychiatrist gave Mr Mahdi a letter to take to his Auckland GP and also referred him for follow up to the Auckland Refugees as Survivors Centre.

In early July 2004 Mr Mahdi was assessed by a psychiatrist at the Refugees as Survivors Centre in Mangere. He presented with what the psychiatrist described as "*paranoid ideas that some Iraqis and Kiwis have been trying to do bad things*" but he would not elaborate on this. Mr Mahdi claimed that he had been sleeping and eating well, but he was not socialising due to the problems he was having and he was avoiding any kind of social contact.

The attending psychiatrist was of the opinion that Mr Mahdi was suffering from either a delusional disorder or a relapse of his paranoid psychosis due to the non-compliance with medication for more than two months. He reported that Mr Mahdi's "*psychosocial functioning has been poor, and he is becoming litigious due to his thoughts and in future may become more unwell and unmanageable in the community*".

Mr Mahdi was referred to The Cottage, a Community Mental Health Centre, for follow-up.

On 12 August 2004, two days before his death, he attended The Cottage and was seen by a consultant psychiatrist.

On this occasion Mr Mahdi reported that he felt people were against him and that people in authority spoke badly to him because he was a refugee. He complained particularly about people at WINZ. He told the assessing doctor that he had heard voices in the past but denied hearing them now. He did however admit that he was hearing what he termed "*noises*" and that he occasionally had some bad thoughts, which he intimated related to his wife having an extra-marital affair or that someone might be trying to harm him.

The consultant psychiatrist diagnosed Mr Mahdi as having paranoid schizophrenia (in partial remission). The psychiatrist discussed with Mr Mahdi the use of medication but Mr Mahdi stated

that he did not want to continue with his medication as it had previously given him side effects. He did indicate that he would be willing to consider it in the future if there was any deterioration in his symptoms. Mr Mahdi agreed to a follow-up appointment in two weeks time.

THE EVENTS OF 13 AND 14 AUGUST 2004¹

On Friday 13 August 2004 at about 7pm Mr Mahdi had dinner and went to sleep.

Around 9.30pm he woke up and prayed, some time later he sat at the computer with headphones on. At this time, he told Ms Abed that he was hearing messages through the headphones; he then left the headphones and went and prayed again.

At about 1am he returned to the computer, using it to communicate with two of his brothers who lived in Australia.

Mr Mahdi stayed up until about 4am and then returned to bed for around two hours, waking for prayers at 6am. At this point he told Ms Abed that the message he had heard in the night was that *"somebody will come in the morning"*. After praying Mr Mahdi returned to bed, eventually waking at about 9am.

When Mr Mahdi woke, Ms Abed noticed a change in him and asked him what was wrong. Mr Mahdi told her that nothing was wrong and that he was waiting for some people who were coming at *"9 o'clock."*

At approximately 11am Mr Mahdi and Ms Abed got out of bed. Mr Mahdi told his wife that he could hear a noise coming from the freezer. Ms Abed stated that she saw Mr Mahdi open the freezer door and look inside before closing it. He kept saying that he was *"waiting for some people"*.

Coincidentally at this time, two men visited the address to promote the Jehovah's Witness magazine. This was not an arranged visit. The two men report that Mr Mahdi seemed preoccupied, with a look described as vacant.

¹ Those portions of this report which rely on information given by Ms Abed were obtained from Ms Abed in interview through an interpreter. The quotations used are as given in translation.

Ms Abed noticed that Mr Mahdi was unusually quiet and that he failed to respond to questions Ms Abed directed at him after completing his midday prayers.

Mr Mahdi then took a knife from the kitchen and started to sharpen it using sandpaper. He was sitting at a table in the lounge. Ms Abed said that she did not ask him why he was sharpening the knife as *"I didn't want him to be angry so I just left him"*. She says that she was not concerned for her safety as he had never physically attacked her before.

After sharpening the knife for approximately five minutes Mr Mahdi closed the curtains and brought in belongings from a car outside. He then went to Ms Abed, placed her hands behind her back and told her *"I'm going to kill you today, I want to kill you today."* He put the sharpened knife to her throat. Ms Abed states that she told him to relax, resisted him and tried to take the knife from him. In doing so she sustained several cuts to her hands. Throughout this part of the incident Ms Abed states that Mr Mahdi was telling her *"You killed my brother, you killed people, you are criminal."* Ms Abed said that she feared for her life at this point.

When Mr Mahdi saw the blood on Ms Abed's hands he stopped and placed a call to the St John Ambulance Service using 111. This call was made at approximately 2.20pm and was answered by the Emergency Medical Dispatcher. Mr Mahdi advised the ambulance service that he had cut his wife *"1001 times"*. Despite language problems the dispatcher was able to elicit Mr Mahdi's address and contact phone number.

At 2.23pm the Emergency Medical Dispatcher terminated the call and contacted the Police Northern Communications Centre to advise Police of the phone call.

The Emergency Medical Dispatcher indicated to Police that, for safety reasons, they would not be sending any staff to the residence without Police presence.

At 2.23pm a Northern Communications Call Taker ("Call Taker 1") logged the call and commenced an event chronology.

Call Taker 1 realised that there was insufficient information to dispatch officers to the scene and phoned the address to obtain further details. The call was of short duration and Call Taker 1 spoke directly with Ms Abed.

Ms Abed advised that her husband was “*sick, very sick...mentally sick*” and that he needed a doctor “*for his mind*”. She did not want the Police but requested a doctor. Due to the language barrier and Ms Abed’s stressed state, Call Taker 1 could not confirm whether or not Ms Abed was hurt.

Call Taker 1 then terminated the call and updated the event chronology with the additional information obtained.

At 2.25pm a second call taker (“Call Taker 2”) noticed the job on her computer screen. After reviewing the chronology, at 2.26pm she asked Call Taker 1 (by entering text on the screen) if there were any weapons. She waited one minute without getting a response. She could see that Call Taker 1 was no longer on the telephone and so at about 2.27pm Call Taker 2 telephoned the address again and spoke with Ms Abed (“the second call”).

