

Prisoner left in a New Plymouth District Court cell

INTRODUCTION

1. On 6 December 2017, Police custody staff left a woman alone and unattended in a cell at New Plymouth District Court for almost six hours.
2. Police notified the Independent Police Conduct Authority of the incident, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

3. On 6 December 2017, Ms X appeared in New Plymouth District Court for a driving related offence. After her hearing, Ms X was required to sign a new bail bond and was taken into Police custody, while awaiting the completion of paperwork by court staff.
4. There were two Police officers working at New Plymouth District Court that day. Officer A, a non-sworn Police authorised officer, was responsible for the court and Officer B, a sworn Police officer, was managing the court cells. Officer A had only been in the authorised officer role for two days.
5. Officer A took Ms X to the court cells and handed her over to Officer B before he returned to the courtroom. At 11.58pm, Officer B recorded Ms X's details in the prisoner receiving book, removed Ms X's property, and then placed her in a cell¹.
6. A short time later, Officer A returned to the cell area and advised Officer B that court had been adjourned for the day. At 12.01pm, the two officers left the courthouse and returned to New Plymouth Police Station (located directly across the road from the courthouse).

¹ The cell had a toilet and running water.

7. At 5.55pm, almost six hours after being received, Ms X spoke to a cleaner through the cell door. Ms X had lost track of time and, unaware it was almost 6pm, asked the cleaner to find out when she was going to be released. The cleaner contacted the Court security firm, who informed New Plymouth Police.
8. Police officers went over to the court and released Ms X from the cell. When she advised staff that she was supposed to pick up her young children at 2pm, her property was returned to her and she was advised that she was free to leave immediately. Officers visited Ms X at home later that evening to ensure her wellbeing.
9. Police staff contacted Officer B and advised her of the situation. Officer B, who was upset that she had forgotten Ms X after becoming distracted, immediately acknowledged her responsibility in failing to follow correct procedure, and expressed a wish to apologise to Ms X in person.
10. Ms X subsequently wrote to Police, requesting a formal letter of apology, seeking an explanation as to how the incident occurred, the procedures that should have been complied with and, if none existed, an outline of new procedures to be implemented to ensure such an incident never happened again.
11. Police sent Ms X a letter of apology on 16 April 2018, and extended an invitation to meet so that Officer B could offer Ms X a personal apology.

THE AUTHORITY'S INVESTIGATION

12. As part of its investigation the Authority interviewed Officers A and B, and the custody sergeant responsible for overseeing the management of Police and Court cells. The Authority also reviewed all material obtained during the Police investigation into the incident.
13. The Authority identified three primary issues during its investigation into Ms X's detention in Police custody and considered the following:
 - i. Did Officer B follow proper procedure before leaving the court cells on 6 December 2017?
 - ii. Were Police custody staff following Police policy and procedure for detainees being received at the court cells?
 - iii. Is Police policy and procedure as it relates to the receipt of those detainees awaiting the completion of paperwork by court staff appropriate?

THE AUTHORITY'S FINDINGS

Did Officer B follow proper procedure before leaving the court cells on 6 December 2017?

14. Officer B was the responsible for the court cells that day. Police staff undertaking duties in the court cells are required to maintain accurate records regarding the receipt (and release) of detainees in the prisoner receiving book and on the whiteboard in the cell corridor. Prior to leaving the premises, Police staff are required to complete a final check of the cells, ensuring that all cells doors are left open, and clear the whiteboard.
15. Officer B made an error in the receiving book (mistakenly recording the release of another prisoner twice, at 11.55am and 12pm). Although somewhat irrelevant (as Officer B accepts that she forgot about Ms X), this left the tally of prisoners recorded as being in the cells at the time Officers A and B left the building at zero.
16. Officer B readily acknowledged that she failed to follow correct procedure by not checking all the cells, and ensuring the doors were left open, stating, *"If I had followed procedure, [Ms X] would have been noticed and not left locked in the cell."* Having worked in this area on many occasions in her 20 year policing career, Officer B said that she had never previously failed to follow procedure and she felt that she had failed in her duty of care for Ms X.
17. The Authority accepts that, although unacceptable, Officer B's error was accidental and unintentional.
18. Officer A did not detect Officer B's error because he understood that prisoners like Ms X were being issued with bail bonds and then released. He was unaware that they were being detained in the cells while the bail papers were being prepared and it therefore did not occur to him to check the cells. It is also noted that, having made three unanswered calls to the cell area after Officers A and B left the building, court staff completing Ms X's paperwork assumed that she had not been taken to the cells and had left the courthouse before signing her bail bond.

FINDING

Officer B did not follow proper procedure before leaving the court cells on 6 December 2017, which led to Ms X being unlawfully and arbitrarily detained for almost six hours.

Were Police custody staff following Police policy and procedure for detainees being received at the court cells?

