

SCRUTINY OF POLICE POWERS PANEL

PANEL REVIEW OF 14/01/2017 TASER CASE

1. BACKGROUND

The Scrutiny of Police Powers Panel (the Panel), was established by the Police and Crime Commissioner at the request and with the support of Avon and Somerset Constabulary. The Panel, consisting of 16 local people from across the Avon and Somerset area and all walks of life and diverse backgrounds, acts as a 'critical friend' to the Police and Crime Commissioner (PCC) and to the Avon and Somerset Constabulary (ASC). By reviewing records and video footage, the Panel examines the use of force, Taser, stop and search and spit guards and considers whether the use of this force was appropriate according to a layperson's understanding of ASC policy, procedure and training, and current legislation; and personal and community expectations of modern policing. In doing so the Panel's objectives are to maintain public trust in the ASC and to promote organisational learning within the force. The Panel's Terms of Reference are attached in Appendix 1.

2. THE JANUARY 2017 USE OF TASER CASE

In January 2017, two ASC officers stopped an individual (X) in the Bristol area and had an interaction with him which culminated in the individual being Tasered and arrested. The officers had misidentified X as an individual wanted under warrant. X had been misidentified as that same individual by the Constabulary on a previous occasion. He was arrested and injured on that occasion.

The officers both deployed their BWV from an early stage in the interaction in accordance with guidance. A neighbour of the individual also videoed an element of the interaction though without a significant part of the interaction. This was however, caught on the officers' BWVs.

The neighbour's video was uploaded to the internet shortly after the incident causing significant local, national and international reaction through the media and on social media. The individual X was a founder member of the Constabulary's Independent Advisory Group and a well-known local community leader.

The ASC referred the case to the Independent Office of Police Conduct (IOPC) who investigated whether the officers had treated X in a racially discriminatory manner and whether they had Tasered him unnecessarily. The IOPC carried out an independent investigation into the incident. They referred one of the officers (Officer A) to the Crown Prosecution Service (CPS) for a charging decision. The IOPC also considered that there was a case to answer for gross misconduct in relation to the allegation that the discharge of Taser amounted to an excessive use of force. The IOPC did not consider there was any case to answer against the other officer (Officer B) nor did the IOPC consider there was a case to answer against Officer A in relation to the allegation that she had discriminated on the grounds of race.

Officer A was charged by the CPS with assault by beating and in May 2018 was found not guilty in the Magistrates Court of this charge. In September 2018, at a public disciplinary hearing led by an independently qualified Chair an allegation of breach of professional standards against Officer A regarding the use of force was not proven. The IOPC did not identify any organisational learning for the ASC.

The Panel was recruited in the immediate aftermath of this high profile January 2017 Taser case and the case was very much in the minds of those who applied to join the Panel. It is undoubtedly a difficult, divisive and controversial case. It has always been the request of the Panel that they should be entitled to review the January 2017 case and offer their thoughts on organisational learning for the Constabulary. This was agreed by all parties to happen after the criminal and misconduct proceedings were concluded. In November 2018 the Panel reviewed

the BWVs of the case. They provided their views at the time using their normal method of work, which was to discuss the video in small groups, followed by a plenary discussion. The Panel's Case Review methodology is set out in Appendix 2.

The Panel has a number of concerns about the use of force in this case and they have provided a number of recommendations to the ASC from their review of the case. The Panel were very surprised that the IOPC did not identify any opportunities for learning in their investigation report. They have met with the Police and Crime Commissioner, the Chief Constable and other senior police officers to discuss their recommendations and views.

It is recognised that the two officers that stopped X in January 2017 have been through an extremely challenging and difficult time through the public scrutiny of this case and have suffered inappropriate online and at times personal abuse in connection with this case. This is very unfortunate. The two officers have been independently investigated, both from a criminal and a misconduct perspective, and have been cleared of any wrong doing by both forums.

The Panel's usual practice is to publish a summary of each case the members have reviewed with the officers' details anonymised. Unfortunately, because of the notoriety of this case, anonymisation cannot be achieved and, exceptionally therefore, the Panel cannot follow their normal practice of publishing their comments on the officers' actions.

3. THE PANEL CONCLUSIONS ON THE 14/01/2017 TASER CASE

The Panel's conclusions are focused on organisational learning for the Constabulary. They were reached after reviewing the Body Worn Video of the use of Taser in this case. The Panel also submitted questions to ASC about the repeated misidentification of X and how Taser was used in this specific incident.

A: Misidentification

The misidentification in January 2017 was the second time this particular misidentification has happened. It also happened on two subsequent occasions. The Panel is dismayed and concerned by ASC's lack of organisational learning from these incidents, all of which have led to further adverse press coverage. This has caused damage to the work being done to re-establish community relations.

