

Summary Report

Police investigation into a complaint of assault

INTRODUCTION

1. On 20 December 2010, Mr X complained to Police that an officer had assaulted him with a torch during his arrest in Feilding on the previous evening.
2. The Police notified the Independent Police Conduct Authority (the Authority) of Mr X's initial complaint on 11 January 2011. Based on the information to hand at the time, the Authority referred the matter to Police for their investigation to continue on the basis that the Authority would review the Police investigation into Mr X's complaint once it was concluded.
3. At the conclusion of their investigation, Police charged the arresting officer with common assault. On 29 November 2012, following the acquittal of the arresting officer, Mr X made a further complaint to the Authority, alleging that the actions of the arresting officer had been improperly investigated, and that his original complaint should be re-opened. The Authority referred this to the Police so that the prosecution could be reviewed.
4. On 19 September 2013, because of Police delays in resolving the matter, the Authority commenced an independent investigation focused on the Police's handling of Mr X's allegation that he had been assaulted with a torch during his arrest. This report sets out the results of that investigation and the Authority's findings.
5. Mr X's two complaints also raised some subsidiary matters, and the Authority's findings on these matters have been reported to him directly.

Index of officers

Communications Centre Staff	Roles/Comment
Officer A	Arresting officer stationed at Feilding Police Station.
Officer B	Officer A's patrol partner, stationed at Feilding Police Station.
Officer C	Investigating Officer.
Officer D	District Manager Criminal Investigations (Central District). Reviewed the prosecution of Officer A.

BACKGROUND

Events surrounding Mr X's arrest and subsequent complaint

6. At about 10:10pm on 19 December 2010, Mr X was arrested at a Feilding address by Officers A and B after he refused to accompany them to the Feilding Police Station for the purpose of an evidential breath test.
7. Mr X's and the officers' versions of what happened next are in dispute. Mr X says that, while he was handcuffed and being walked to the patrol car, Officer A assaulted him by striking him in the face with his torch.
8. Both Officers A and B say that Mr X was not hit in any way while walking to the car. Officer A says that while being driven to the Police station Mr X was aggressive and attempted to head-butt him as they sat in the back passenger seat. Officer A responded with force, saying that he punched Mr X twice in the head with a closed fist. Officer B says that a commotion occurred in the back of the car which she heard but did not witness. Mr X says that he was not assaulted in the Police car.
9. Back at the Feilding Police Station Mr X underwent an Evidential Breath Test and returned a positive result.
10. Mr X says that while he was being processed for driving with excess breath alcohol, he complained to a senior officer that he had been assaulted by one of his officers. The senior officer gave Mr X his card and told him to come back in the morning to make his complaint.

11. Mr X was charged¹ with driving with excess breath alcohol, refusing to accompany an enforcement officer when required, and assaulting Officer A. He was given Police bail and released from custody at 11:50pm.
12. At 1am on 20 December 2010, Officer A completed a Tactical Options Report. He recorded that Mr X had attempted to head-butt him in the Police car, and that he had responded with two punches that resulted in Mr X receiving a small cut under his left eye, which did not require treatment.
13. At 8:40am Mr X returned to the Feilding Police Station to complain that Officer A had assaulted him with a torch while placing him under arrest. After speaking with senior officers at the station, Mr X decided that he would prefer to make a complaint through his lawyer. He requested a copy of the station's CCTV footage from the previous evening and other relevant Police documents.
14. One of the senior officers who had spoken to Mr X recorded their conversation in a Police jobsheet, and noted that he had directed one of his officers to obtain Officer A's torch as an exhibit, and place it in the Senior Sergeant's safe. Later that afternoon, that officer unsuccessfully attempted to contact Officer A about securing his torch.
15. Mr X made a formal statement of complaint to an officer at Palmerston North Station at 3:20pm that afternoon. Photographs of his injuries and a medical report completed by a local doctor were attached to the file.
16. On 21 December 2010, the complaint was passed to the Acting Professional Standards Manager for investigation and notification to the Authority.