At 2.25pm, the first call having been assigned to several Police units (this process is discussed later), a Police dog handler, holding the rank of Senior Constable, who was in the area heard the dispatch and advised that he would attend.

The dog handler and two Constables were present at the address at the time Mr Mahdi was shot. Throughout this report the dog handler is referred to as Officer 1 and the two Constables as Officers 2 and 3. An Acting Sergeant, who arrived at the scene as the shots were being fired, is referred to as Officer 4.

The second call to the address was made by Call Taker 2 to obtain further information to relay to the dispatched officers, in particular additional information on any weapons involved or threats made. Ms Abed answered the call. Ms Abed advised that Mr Mahdi had threatened her and had a knife. She said that he was “*very, very dangerous, please come*” and several times said to Call Taker 2 to “*please, please come*” and to do so “*very, very fast*”. Whilst Call Taker 2 was relaying this information for dispatch to the officers, Ms Abed could be heard speaking to Mr Mahdi in a foreign language, subsequently identified as Arabic, the tone clearly suggesting pleading.

The first officer to arrive at the scene was Officer 1 who parked the patrol vehicle at the intersection of Palm Avenue and Dale Crescent, the agreed Safe Forward Point (“SFP”), at

approximately 2.30pm and retrieved a Police issue Glock 9mm pistol from the vehicle gun safe. Officer 1 put the pistol in the ready state by chambering a round and then secured it in his holster.

Officers 2 and 3 arrived at the SFP at 2.32pm as Officer 1 was securing the pistol. They then made their way on foot to the scene address.

As well as the Glock, Officer 1 was carrying a side-handled baton (PR24), oleoresin capsicum spray (OC spray) and an extendable baton (ASP baton). He also carried a multi-tool. Officer 1 was dressed in Police issue dog section overalls which carry the insignia of the New Zealand Police. Officer 1 had two dogs in his vehicle during this incident; however, for reasons discussed later in this report, he decided not to use them. As Officer 1 was the senior officer present, he assumed responsibility during the incident.

Officers 2 and 3 were not armed. Officer 2 was carrying OC spray and an ASP baton, Officer 3 was carrying OC spray. Both officers were dressed in Police uniform.

The address is a block of two single storey flats. The dwelling occupied by Mr Mahdi and Ms Abed was the rear unit.

Once at the residence, Officer 3 went to the rear of the dwelling while Officers 1 and 2 approached the front door.

Officers 1 and 2 found that the front door was closed and secured by an internal safety chain. Officer 1 pushed the door open and cut the chain using a small bolt cutter attached to his multi-tool.

The front door of the dwelling opens into a small kitchen/laundry area. Opposite the front door, another door opens directly into the lounge. To the left, on entering the lounge, are doors to a bedroom and a hallway. The lounge, where the shooting took place, is small, measuring 4.55m x 5.06m.

Upon entering the kitchen/laundry area the officers found the home very quiet with no sign of activity.

Officer 1 opened the lounge door and saw Mr Mahdi sitting in a chair on the opposite side of the small room. Officer 1 describes Mr Mahdi as holding a knife in a raised position and looking straight at the officers as they entered the room. At this point Ms Abed dropped the telephone and the open line to the Police Northern Communications Centre continued.

This open line created a unique opportunity for the Northern Communications Centre staff and Police generally to listen to and record the events as they unfolded.

Ms Abed is described as standing on the opposite side of the room to Mr Mahdi and to the left of the officers. Ms Abed says that when Mr Mahdi heard the Police arrive he grabbed the knife, which he had previously placed on a table beside him.

Officer 1 told Mr Mahdi to put the knife down but Mr Mahdi failed to respond.

Officer 1 recalls that upon the Police entering the room, Mr Mahdi stood up and moved quickly towards Ms Abed. Officer 1 states that he used OC spray on Mr Mahdi but that it had no effect and that Mr Mahdi then immediately moved towards him. Officer 2 supports this version of events. Ms Abed has a slightly different recollection; she says that when Police entered the room, Mr Mahdi stood up and moved straight towards the Police officers and did not move towards her at all and that the OC spray was used a little later in the incident.

Despite this difference, both Officers 1 and 2 and Ms Abed agree that Officer 1 deployed OC spray on Mr Mahdi and that this spray had no effect.

Mr Mahdi immediately advanced on Officer 1 using the knife in a manner described by Officer 1 as "*a figure 8 fashion, wide strikes, quite quickly with force and he was advancing on me while he was doing it*". Officer 1 raised his left arm up to protect himself from the assault. Mr Mahdi slashed at Officer 1 who sustained two deep laceration wounds to the left forearm and hand (these injuries involved a severed tendon which required hospital admission and surgery).

Officer 1 and 2 immediately retreated from the lounge into the kitchen, forcing the door closed behind them. Mr Mahdi continued to slash at the door with the knife. He also began to bang and push on the door in an attempt to force his way through. This was only prevented by Officers 1 and 2 leaning against the door to the kitchen.

Due to his injuries Officer 1 was preparing to hand the pistol to Officer 2 and had said "*you take the gun*". However before the pistol could be physically handed over to Officer 2, Mr Mahdi stopped attacking the door and Officers 1 and 2 heard loud screams from Ms Abed.

Fearing for Ms Abed's safety, the officers made the instant decision to re-enter the lounge. Officer 1 drew the pistol from his holster and opened the door. Both officers entered the lounge to find Mr Mahdi standing behind Ms Abed, holding her in a headlock.

Mr Mahdi and Ms Abed were on the far side of the lounge near the door to the master bedroom. Mr Mahdi was using his left arm to hold Ms Abed around her throat and in front of his body and was holding the knife in his right hand near her throat.