19. During the Authority's investigation of this matter and its inspection of New Plymouth District Court and Police cells (as part of its obligations under the United Nations' Optional Protocol to the Convention against Torture (OPCAT)), the Authority reviewed the records of those detainees who had been received by Police custody staff at the court cells in the weeks prior to the visit. Police policy outlines the requirements of Police custody staff (in Police and court cells) when a detainee is being received.
20. Specifically, officers must:
 - i. Record the receipt and release of detainees in the prisoner receiving book (as Police staff at New Plymouth District Court cells do not have access to Police's electronic custody recording system).
 - ii. Search the detainee.
 - iii. Remove any items of property and record them on the custody record sheet.
 - iv. Complete an evaluation of the detainee (based on their recorded history and current presentation) as to whether they might be at risk and/or in need of specific care and monitoring while in custody, and record this in the custody record sheet (again because they do not have access to Police's electronic custody recording system).
21. The Authority found that, while brief details of detainees' receipt and release were being recorded in the prisoner receipt book, these were not being transferred into the Police's electronic custody system, and were discarded after a short period. This means that there is no enduring record, electronic or otherwise, of these detainees' time in Police custody at the court cells.
22. The Authority also found that detainees awaiting court documents were, generally, not subject to a search and, although property was being removed, it was not being itemised on the property record sheet.
23. Critically, the Authority also found that Police staff were not undertaking a formal risk evaluation of detainees being received into Police custody at the court cells.
24. Police staff advised the Authority that it was often impossible to strictly comply with the policy due to the volume of detainees being processed at any given time and the number of Police staff available. Concerns were expressed about the practicality of the cell block's size and layout, and the impact of this on the safety of staff and detainees waiting to be processed. Staff noted that detainees awaiting court documents had generally come to court of their own accord and were compliant and staff were therefore less vigilant about the need to conduct searches. They queried the necessity of completing evaluations for those who were in Police custody for such a short period, especially given they did not have access to the Police computer system (to view a detainee's history) in the court cell area, except on their handheld devices.

25. New Plymouth District Court does not have a 'Bail Room', where defendants can wait for their court documents to be completed by court staff. Therefore, it is standard practice for those summoned to appear in court to be placed in Police custody following their hearing, while awaiting any court bail documents to be completed by court staff. Although it generally only takes about 15 minutes for documents to be prepared, Police policy requires officers to carry out the same process for receiving and assessing all detainees in Police custody.
26. It is understood that concerns around the necessity of placing those awaiting court documents into Police custody had previously been unsuccessfully raised by Police with New Plymouth District Court management and with the judges regularly presiding there. Police advise that further discussions with court management are planned to review this issue again.

FINDING

Police custody staff were not generally following Police policy and procedure for detainees being received at the court cells.

Is Police policy and procedure as it relates to the receipt of those detainees awaiting the completion of paperwork by court staff appropriate?

27. The Authority considers that the concerns expressed by custody staff about the handling of detainees awaiting the completion of paperwork by court staff is not isolated to New Plymouth Police. Indeed, a number of the Authority's investigations into such matters, as well as our OPCAT inspections, indicate that this is a systemic issue. The Authority accepts that custody staff, particularly in a court setting, are dealing with a significant number of detainees at any given time and are simply unable to adhere to all that is required by Police policy when it comes to receiving them.
28. Given the limited space and available personnel at many courts, it is common practice for those summoned to appear in court to be placed in Police custody following their hearing, while awaiting their bail documentation. Given that court staff generally complete this process promptly, the Authority considers that it is both impractical and unnecessary for this type of detainee (who have attended of their own accord and are, typically, compliant) to be subject to exactly the same receiving and evaluation process as detainees who have been remanded in custody to await trial or sentencing.
29. Ideally, detainees should be placed in courthouse bail rooms (overseen by Ministry of Justice staff) to await completion of their bail documentation. However, where this is not possible and detainees need to be briefly placed in Police custody, the Authority considers that there should be a specific provision in Police policy for this situation. Records should continue to be made regarding the receipt (and release) of detainees awaiting court papers and they should continue to be searched and have property removed and recorded. However, unless there is an alert indicating the detainee might be at risk or in need of specific care, or the custody officer deems it necessary (based on their current presentation), an evaluation of the detainee should not be required.

FINDING

Police policy and procedure as it relates to the receipt of those detainees awaiting the completion of bail papers by court staff is not appropriate.

POLICE RESPONSE TO THE INCIDENT INVOLVING MS X

30. Police conducted an employment investigation into Officer B's actions, which resulted in a disciplinary sanction.
 31. Notices have been placed in prominent positions in the court cell area reminding staff that all cell doors must be left open prior to leaving the premises. Court staff are now also checking the cell area before the court closes for the day.
 32. Standard Operating Procedures for the court cell area are now provided to staff as part of their induction, and a copy has been placed on the wall in the court cell area.
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CONCLUSIONS & RECOMMENDATION

33. While the Authority accepts that this incident was a result of an inadvertent human error, it found that:
- i. Officer B did not follow proper procedure before leaving the court cells, which led to Ms X being unlawfully and arbitrarily detained for almost six hours;
 - ii. Police custody staff were not generally following Police policy and procedure for detainees being received at the court cells; and
 - iii. Police policy and procedure as it relates to the receipt of those detainees awaiting the completion of bail papers by court staff is not appropriate.
34. Pursuant to section 27(1) of the Independent Police Conduct Authority Act 1988 the Authority recommends that the Commissioner of Police review the People in Police detention policy as it relates to detainees being held in court cells awaiting bail documentation, with a view to ensuring:
- 34.1 wherever practicable such people should await the bail documentation in a bail room rather than be taken into Police custody, and
 - 34.2 where this is not practicable and people are detained in Police custody, the required steps set out in the current policy are amended to reflect the practicalities of the court environment.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

4 December 2018

IPCA: 17-1258

ABOUT THE AUTHORITY

Who is the Independent Police Conduct Authority?

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

It is not part of the Police – the law requires it to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Colin Doherty.

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 about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.

This report

This report is the result of the work of a multi-disciplinary team of investigators, report writers and managers. At significant points in the investigation itself and in the preparation of the report, the Authority conducted audits of both process and content.



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