Initial Police investigation of Mr X's complaint

17. The investigation into Mr X's complaint did not commence until March 2011, when it was assigned to Officer C. This delay occurred because:
 - 17.1 an officer from the Feilding Police Station was appointed to investigate the complaint, despite this being contrary to the Acting Professional Standards Manager's instructions. Mr X had previously indicated he did not want staff from Feilding Police Station dealing with his complaint, and objected to the appointment of this officer on 13 January 2011; and
 - 17.2 the second officer appointed to investigate the complaint was re-deployed on 1 March 2011 to assist with the state of emergency following the Christchurch earthquake.
18. When the investigation file was forwarded to the second investigating officer, an officer from the Feilding Station again undertook to secure Officer A's torch when Officer A returned from leave. This did not occur.

¹ Mr X pleaded guilty to the excess breath alcohol charge, while the charge of refusing to accompany an officer was withdrawn. The charge of assaulting a Police officer proceeded to a defended hearing on 29 March 2011. However, part-way through the hearing Police withdrew the charge due to lack of evidence.

19. On 1 March 2011, the Acting Central District Commander sent a memorandum to the Acting Area Commander of Palmerston North and directed that the investigation be assigned to a Detective Sergeant without delay. The Acting Central District Commander stated that:
 - 19.1 he wished to be informed of the name of the investigating officer by 4 March 2011;
 - 19.2 the file should not be passed on again;
 - 19.3 the investigation should be completed by 30 March 2011; and
 - 19.4 Mr X should be contacted as soon as possible.
20. On 8 March 2011 Officer C was formally assigned the investigation.
21. Officer C delivered his investigation report on 30 May 2011, two months after the deadline set by the Acting Central District Commander. Officer C recommended that Officer A be charged with common assault², based on Officer A's version of events that he had punched Mr X.
22. Officer C's report was reviewed by two senior officers, following which the Central District Commander agreed that Officer A should be stood down from duty and prosecuted.
23. Officer A was charged and summonsed to appear in Court on 30 June 2011. He pleaded not guilty, a defended hearing took place on 28 November 2012, and Officer A was acquitted.

Police investigation following Officer A's acquittal and Mr X's second complaint

24. Following the outcome of the defended hearing, Mr X made a second complaint directly to the Authority on 29 November 2012. He asked for the case against Officer A to be re-opened on the grounds that Officer A should have been charged with assault with a weapon, the evidence relating to the torch was never investigated, and the whole matter was improperly investigated by Police.
25. Police commenced a review of the prosecution of Officer A. On 14 July 2013, Officer D, District Manager Criminal Investigations (Central District), prepared a report for the Professional Standards Manager at Central District Headquarters.
26. Officer D concluded that decisions made at the early stage of the investigation into Mr X's allegation of assault compromised the ability of Police to determine whether the version of events put forward by Mr X, or Officer A, was more likely to be correct; and the most appropriate charges to lay. He found that forensic examination of Officer A's torch and gloves, and further medical enquiries into the nature of Mr X's injuries, could have supported or refuted either version.
27. Even without forensic evidence, Officer D felt that further consideration should have been given to charging Officer A with Mr X's allegation (that Officer A hit him with a torch outside

² Pursuant to section 196 of the Crimes Act 1961

the Police car), rather than Officer A's version of events (that he had used his hand to punch Mr X in the back of the Police car).

28. Officer D recommended that medical enquiries be undertaken to try to determine the cause of Mr X's injury. He also recommended that Police acknowledge to Mr X that they had failed to undertake a forensic examination of the torch.
29. The Central District Professional Standards Manager considered the outcome of the prosecution review, and provided his views to the Professional Standards section of Police National Headquarters for review on 20 August 2013. The Central District Professional Standards Manager:
 - 29.1 agreed with Officer D's view that Police should have secured the torch quickly for forensic examination, and not doing so was a failure on the part of Police; and
 - 29.2 concluded that further investigation into medical evidence was not possible, because Mr X would not consent to Police obtaining his private medical records.
30. On the same day, the Central District Professional Standards Manager wrote a letter to Mr X, apologising for Police's failure to secure the torch as evidence of the alleged assault, but noting that Officer A was nonetheless charged with assault.

Review of the complaint file by Police National Headquarters

31. Police National Headquarters reviewed the file and on 16 September 2013 sent it back to Central District because further work was considered to be necessary.
32. The Central District Commander reconsidered the file but remained of the view that Mr X's second complaint had been properly addressed. On 28 January 2014, the Central District Commander returned Mr X's file to Police National Headquarters Professional Standards, and outlined his final response to Mr X's complaints.
33. In his view, the failure to secure the torch as evidence was *"a symptom of a wider issue around a sense of urgency in relation to complaints of this nature,"* and staff had not shown ownership or leadership in terms of managing the complaint.
34. The Central District Commander also noted that he planned to speak to the officers concerned, and would schedule training on complaint handling practices for staff in districts who deal with investigations in early 2014. The newly appointed District Professional Standards Manager had been tasked with monitoring complaint management across the District.
35. Police National Headquarters Professional Standards accepted the Central District Commander's proposed approach for resolving the matters raised by Mr X's complaint on 7 February 2014.