Officer 1 called on Mr Mahdi to put the knife down using the words, "*drop the knife*". This instruction was given on three distinct occasions. These demands were recorded and are clearly audible when listening to the open line audio. Officer 1 also called on Mr Mahdi to "*stop there or I'll shoot*". This command was given twice and is also clearly audible.

Mr Mahdi made no attempt to stop the attack or drop the weapon. At this point Officer 1 states that he thought Ms Abed's life was in imminent danger.

Officer 1 noticed that Mr Mahdi's right thigh was not covered by Ms Abed's body and so raised his pistol in the "High Ready" position and "*then fired, I believe I fired four times at his leg. I could be wrong one or two either way.*" In fact, a total of five shots were fired in the direction of Mr Mahdi's thigh. Three rounds hit the fleshy part of the thigh just above the knee and two shots missed the target, striking and lodging in the floor.

Officer 1 stated that he hoped that the shots to the thigh "*would distract him sufficiently to drop the knife, let the lady go and give us an opening to perhaps physically overpower him*".

Officer 2 reports that when the shots were fired he backed into the doorway and called for assistance over the radio. He said he made this call because "*I felt that my life and [Officer 1's] life were at immediate risk*".

The shots appeared to have had no effect on Mr Mahdi who started to advance on Officer 1 using Ms Abed as a shield.

Mr Mahdi advanced approximately two metres towards Officer 1; as he was doing so he raised the knife and started slashing Ms Abed on the top of her head.

Officer 1 stated:

“At that point I really feared for her life. I thought she was about to die and at that point is when I decided I had to do something which was going to stop the situation immediately and I raised the gun, took an aimed shot at his head and fired one round and he immediately dropped to the ground...”

This shot was fatal. The forensic pathologist would later report that Mr Mahdi died instantly due to the round severing the lower end of his brain stem.

Officer 3 immediately escorted Ms Abed from the residence.

The time from when Police first entered the lounge until the fatal shot was fired was 30 seconds.

Differences in recollection

It should be noted that Officers 1 and 2 and Ms Abed agree on the basic sequence of events with two exceptions.

Exception 1

Ms Abed has a different recollection of the events when Police first arrived. She reports that she was still on the phone to Call Taker 2 when Officers 1 and 2 entered the lounge. She says Mr Mahdi was sitting on a chair very near the dining table and the knife was on the table not in his hands.

When interviewed by an Investigator from the Police Complaints Authority, Ms Abed stated, through an interpreter:

“The way they entered provoked him again. He was quite calm before that. They cut the chain and they entered and they opened the door really strongly. I was frightened by the way they entered myself”.

When questioned about why she was frightened when the Police entered, Ms Abed said:

"It was because of the way they entered because both of us needed help and we did not...we aren't criminals so they...attacking us this way. So when they came this way I was really scared".²

Ms Abed recalls that when Police entered, Mr Mahdi grabbed the knife from the table and then advanced towards the officers. She says that Mr Mahdi did not go towards her but straight towards the officers.

Officers 1 and 2 both recall that upon their entering the room, Mr Mahdi stood up and initially moved quickly towards Ms Abed. They recall that Officer 1 used OC spray on Mr Mahdi but that it had no effect and that Mr Mahdi then immediately moved towards Officer 1.

It should be noted that the Authority has no criticism of the way Police entered the property given the information that they had at the time. This issue is discussed later in this report under the heading 'Issue 1' (page 17).

Exception 2

Ms Abed also reports that Officer 1 did not use the OC spray during that first encounter with Mr Mahdi. She says that the OC spray was used against Mr Mahdi during the second encounter when Officers 1 and 2 re-entered the lounge. She says that Officer 1 began to spray Mr Mahdi when he was holding her. She advises that some of the spray hit her.

It should be noted that Officer 1's OC spray canister was located on the floor next to the doorway between the lounge and kitchen/laundry. It is Officer 1's recollection that after retreating into the kitchen having being cut, he dropped his PR24 Baton and OC spray and when he heard Ms Abed screaming he re-entered the lounge with only the Glock in his hands. The PR 24 Baton was found on the floor of the kitchen.

² Ms Abed was interviewed by the PCA Investigator using an interpreter. The quotations used are as given in translation.

In the view of the Authority these are differences that can be attributed to perception and recollection and may be able to be explained due to the small size of the room, the heightened atmosphere and the few seconds during which this section of the incident took place.

The Authority considers that these two differences have no significant bearing on the outcome or justification for the deployment of OC spray and the shooting that was to follow.

FIRST AID MEASURES

At the time of the fatal shooting an ambulance was waiting outside the address. As soon as Officers 1 and 2 and Ms Abed came outside, Officer 4, who had just arrived at the scene, went inside to check the condition of Mr Mahdi by feeling the pulse on his wrist. Ms Abed was immediately treated by an Ambulance Officer. Police advised a second Ambulance Officer that there was a male inside the house with gunshot wounds. She contacted her communications centre and requested another ambulance and then entered the address with a cardiac monitor where she checked Mr Mahdi's carotid pulse and ascertained that he still had one. She placed the cardiac monitor on Mr Mahdi which indicated a pulse rate of 56 beats per minute. She requested Police officers to retrieve further equipment from her ambulance. She then noticed that Mr Mahdi's heart rate began to drop. There was then no electrical heart activity and Mr Mahdi died on the floor of the lounge.

CAUSE OF DEATH

On Sunday 15 August 2004, Associate Professor Koelmeyer, forensic pathologist, undertook a post mortem examination and provided a written report that concluded that the cause of death was *"gunshot wound to head"*.

CORONIAL INQUIRY

On 1 March 2005, an Inquest into Mr Mahdi's death took place before an Auckland Coroner, Sarn Herdson. Ms Herdson found that Mr Mahdi died as a result of *"a gunshot wound to the head"* which was *"the result of the discharge of a firearm, a Police issue Glock pistol, by a serving Police Officer working in the line of duty and occurred during a violent domestic incident at a time when the balance of Haidar Ebbadi MAHDI's mind was disturbed due to mental illness"*.