B: Use of Taser

The Panel believes there should *have been* significant learning from this case and has raised various issues with ASC. It is a disappointment that:

- i. The only learning point initially accepted by the ASC, specifically relating to the January 2017 use of Taser, was that the officers would have benefited from asking questions first and by making further enquiries to establish identity.
- ii. Rather than specifically answering the Panel's questions, the initial ASC response was to refer to the IOPC report, which did not identify any organisational learning. The Panel believes that the ASC should not have solely relied on this to answer questions on its own organisational learning initiatives.
- iii. The Panel reviewed the January 2017 case in November 2018. This led to a number of questions being raised with the ASC. The Panel were disappointed with the delayed and limited response from the ASC to these initial questions.
- iv. The Panel has currently received no response from the ASC to the Panel's organisational learning proposals, which are detailed below.

4. RECOMMENDED ORGANISATIONAL LEARNING AND ACTIONS

Despite the above comments, the Panel recognise that over the past two years since the January 2017 Taser incident, the ASC has taken a number of important initiatives that demonstrate the organisation is serious about learning from this incident and from other such high profile cases. This is in order to rebuild communities' trust and confidence and to improve the training of officers and staff. Some of the initiatives date back two years and some are very recent. Key areas include:

1. De-escalation training
2. Patrol training
3. Stop and search training
4. 'Five big ideas' to accelerate training on inclusion and diversity
5. Police Constable degree apprenticeships
6. Professional standards training
7. Organisational learning
8. 'Engine Room' to build the community's trust and confidence in the ASC.

On 12/11/2018 the Chief Constable launched the ASC's revised mission, vision and values, namely:

- Mission: serve, protect, respect
- Vision: outstanding policing for everyone
- Values: caring, courageous, inclusive, learning.

The Panel acknowledges the actions taken by the ASC over the last two years to rebuild communities' trust and confidence. It also recognises that many of these changes are likely to have effect only in the long term.

However, the Panel believes that some immediate actions are needed to communicate to the community the seriousness with which the Police view such incidents as the 14/01/2017 Taser case. The Panel has therefore recommends that:

1. A senior officer (SO) should be appointed to draw up and oversee the implementation of a plan to improve communities' trust in the ASC. This SO should report to the highest level of both the PCC and the ASC. The SO would produce an action plan with objectives, drawing together all the initiatives and providing a description of what success looks like. There should also be a regular review and progress report. Equality Impact Assessments should be used throughout this process to minimise the risks of institutional discrimination

Contents of this plan could include:

- Regular engagement with those communities which have less trust and confidence in the ASC.
 - Targeted surveys within these communities. Comparisons should then be drawn between these surveys and the broader surveys by the PCC.
 - Focus groups to be conducted in the community to report on any change in the community's trust in the ASC. In particular canvassing those members of the community whose trust was shaken by the above January 2017 Taser incident.
 - Ensuring that supervisors make it clear that fulfilling the ASC's 'mission, vision and values' commitment is an **absolute requirement and any undermining of these aims will have adverse consequences for the officers concerned.**
 - Setting time lines (short, medium and long term) within which identified targets need to be achieved.
 - Measuring progress using both quantitative and qualitative data.
2. Ensuring that front line officers are up to date with their Cultural Competency Training.

3. Reviewing protocols, procedures and training so that officers correctly identify individuals, who are to be arrested or served with warrants.
4. Reviewing protocols, procedures and training in how to de-escalate situations in order to minimise the use of force.
5. Developing processes during recruitments that enable the assessment of candidate attitudes towards equality and diversity.

The Panel awaits to hear ASC's response to the Panel's recommendations.

14/06/2019

THE SCRUTINY OF POLICE POWERS PANEL

TERMS OF REFERENCE

CONTENTS

- 1. Aims and Objectives**
- 2. Review methodology**
- 3. Confidentiality**
- 4. Selection of Chair**
- 5. Selection/de-selection of Panel Members**
- 6. Frequency of Meetings**
- 7. Servicing of Meetings**
- 8. Reimbursement of Expenses**
- 9. Reporting**
- 10. Training**
- 11. Rights and Responsibilities of Members**
- 12. Review of Terms of Reference**

1 AIMS AND OBJECTIVES

1.1 Aims:

- 1.1.1 To act as a 'critical friend' to the Police and Crime Commissioner (PCC) and to Avon and Somerset Constabulary by providing feedback on reviewed Police Powers records. The Scrutiny of Police Powers Panel (the Panel) will review records and video footage, for example, Taser use, deployment and use of Police Officer Body Worn Video Cameras, Stop and Search and the use of force from a local citizen's viewpoint.
- 1.1.2 To improve and maintain public trust and satisfaction in Avon and Somerset Constabulary.
- 1.1.3 To support the openness and transparency of Avon and Somerset Constabulary (the Constabulary) in delivering a high quality policing service.