Was Mr X's complaint that he was assaulted by Officer A with a torch before being placed in the patrol car investigated in a fair, timely, and effective manner?

36. The Authority has reviewed and analysed the Police file in relation to the Police investigation into Mr X's complaints. The Authority has also interviewed Mr X and senior officers involved in the investigation.
37. Police policy on Police investigations of complaints and notifiable incidents requires that all complaints into the conduct of Police employees are investigated in a fair, timely and effective manner. Mr X's complaint was that he was assaulted with a torch by a Police officer, and so a robust criminal investigation should have been conducted without delay.
38. Significant delays in assigning an officer to investigate Mr X's complaint, and the failure to secure Officer A's torch, denied Mr X the chance to have his version of events verified and effectively investigated.
39. From the time that Mr X's first complaint was made, senior Police officers were aware that Officer A's torch needed to be secured. Despite this, no one took responsibility to ensure that this was done.
40. An officer at Feilding Police Station was instructed to secure the torch for evidential purposes on the day the complaint was made, but was unsuccessful in contacting Officer A. Police identified that the torch had not been seized 39 days later, and an officer undertook to obtain the torch when Officer A returned from leave. The torch was never secured.
41. The time delay in appointing an investigating officer meant that the opportunity to gather any other forensic evidence which the investigator might have considered useful was also lost. It took 78 days to assign Officer C to investigate Mr X's complaint. Officer C was the third investigating officer to be assigned, the first officer having a perceived conflict of interest and the second being redeployed to Christchurch.
42. Police took the unusual decision to investigate the version of events put forward by Officer A and supported by Officer B, relating to use of force in the back of the Police car, rather than Mr X's complaint he had been hit with a torch prior to getting into the Police car. Mr X has always maintained that excessive force was not used against him in the Police car.
43. The Authority finds that a lack of evidence to verify or refute Mr X's version of events is likely to have influenced the decision to focus the investigation on Officer A's version of events, and the subsequent decision to prosecute Officer A for common assault.
44. As discussed in paragraph 33, Police acknowledge that there were issues regarding the urgency with which complaints against Police officers were handled within the Central Police District at the time of this incident.

45. The Authority has been advised that Police have taken action to address this issue by speaking with officers involved, ensuring that staff and officers that deal with investigations attend appropriate training, and introducing monitoring of complaint handling practices within the District.

CONCLUSIONS

46. The Authority has concluded on the balance of probabilities that:
- 46.1 Police should have conducted a timely, robust criminal investigation into Mr X's complaint of assault by a Police officer;
 - 46.2 Significant delays in assigning an investigating officer, and Police's failure to secure Officer A's torch, undermined the fairness and effectiveness of Police's investigation into Mr X's complaint; and
 - 46.3 The failures of Police were contrary to policy and unjustified.
47. The Central Police District has accepted that there was a lack of urgency when handling complaints against Police at the time of this incident, and has implemented a staff training programme and a system for monitoring complaint handling processes.
48. The Authority considers that Police made a mistake by not securing Officer A's torch as evidence and this has had unfortunate consequences for Mr X. This mistake cannot now be rectified because of the length of time which has elapsed since Mr X's arrest.
49. In the light of this, the Authority considers that the actions subsequently taken by the Central Police District to ensure that complaints against Police officers are investigated appropriately in the future are reasonable.



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

11 September 2014

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 overseen by a Board, which is chaired by Judge Sir David J. Carruthers.

Being independent means that the Authority makes its own findings based on the facts and the law. It does not answer to the Police, the Government or anyone else over those findings. In this way, its independence is similar to that of a Court.

The Authority employs highly experienced staff who have worked in a range of law enforcement and related roles in New Zealand and overseas.

What are the Authority's functions?

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

- receives complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- investigates, where there are reasonable grounds in the public interest, incidents in which Police actions have caused or appear to have caused death or serious bodily harm.

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



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