In relation to the action of Police, Ms Herdson found:

“Having assessed the evidence as a whole, my conclusion is that there was nothing improper in the conduct of the Police and that they acted reasonably as a group. In terms of the behaviour of Subject Officer 1³, it is my view that the weight of the evidence demonstrates that he had a genuine and well founded fear for Maryam’s safety and that it went beyond that to a fear for her life. This amounts to his acting in defence of Maryam. I note that Subject Officer 1 had a very long length of active, front line Police service and that he brought experience and judgement to an urgent situation. Further, he used other options available to him before using his firearm. There is nothing to suggest that any person acted carelessly against Mr Mahdi’s or Maryam’s best interests.”

POLICE INVESTIGATION

Immediately following the incident Police launched a homicide investigation. The Authority considers that the Police investigation was professional and thorough. All avenues were properly explored. Only a few aspects of the investigation need be mentioned here.

The investigation determined that six shots were fired from Officer 1’s Glock. They are as follows:

- Three shots hit Mr Mahdi in the right thigh
- Two shots which appear to have been aimed at the thigh but missed the target. One struck the floor just inside the bedroom and the other struck the floor in the lounge between Mr Mahdi and Officer 1.
- One shot lodged in Mr Mahdi’s skull (the fatal shot)

These misdirected or ‘missed’ shots could be explained by the injuries suffered by Officer 1 and/or that Mr Mahdi was a moving target. The Authority accepts that missed shots such as these are not uncommon in incidents of this nature and the Authority has no criticism of them.

The examination of the scene disclosed that the evidence was consistent with the sequence of events described by Officers 1 and 2 and Ms Abed.

³ Subject Officer 1 is referred to in this report as Officer 1.

The statements of both Officers 1 and 2 detail their actions throughout. The audio recording of the open telephone line is consistent with their accounts of the events.

Officer 1 was not approached for a blood or breath test on the day of the shooting. Three days later, on 17 August 2004, Officer 1 was interviewed about his alcohol intake (if any) on the day of the shooting. Officer 1 advised that he does not consume alcohol. A routine hospital analysis of Officer 1's blood, taken during the course of his treatment and within hours of the shooting, disclosed no alcohol content.

CONSIDERATION OF LIABILITY OF OFFICER 1

As part of the Police investigation into Mr Mahdi's death, consideration was given by them as to whether Officer 1 should face criminal prosecution for homicide. That issue was the subject of consideration by the Crown Solicitor for Auckland. The decision was made that no criminal liability attached to Officer 1.

The reasoning behind this decision is discussed later in this report.

THE INVOLVEMENT OF THE POLICE COMPLAINTS AUTHORITY

The incident was reported to the Authority on the day of its occurrence and three of its Investigating Officers began working on the investigation.

The purpose of the Authority's investigation was to consider whether the circumstances of the matter disclosed misconduct or neglect of duty on the part of any member of the Police and to examine the procedures, practices and policies of the Police in the handling of an incident of this type. The investigation was separate from the Police investigation examining the potential criminal or disciplinary liability of Officer 1 or of any other person.

Over the next few days all three investigators were kept advised of progress of the Police investigation.

The investigators attended Auckland Hospital and met with the Acting Coroner, Dr. Jamieson. At the mortuary they inspected the body of Mr Mahdi and met and heard the findings of the forensic pathologist, and they inspected the scene.

The Police and the Authority employed separate interpreters to translate the background conversation that took place between Mr Mahdi and Ms Abed during the open line call. Both translators had difficulty deciphering all that was said; however the two translations establish that Ms Abed was pleading with Mr Mahdi and trying to make him believe that she had nothing to do with the “*crimes*”. Ms Abed explained to Police, when interviewed, that the ‘crimes’ Mr Mahdi accused her of was the killing of his brothers in Iraq.

An Authority investigator met with Ms Abed, with an interpreter, to explain the role of the Authority and to take a statement from her. He also met with leaders in the Iraqi community and Iraqi friends of Mr Mahdi and Ms Abed.

No written complaint over the actions of the Police on that day has been made to the Authority by or on behalf of Ms Abed or by any other person. However, early in the investigation, both Ms Abed and the Iraqi community leaders who met with the Authority investigator, verbally expressed concern that Police had killed Mr Mahdi instead of wounding him and also that Police had come to the house instead of the doctor that Ms Abed had requested. These issues were also raised by Ms Abed at the Coroners Inquest and are discussed later in this report.

OPINION OF CROWN SOLICITOR

During the course of the Police investigation into the potential criminal liability of Officer 1 the Police sought an opinion from the Crown Solicitor at Auckland.

He considered the justification of Officer 1 for shooting Mr Mahdi in the light of section 48 of the Crimes Act which 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.”

The Crown Solicitor stated that in this particular case, to satisfy section 48, the force used by Officer 1 must have been used in the defence of Ms Abed. This was to be determined by reference to the circumstances as Officer 1 believed them to be. It is a subjective requirement. Further the force used by Officer 1 must have been no more than it was reasonable to use in the circumstances as he believed them to be. This is an objective requirement.

In the opinion of the Crown Solicitor:

“...it is clear that [Officer 1’s] perception of the circumstances at the time of the thigh shots and at the time of the head shot justifiably gave rise to his decision to act in defence of Mrs Abed on each occasion. I am also of the opinion that the evidence of the other witnesses, especially that of Mrs Abed and [Officer 2], supports the correctness of [Officer 1’s] perception of the circumstances. Further, the transcripts of the ambulance and North Comms calls are consistent with [Officer 1’s] version of events. I therefore have little doubt that [Officer 1] was acting in defence of Mrs Abed.