1.2 Objectives:

- 1.2.1 To provide Panel feedback to the Constabulary and to scrutinise the Constabulary's use of Police Power records.
- 1.2.2 To provide support and scrutiny in helping to discharge the PCC's duty to have oversight of the Police and to hold the Chief Constable to account for the delivery of the Police and Crime Plan, providing an efficient and effective policing service.
- 1.2.3 To give independent, lay-persons' views of the use of Police powers by Avon and Somerset Police Officers.
- 1.2.4 To ensure that Avon and Somerset Constabulary's use of Police powers is effective, in line with Approved Professional Practice and is operating without bias or discrimination.
- 1.2.5 To identify best practice in the use of Police powers and in operational policing where appropriate.
- 1.2.6 To bring records of concern to the notice of the Constabulary and the PCC's office, so that the concerns can be reviewed and lessons learnt where appropriate.
- 1.2.7 To improve the quality of policing provided to members of the public regarding the use of Police powers.

2 REVIEW METHODOLOGY

- 2.1 The panel will review Records and Body Worn Video Camera footage through a quarterly dip-sampling of documentation and video recordings. The Panel will provide a qualitative round table discussion on each case, focusing on a particular category of Police power deployed, a geographic area or specified record selection criteria. The review will look at the appropriateness of the use of the Police power, commenting on positive points as well as issues of concern and operational learning. This approach will be reviewed for effectiveness by the Panel as it progresses in its work.

3 CONFIDENTIALITY

- 3.1 The proceedings of all Panel meetings are sensitive and members must not reveal any information about Police records and personal data of Police Officers and members of the public. This includes witnesses' and any person's personal information in the police records that could identify any individual. Panel members must not disclose any aspect of discussions which the panel undertakes during the course of scrutiny, apart from the points recorded in the published notes from Panel meetings.

- 3.2 To operate effectively, members may on occasion have sight of restricted material that must be treated as strictly private and confidential. The requirements of the General Data Protection Regulation will apply to all work undertaken by Panel members. Please refer to the PCC's website for information about the GDPR, which are within the [Privacy Notice](#), including the Rights for Panel members.
- 3.3 Panel members will be asked to sign a volunteer agreement (if they have not already done so) and uphold this at all times.
- 3.4 Any breaches of these confidentiality arrangements will lead to an investigation by the office of the PCC (and the Police if required), and the possible expulsion of a member from the Panel, if it is demonstrated that a clear breach of confidentiality has occurred.

4 SELECTION OF CHAIR AND VICE CHAIR(S)

- 4.1 Nominations for Chair and Vice Chair(s) will be requested from Panel members on an annual basis, with a closing date of at least one week before the election date. A paper or electronic ballot voting system will be used to elect the Chair and Vice Chair(s) during a Panel meeting. A quorum is needed for an election, which is 2/3rds of the Panel membership.
- 4.2 One Panel member will act as Chair and one or more as Vice Chair. The PCC's facilitator will invite the Vice Chair(s) to take relevant action in the absence of the Chair. The Vice Chair(s) and facilitator will agree a temporary Chair before the meeting.
- 4.3 The Chair is accountable to the Scrutiny Panel.
- 4.4 Panel members may ask the Chair to act on their behalf at meetings, or in other agreed situations. The Chair may also ask a Vice Chair (or another member) to act on the Chair's behalf at meetings.
- 4.5 The Chair and Vice Chair(s) will each serve for a term of up to 1 year, and may serve a maximum of 3 consecutive terms. At the end of his/her term as Chair/Vice Chair, s/he can remain a Scrutiny of Police Powers Panel member.
- 4.6 The Chair can be removed, if at least 2/3rds of the non-Chair members agree.
- 4.7 In addition to chairing meetings, the Chair will assist the PCC's facilitator to plan meetings and agenda, review Panel feedback reports, and act as a single point of contact between meetings for the office of the PCC.

5 SELECTION/DE-SELECTION OF PANEL MEMBERS

- 5.1 Members of the Panel (Panel membership being a total of about 20) will be appointed by the PCC in a transparent way, with the decision published. The existing (2016) Taser Panel members were invited to be members of this Scrutiny of Police Powers Panel, subject to eligibility.
- 5.2 Any travel expense remuneration will be made public, as required.
- 5.3 Panel membership will be for an initial 3 year term. A member may choose to continue for a second term at the end of this period but no member may serve more than 2 consecutive terms (6 years). This is subject to PCC elections and the Panel continuing.
- 5.4 Members are expected to disclose to the PCC's office any changes in their circumstances which may have a bearing on their proper membership of the Panel. Disclosures, such as criminal convictions, will be kept confidential, and discussed only with the PCC's Chief Executive Officer (CEO) or PCC. The CEO or PCC will then decide whether the person's membership needs to be re-assessed in light of the disclosure.