The question then arises as to whether or not the force used by [Officer 1] was reasonable given the circumstances as he believed them to be. In my opinion, the force was reasonable. [Officer 1] is a very experienced police officer of almost 32 years standing. He has previously been deployed several times in an Armed Offenders Squad role. Prior to firing the shots into Mr Mahdi’s leg he had already told Mr Mahdi to put the knife down and had tried the use of OC spray. In my opinion it was therefore reasonable for [Officer 1] to take the next step and attempt to incapacitate Mr Mahdi by firing at his right thigh to prevent him from killing his wife with the knife.

At the time [Officer 1] shot Mr Mahdi in the head it is also my opinion he used reasonable force. His attempt to incapacitate Mr Mahdi by shooting him in the thigh had been unsuccessful and Mr Mahdi was now attacking Mrs Abed’s head with the knife. [Officer 1] had very little option but to act as he did.”

The Crown Solicitor concluded:

“For the above reasons it is my opinion that, based on the material provided to me, [Officer 1] was justified in acting as he did in the defence of Mrs Abed and no criminal liability attaches to his actions. I can find no evidence of any other possible criminal liability.”

Police accepted this advice.

ISSUES

The following are the issues considered and explored during the review of this investigation:

1. Were the Police lawfully on the property during their initial attendance, and was the Police response appropriate and lawful given the information they had at the time?
2. Was Officer 1 justified in possessing the firearm and arming himself for this incident?
3. Was Officer 1 justified in shooting Mr Mahdi in the leg?

4. Was Officer 1 justified in shooting Mr Mahdi with an aimed shot to the head (the fatal shot)?
5. Were there other (non-lethal) alternatives available or considered in this situation?
6. Were there any breaches of law, policy or procedure?

Issue 1

Were the Police lawfully on the property during their initial attendance, and was the Police response appropriate and lawful given the information they had at the time?

Despite the language barrier, Call Taker 1 and Call Taker 2 received sufficient information to capture the essence of what was occurring at the home of Mr Mahdi and Ms Abed.

The event was immediately electronically recorded and information obtained was passed on to Officers 1, 2 and 3 who at once responded to the call. An analysis of the information dispatched to the attending officers finds that as they approached the residence they had the following information:

- The incident was occurring at a specific address in Dale Crescent.
- A male had called the Ambulance service reporting he had cut his wife “1001 times”.
- Call Taker 2 had the female from the residence on the telephone.
- The female had been cut (although specifics of this were not clear) and was fearful for herself.
- The male in the residence was said to be mentally unwell.
- The male was threatening to kill the female and he was armed with a knife.
- The front door of the residence was open and the male was standing in the hall.

The Authority concludes that there were clear grounds for the officers to believe the threat of death or grievous bodily harm existed. In his statement, Officer 1 records “*I had fears, from what I heard that guy had admitted cutting his wife 1001 times, it gave me more than enough reason*” (to enter the house). He also states he considered his powers to enter the house under Section 317 of the Crimes Act and considered that grounds existed to justify entry.

Section 317 provides that a Constable is authorised to enter any residence to arrest any person when there is "*good cause to suspect*" that that person has committed an offence. It also authorises entry to prevent an offence likely to cause serious injury and entry "*by force if necessary*".

Officer 1 found that although the front door was unlocked, he could only open the door slightly as it was held by a short security chain. He used a small bolt cutter to cut through the chain which then gave him access to the residence. When asked in his statement if he believed there was an offence being committed in the residence, he responded by saying "*Yes definitely*". Given the information he had, the Authority is of the view that that was a logical and sensible conclusion. He added "*I wanted to effect entry and to assess what was happening*". Under the circumstances, this was also reasonable and the Authority concludes that the force used to enter the dwelling was reasonable and justified.

In entering the dwelling, the officers were acting in the lawful execution of their duty.

The Authority concludes that the Police response was entirely appropriate and necessary given the information they had at the time.

Issue 2

Was Officer 1 justified in possessing the firearm and arming himself for this incident?

Officer 1 was equipped with a firearm in the locked safe of his vehicle when he was dispatched to the Mahdi residence. He had signed out the Glock pistol on 13 August, the day before the shooting, while working a late shift, due to two armed offenders incidents.

The circumstances in which Officer 1 signed out the Glock pistol are as follows. Officer 1 had taken possession of the Glock from a Constable who was also a dog handler (Officer 5). The weapon had been signed out by Officer 5. Upon obtaining the weapon from Officer 5, Officer 1 crossed out Officer 5's name and registration number and replaced it with his own name and registration number in the Arms Register.

In his statement Officer 1 stated:

"I went to the firearms safe and found there were no firearms left, they had all been issued. [Officer 5] was at the dog base with me. He found out where we could get another firearm. [Officer 5] offered me his firearm and told me to amend the firearms register. He had signed his firearm out. I went in there, crossed his name out and put my number above it and took possession of the firearm. The firearm, we were on call from late shift to early shift so the firearm was kept in the Arms Safe in the vehicle at my home address. There is a car alarm set on the van".

General Instruction F059 (8) states which details must be recorded in the Firearms Register whenever a firearm is issued.

Officer 1's actions did not comply with the established policy. Officer 1 should have had Officer 5 sign the Register to indicate the return of the pistol and then Officer 1 should have signed the pistol out in his own name on a separate entry line. Officer 1's failure to do so amounts in my view to a minor administrative breach of the established policy. It was not done for any reason other than expediency and convenience.

General Instruction F060 (3) states that a District Commander may authorise the carriage of Police approved firearms in Police vehicles, as necessary, to ensure members have ready access to firearms should the circumstances dictate.

General Instruction F059(4) states Police firearms are not to be issued to staff except on the authority of a Commissioned Officer or supervising NCO unless an emergency exists and no Commissioned Officer or NCO is available.

General Instruction F060(6) authorises Police members to carry Police issue firearms on the person where there is clear and specific evidence that a risk of encountering any of the circumstances referred to in General Instruction F061 exists. If an authorising officer is not available, members may exercise their own discretion, but shall advise their supervisor at the first reasonable opportunity.

General Instruction F061(2) states that Police can use a firearm *"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."*

Officer 1 was not a commissioned officer or supervising NCO; there is however no doubt that this was an urgent and potentially life threatening situation. Time was of the essence and given the information he had, the Authority concludes that he was wise to take the firearm from the vehicle safe and arm himself.

General Instruction F062 (Fire Orders) states, *“Every sworn member of Police who is issued with a firearm in the course of duty is personally responsible for ensuring that he or she is thoroughly conversant with relevant law, particularly sections 39, 40, 41,48 and 62 of the Crimes Act, and policy as outlined in General Instructions F061”*.

It also requires that “Fire Orders” be given *“if time and circumstances permit”*

Officer 1 is a very experienced operational Police officer. He had very recently completed the required Staff Safety Tactical Training (“SSTT”) which reinforces the relevant law and policy. He had also attended Armed Offenders Squad training days. When interviewed, Officer 1 was able to relate how sections 39, 40, 41,48 and 62 of the Crimes Act applied to this incident.

The situation was urgent and since Officer 1 was the senior member present and the sole armed officer, time and circumstances did not require the giving of Fire Orders.

With the minor exception of not properly completing the Firearms Register, the Authority is of the view that Officer 1 acted correctly and in accordance with existing Police policy and was justified in possessing the firearm and arming himself for this incident.

Issue 3

Was Officer 1 justified in shooting Mr Mahdi in the leg?

This issue has also been the subject of the report by the Auckland Crown Solicitor, discussed on pages 15 and 16 above.

The Authority has reached the conclusion that Officer 1 was justified in shooting Mr Mahdi in the leg.

The reasons for this conclusion are:

1. Before Officers 1 and 2 entered the house they had been advised by Call Taker 2 that Mr Mahdi was suffering from a mental illness, was in the possession of a knife and had cut his wife.
2. As soon as Officers 1 and 2 entered the lounge, they were confronted with Mr Mahdi who was holding a large kitchen knife. The lounge itself is very small and confining. As the two officers entered the room, Mr Mahdi immediately stood up with the weapon in plain view and started wielding it threateningly.
3. Both officers were of the view that Mr Mahdi was advancing towards his wife to attack her with the knife. Officer 1 stated: *"I had fears for her safety immediately"*.
4. In an attempt to stop the attack and subdue Mr Mahdi, Officer 1 had used OC Spray. The spray had no apparent effect on Mr Mahdi.
5. Mr Mahdi attacked Officer 1 with the knife, causing two deep lacerations. This attack was determined and frenzied.
6. Once Officers 1 and 2 retreated into the kitchen, Mr Mahdi commenced attacking the lounge door with the knife. This retreat had secured their safety but left Ms Abed vulnerable and without protection.
7. A cordon and contain option would have been desirable at this point had it not been for the fact Ms Abed was still in the dwelling with Mr Mahdi.
8. The officers then heard Ms Abed screaming inside the lounge. Officer 1 stated *"As soon as I heard that screaming I knew that things were very bad inside that room"*.

Officer 1 said further:

"I thought he was attacking her with the knife. He'd just sliced me, as it turns out twice, and with no warnings he was just intent on getting me and he got me. I just had a feeling that he'd be showing the same intent towards her and I did have grave fears for her safety".

9. Upon re-entering the lounge, Officer 1 found Mr Mahdi holding Ms Abed around the neck. Mr Mahdi had the knife held to her throat. Officer 1 was of the opinion the Mr Mahdi had cut her throat or was about to cut her throat.

At this point Officer 1 said:

"I was sort of assessing what he was doing in the brief seconds that I had and in my mind I thought he was going to do her serious harm or kill her. Just when I balanced everything out from the phone call of cutting her 1001 times, him slicing my hand, his initial attack on her as well and then the position he had the knife I thought if he was going to act he could kill her very quickly".

10. Officer 1 on three occasions called upon Mr Mahdi to drop the knife. Mr Mahdi did not comply. Officer 1 then decided that shooting Mr Mahdi was the only way he was going to save Ms Abed. As Mr Mahdi was positioned behind his wife, Officer 1 was unable to shoot at his centre body mass to incapacitate. He did see that Mr Mahdi's right leg was exposed and took 5 aimed shots at the right thigh with short pauses between each shot.

It is clear to the Authority that Officer 1 was acting in the defence of Ms Abed when he fired the first 5 shots at Mr Mahdi. He fired the shots to save her life and was justified in his actions.

Issue 4

Was Officer 1 justified in shooting Mr Mahdi with an aimed shot to the head (the final shot)?

This issue has also been the subject of the report by the Auckland Crown Solicitor referred to above.

The Authority has reached the conclusion that Officer 1 was justified in shooting Mr Mahdi with an aimed shot to the head.

The reasons for this conclusion are those set out above in respect of the initial shots and also:

1. Officer 1 had fired 5 shots aimed at Mr Mahdi's thigh. He did not know how many of these shots had hit the target but in the Authority's view it would be reasonable for Officer 1 to assume that Mr Mahdi had been hit. In fact Mr Mahdi was hit 3 times.
2. After being shot in the thigh Mr Mahdi had advanced across the room towards Officer 1. As he advanced, he began stabbing Ms Abed on the top of her head with the knife.
3. Officer 1 was convinced that Ms Abed would be killed unless Mr Mahdi was stopped.
4. Officer 1 had no other weapon or option available to him. The evidence suggests that he waited until Mr Mahdi had advanced to within 1 metre of himself. Due to his proximity it is the Authority's clear view that Mr Mahdi was now not only a risk to Ms Abed but was close enough to be a risk to Officers 1 and 2.
5. Mr Mahdi was using Ms Abed as a shield and only his head was exposed.