- 5.5 Panel members are expected to act within these agreed Terms of Reference and within the Volunteers' agreement.
- 5.6 Panel members are expected to commit to and attend meetings regularly and to send apologies to the office of the PCC where they are unable to attend.
- 5.7 Panel members who do not attend three consecutive meetings without satisfactory reason will have their position on the Panel reviewed by the office of the PCC and Chair. Breach of the Terms of Reference or the volunteers' agreement will also trigger a member's review.

6 FREQUENCY OF MEETINGS

- 6.1 The Panel will meet no less than four times a year. The frequency of meetings may increase in response to any urgent concerns, or as agreed between the office of the PCC and the Panel.

7 SERVICING OF MEETINGS

- 7.1 The office of the PCC will provide administrative support to the Panel and will be responsible for writing reports of meeting findings and emailing any briefings and any relevant paperwork prior to meetings.
- 7.2 Members will obtain the agreement of the Chair if they wish to propose case selection criteria, for example a specific geographical area. The suggestion can be via the PCC's Panel facilitator.

8 REIMBURSEMENT OF EXPENSES

- 8.1 Reasonable out of pocket travelling expenses – in accordance with HMRC travel expense rates, including car-sharing - will be available for reimbursement from the office of the PCC to Panel members for attending meetings and training related to the Panel's work.
- 8.2 Expenses will not be paid if a Panel member represents the Panel at other meetings and training events without the prior knowledge and authorisation of the PCC's office.
- 8.3 Claims, with receipts, must be submitted quarterly within each financial year.

9 REPORTING

- 9.1 The office of the PCC will publish a feedback report after each Panel record review session, on behalf of the Panel, on the PCC's website and, where requested, in other appropriate formats. The Constabulary will produce a written response to the Panel's feedback report.

10 TRAINING

- 10.1 The office of the PCC and Constabulary will be responsible for providing induction training and any ongoing learning for Panel members.

11 RIGHTS AND RESPONSIBILITIES OF PANEL MEMBERS

- 11.1 Panel members should not make subjective judgements about other Panel members or any person mentioned in Police Records. It is imperative that every Panel member respects other members, and that any conflicts are resolved with dignity and professionalism. The Chair will intervene in any disputes which members may not be able to resolve between themselves.
- 11.2 Members are expected to abide by these Terms of Reference and where breaches occur or are likely to occur, they are expected to declare this to the Chair.
- 11.3 Applicants prior to Panel membership will be required to submit to NPPV Level 2 vetting checks.
- 11.4 When representing the Panel, all Panel members must refrain from any political activity that may cause the Panel to compromise its independence.

- 11.5 No Panel members will have any contact with the media in relation to Panel, Police or PCC related matters or comment in their capacity as a Panel member without discussing this in advance with the PCC's office. Panel members other than the Chair are not expected to comment generally to the media in their capacity as Panel members.
- 11.6 All Panel members must give correct and up-to-date definitions of their role/s within the Panel if communicating with the public.
- 11.7 Members must refer any personal issues, such as change of address, or conflicts of interest which could interfere with their membership, to the PCC's office as soon as possible. Similarly, any complaint made against a panel member must be referred in the same way.
- 11.8 These Terms of Reference will be published on the PCC's website.

12 REVIEW OF TERMS OF REFERENCE

- 12.1 These Terms of Reference will be reviewed annually or amended as necessary.

Appendix 2: Case Review Methodology

The Panel reviewed the 2017 Taser case in the same manner and using the same criteria as in all its case reviews. After considering ASC's logs of the incident and viewing Body Worn Video (BWV), the panel discusses the case and each panel member answers five questions, namely:

1. If force was used, was it appropriate?
2. Did the Police make the correct decisions throughout this episode?
3. Was the Police behaviour based on stereotypes or assumptions?
4. Was there demonstrable discriminatory behaviour?
5. Does the behaviour require further investigation?

The collective answers determine the Panel's review and identify learning points, as well as often commendations of an officer's actions. When the Panel's report is published, all personal details, including those of the officers, are anonymised. The Panel's previous published reports may be found at:

<https://www.avonandsomerset-pcc.gov.uk/Openness/Scrutiny/Scrutiny-of-Police-Powers-Panel-Reports.aspx>

In this particular case, the Panel submitted a series of detailed questions to the Constabulary about the policies, procedures, systems, processes and organisational learning applicable in this case and how the occurrence of this case has led to changes. In particular, the Panel asked questions about Equality and Diversity Training, the National Decision-Making model, de-escalation training, misidentification and the IOPC process. As noted in the report the Panel were very surprised that the IOPC did not recommend any organisational learning in this case.