The Authority has reached the conclusion that Officer 1 was acting in the defence of Ms Abed when he fired the fatal shot and was justified in doing so.

Issue 5

Were there other (less violent) alternatives available or considered in this situation?

The Authority has considered why the attending Police used the tactics they did and whether or not there were other options that could have been considered.

Some other options were rejected as impracticable (Cordon and Containment, Police Dog and Baton) and others were employed before the shots were fired with limited or no effect (Retreat, Verbal Commands and OC spray).

Cordon and Containment

The attending officers did not consider Cordon and Containment an option when they first arrived at the residence as the information they had indicated they had an armed offender who had stabbed his wife who was still with him. There was the potential that someone required immediate medical attention and the situation was potentially life threatening. In the view of the Authority a Cordon and Containment option and a call for the Armed Offenders Squad would not have been effective as it would have left Ms Abed in a dangerous and vulnerable situation.

Police Dog

Officer 1 is a dog handler and had 2 dogs with him (in his Police vehicle). When questioned at interview about his decision not to take the dogs, Officer 1 said:

"I generally don't take the dog with me to a knife incident initially. I like to go in and assess the situation and if it's appropriate to use a dog I will and if it's not I won't."

...

"I don't know what the situation is going to be when I go in there, if there's too many people screaming and yelling the dog is going to be detrimental and he may not focus on the person I want him to focus on, so it becomes an impediment as opposed to an asset. So that's why I like to assess the situation first and then if I feel that a dog is appropriate then I would run back and get the dog and do whatever has to be done from there".

In the opinion of the Authority, Officer 1 made a considered and appropriate choice not to use the dogs, based on his many years of experience as a dog handler.

PR24 Baton

Officer 1 was carrying in his hand a PR24 baton (a side-handled baton) when he entered the lounge. The evidence shows that this baton was dropped by Officer 1 at the time that he retreated from the lounge. The baton was found on the floor in the kitchen/laundry.

In his interview, Officer 1 said in relation to the baton:

"I didn't even consider using it. Basically because I couldn't get a strike out because I would have hit the wall and at that point I was into defensive mode, I was getting out."

Batons have limited usefulness when officers are faced with a close range, determined adversary armed with a deadly weapon. Given the fact that Mr Mahdi was approaching quickly in an aggressive manner swinging the knife in a figure 8 motion, it would have been unsafe to attempt to engage him with a baton. The likelihood of being able to disarm Mr Mahdi without serious harm being inflicted on the officer(s) was remote. There is no criticism attached to Officer 1's decision not to use his baton.

It should be noted that Officer 1 had previous training with the PR24 baton but had not received his annual refresher training and therefore technically he should not have been carrying the baton. However, given that the baton was not used in this situation, this lapse is considered by the Authority to be a non-material breach of procedure.

Retreat

It is the view of the Authority that further retreat from the lounge or residence would have exposed Ms Abed to an extreme risk of death or at least of grievous bodily harm.

No issues arise in relation to Officer 1 and 2 retreating into the kitchen/laundry in the circumstances in which they did.

Verbal Commands

Officer 1 did issue numerous demands to drop the weapon. This is confirmed on the open line audio. The demands are loud and very clear. Despite the language barrier, it is the Authority's opinion that Mr Mahdi must have known what was being required of him. Mr Mahdi ignored those demands. After the first shots had been fired, Mr Mahdi remained standing and in fact advanced on Officer 1 with the knife still in a raised attack position.

No issues arise in relation to Officer 1's use of verbal commands.

OC Spray

Officer 1 says he used OC spray on Mr Mahdi in the first stage of the confrontation, before he retreated from the lounge. It is noted that Ms Abed says that the spray was used at a later point, but still before any shots were fired.

OC spray does have certain limitations and disadvantages. The type of canister carried by Officer 1 has an effective range of 1 – 3.5 metres. In addition, OC spray does not work on everyone. In some instances, failure has been attributed to the mental state of the individual being sprayed.

Further, Mr Mahdi was not a stationary target. He was moving quickly and this hindered attempts to spray him effectively. Both Officers 1 and 2 report that Mr Mahdi did not seem to be affected by the spray.

General Instruction A270 (1) states that Police members may only use OC spray *“to defend themselves or others if they fear physical injury to themselves or others, and they cannot reasonably protect themselves, or others less forcefully.”*

General Instruction A271(1) states that *“caution should be exercised where a subject is armed with a blunt edged weapon, or knife, to ensure a safe distance is maintained.”*

General Instruction A272 states that unless it is impracticable to do so, a verbal warning is to be given prior to discharging the spray at another person to encourage peaceful compliance and to warn any people nearby.

When Officer 1 was interviewed about his use of OC spray, he said:

“...In relation to the giving [of a] warning there was no opportunity to warn him. He was moving forward to attack his wife and I didn't have time to warn him. He would have made it to his wife before I got the warning out.”

It is the view of the Authority that both Officers 1 and 2 held a fear of physical injury to themselves and/or Ms Abed and that the use of OC spray by Officer 1 was justified in terms of the General Instructions.

Summary

The Authority is satisfied that less violent alternatives were used (with limited or no effect) and others were considered but rejected before the shooting occurred. In the final analysis, given the circumstances and the speed with which the threat level escalated, Officer 1 eventually resorted to the only option then remaining, his firearm.

Request for Medical Assistance

It is appropriate at this point to also discuss Ms Abed's concern that Police arrived at her house when her husband had originally telephoned the Ambulance and she had repeatedly told Call Taker 1 that she wanted a doctor.

When Mr Mahdi telephoned the St John Ambulance, he advised them that he had cut his wife 1001 times. The Ambulance Service will not go into a potentially dangerous situation without Police first ascertaining what, if any, threat or danger exists. By the time Police and Ambulance arrived at the property Ms Abed had informed Call Taker 2 that Mr Mahdi had a knife and had threatened to kill her. It was therefore essential that Police enter the property, to secure the knife and ensure the safety of those present, before the Ambulance staff entered.

In the Authority's view, no criticism can be directed towards Police for the Police entering the property first. In addition, the Authority finds that Officers 1 and 2 would have been clearly identified by Mr Mahdi and Ms Abed as Police officers due to the fact that Officer 2 was in Police uniform and Officer 1 was in Police overalls carrying the insignia of the New Zealand Police.

Issue 6

Were there any breaches of Law, Policy or Procedure?

The technical breaches in relation to the failure of Officer 1 to complete the Firearms Register and in relation to his carrying of the PR24 baton have been discussed above. Nothing further need be said on these matters.

Response by the Northern Communications Centre ("NorthComms")

The Northern Communications Centre is responsible for responding to phone calls for Police assistance on a 24 hour, 7 days a week capability. Any incoming call to NorthComms is processed by an automatic call distribution system and then presented to one of a number of call takers, who answers the call and obtains details of the incident.

The call taker then enters this information into a Computer Aided Dispatch System.

Once the information has been entered into that system, it is transmitted through the system to the terminal of the dispatcher responsible for the area in which the incident is occurring.

The dispatcher then contacts by radio the Police patrols within that area and relays the incident details to those which are able to attend.

In this case, Call Taker 1 received the call from the Emergency Medical Dispatcher of the ambulance service receiving brief details of the call received from Mr Mahdi.

Call Taker 1 has then entered the event into the computer system to allow the Dispatcher to get response units underway to the scene address.

Call Taker 1 called the scene address to obtain further details for the Police units who had responded. During that short call Call Taker 1 established that there was no injury to anyone at the address, but that a male person needed a doctor for a possible mental illness.

Call Taker 1, in her statement to Police, said:

"I ended the call. If there had been yelling or screaming, or fighting going on in the background I would have stayed on the line up until Police arrived at the address. Other than the woman on the phone being upset there was nothing to indicate that there were any major problems at the address."

The new information was entered into the event chronology and forwarded through to the Dispatcher.

During this call, Call Taker 1 did not establish whether or not there were any weapons involved or whether or not there had been any direct threats to persons at the address.

Call Taker 2 noticed the job on her computer screen and considered that this information was important for the Police units responding and so she telephoned the scene and spoke with Ms Abed. During this conversation Call Taker 2 established that a knife was involved and that threats to kill had been made to Ms Abed. Call Taker 2 updated the information being passed to the units attending.

Call Taker 2 left the line open once Police units arrived and could hear events unfolding at the address.

Call Taker 1, in terminating the call to Ms Abed to update the event chronology, did not breach any operating procedures. It is however the opinion of the Authority that Call Taker 1 should have endeavoured to ascertain whether or not a weapon was involved and whether threats to kill had been made. This information would have assisted the Police officers attending to be fully prepared for the situation they were about to face. It is acknowledged that Ms Abed was clearly distressed while on the telephone and that there were substantial language difficulties that made it difficult for Call Taker 1 to obtain accurate details but it was fortunate that Call Taker 2 was able to make contact with Ms Abed again.

As it happened, Call Taker 2 was able to call the scene shortly thereafter and did obtain this crucial information from Ms Abed. There was no delay in dispatching units to the scene. The Authority considers that Call Taker 2 handled the situation commendably.

No other breaches of law, policy or procedure were discovered during the investigation of this matter.

RECOMMENDATIONS

1. Blood samples taken from Police

Although a routine blood sample was taken from Officer 1 by hospital staff during his treatment, the Police did not test Officer 1 for alcohol or drug levels. The issue of the alcohol or drug

testing of officers involved in critical incidents has from time to time been the subject of discussion in New Zealand and elsewhere.

The Authority supports the consideration by the Police of the merits or otherwise of such a policy.

It is emphasised that there is no suggestion that any Police member involved in this incident was affected by alcohol or drugs.

2. Non-Lethal Alternatives

During the review of Issue 5, above, the Authority examined the use of non-lethal means (weapons and tactics) available to Officer 1.

Currently the New Zealand Police utilise both batons and OC spray as defensive weapons to be used when justified. In this instance, Officer 1 was also in possession of a Police issue Glock pistol.

Although very effective, OC spray and batons have certain limitations and disadvantages. To be effective, both require that the officer be at 'close quarters' with the subject. Under some circumstances that is practical. When however a subject is armed with certain weapons, such as that used in the present case, these tactical options have distance limitations. Maintaining a safe distance from such a threat is essential and renders these tactical options both ineffective and dangerous.

The Authority is satisfied that less violent alternatives were used (with no apparent effect) and others were considered but rejected before the shooting occurred. In the final analysis, given the circumstances and the speed with which the threat level escalated, Officer 1 eventually resorted to the only viable option available to him at the time, his firearm.

Currently in New Zealand there is no tactical option to bridge the gap between close quarter defensive weapons and the use of lethal force (firearm), other than a trial of one device (the 'Taser') which is being conducted in some areas. It is not the role of the Authority to express a view on that device but the Authority supports the consideration by the Police of non-lethal alternatives to protect the public, their members and offenders during violent confrontations.

CONCLUSIONS

The Authority has concluded, following a thorough investigation of this incident, that no misconduct or neglect of duty on the part of any Police officer has been disclosed.

At the time Officer 1 shot Mr Mahdi, he was acting lawfully, and properly, in the execution of his duty and the force used was reasonable and justified given the circumstances. The Authority regards Officer 1's handling of this violent and stressful situation as commendable.

There can be no dispute that, but for the intervention of the Police, at demonstrated risk to themselves, this incident would almost certainly have resulted in the death or grievous bodily harm, at Mr Mahdi's hands, of his wife.

Judge I A Borrin
POLICE COMPLAINTS AUTHORITY

14 December 2006