

No excessive force used by Police after being called to an attempted suicide in Whakamarama

Summary of the Incident

1. Just after 5pm on 10 November 2018, Mr Y called 111 and asked for Police assistance because his partner, Ms Z, was distressed and he believed she was attempting to commit suicide. He gave the call taker the address but was interrupted by Ms Z and the call was terminated suddenly. The Northern Communications Centre (NorthComms) called over the radio for officers to assist with an attempted suicide at the rural address.
2. Officer A arrived and spoke to Mr Y and a neighbour who Mr Y had called over to the address for assistance earlier. Mr Y said that Ms Z had tried to hang herself by wrapping a shower cord around her neck a couple of times and that while she had not passed out, she had choked. Officer A noticed that Mr Y was wiping blood from his leg. Officer A entered the house with Mr Y and both tried to persuade Ms Z, who was extremely agitated, to get out of the shower and get dressed so they could talk. There was broken glass in the bathroom and the hallway outside the bathroom. Officer B arrived a few minutes after Officer A, by which time Ms Z was walking from the bathroom to her bedroom, wrapped in a towel. When she got to her bedroom, she slammed the door shut.
3. Officer B knocked on the bedroom door and opened it. Ms Z was sitting on the bed with the towel wrapped around her. Officer B introduced himself and told Ms Z that Police wanted to check she was okay. Ms Z told Officer B to “*fuck off*” then got up, still swearing, and slammed the bedroom door.
4. Still concerned for Ms Z’s safety and having established that there was an external door off the bedroom, Officer B left the house and walked around to monitor that door. Ms Z came to the door, saw Officer B through the glass and again told him to “*fuck off*”. Officer B saw Mr Y enter the bedroom and observed that Ms Z was getting more aggressive. Officer A told Mr Y to leave the bedroom, then entered himself.

5. As Ms Z ran towards the hallway, Officer A tried to handcuff one of her wrists to restrain her and prevent her from going somewhere she could harm herself further. Officer A told the Authority that Ms Z then tried to bite him on his arm, so he struck her to the head once to get her to release her bite. A struggle then occurred in the hallway, with Mr Y trying to pull Officer A off Ms Z out of concern for her. Officer A then used pepper spray on Ms Z but that was not effective. Officer C (a female) and Officer D arrived just after Officer A handcuffed Ms Z.
6. During the struggle with Officer A, Ms Z's towel came off, so she was naked when Officers C and D arrived. To afford her some privacy, they asked her to face the wall and Officer C placed a blanket around her. Officers C and D took Ms Z to hospital for observation and mental health assessment.
7. Officer A's intention was that Ms Z would be charged with assaulting a Police officer for biting him, but this was inadvertently not pursued.
8. Ms Z complained about Police actions. Police have investigated the incident. Ms Z refused to speak to Police and Mr Y did not respond to Police efforts to contact him. Police have investigated Officer A's handling of this incident and found that his actions were necessary, proportionate and timely.

Issues examined by the Authority

- Issue 1:** Did the officers who attended the incident deal with it appropriately?
- Issue 2:** Was Officer A justified in grabbing and restraining Ms Z when she tried to leave the bedroom?
- Issue 3:** Was the force used against Ms Z by Officer A justified and proportionate?
- Issue 4:** Was Ms Z verbally abused or called names by Officer A during the incident?
- Issue 5:** Did Officer A threaten to arrest Mr Y and to hit him with a baton?

The Authority's Findings

9. We found within the limits of their training, the officers acted in a way that they thought was necessary to ensure the welfare of Ms Z. However, there may have been better ways to communicate with her so as to avoid the increase in tension that occurred.
10. Officer A's use of force, while unfortunate given the circumstances, was proportionate and reasonable.
11. We also concluded that:
 - 1) Officer A was justified in grabbing and restraining Ms Z when she tried to leave the bedroom;

- 2) Officer A's strike to Ms Z's head was justified under section 48 of the Crimes Act 1961 as it was done in self-defence;
- 3) Officer A did not "*smash*" Ms Z to the ground, but Ms Z did fall to the ground when struggling with Officer A and Mr Y;
- 4) Officer A did not deliberately hit Ms Z over the back of the head with a metal object, but it is likely that Officer A's handcuffs got caught in Ms Z's hair during the struggle;
- 5) Officer A's use of pepper spray against Ms Z was justified and he did not rub it into her face or body after spraying it on her;
- 6) Ms Z was not "*slammed*" into the wall, but was held there by Officers A and B while Officer C retrieved a blanket to cover Ms Z;
- 7) It is likely that Officer A did swear during his struggle with Ms Z but he did not verbally abuse her or call her names; and
- 8) Officer A talked to Mr Y after Ms Z had been taken to the patrol car, but he did not threaten to arrest him or to hit him with a baton.

Analysis of the Issues

ISSUE 1: DID THE OFFICERS WHO ATTENDED THE INCIDENT DEAL WITH IT APPROPRIATELY?

12. After attending an unrelated incident, Officers A and B were driving back to Tauranga Central Police Station in separate cars half an hour after the scheduled end of their shift. When they heard the attempted suicide incident over the radio, they called and consulted each other. Due to the urgency of the situation and their proximity to the address, they agreed to proceed there while another unit was on its way from the station, knowing that it may take the other unit 20 to 25 minutes to arrive.
13. Officer A arrived first and saw Mr Y standing at the front of the address wiping blood from his legs with a towel. He told Officer A that the blood was from cuts to Ms Z caused by glass from a broken window and that Ms Z was in the shower washing blood off. Officer A said he was concerned that Ms Z was alone in the bathroom, suicidal, potentially with glass cuts and that she might have damaged her windpipe from the cord, so wanted to get her medically assessed as soon as possible.
14. Mr Y and Officer A entered the house and Mr Y went into the bathroom to try to talk to Ms Z. Officer A said that he immediately heard Ms Z yelling and swearing at Mr Y and that she then started yelling at him also. From outside the closed bathroom door, Officer A told Ms Z that he needed to speak with her and she told him to "*fuck off*". He continued to try and speak with her and she continued to yell abuse at him. He was concerned about the risk posed to Ms Z by

broken glass in the bathroom but did not want to enter without backup.¹ He went outside to update Police Communications about Ms Z's agitated state and said that he would wait for other units to arrive.

15. Officer A then waited in the lounge room, continuing to ask Ms Z to get dressed so he could speak with her. He asked Mr Y to keep an eye on her in the bathroom to ensure that she was not self-harming. Officer B then arrived and while Officer A was briefing him, Ms Z walked from the bathroom to the bedroom wrapped in a towel. After she had gone into the bedroom, Officer B asked Mr Y to check whether Ms Z was dressed. When Mr Y came out he said "*she's all good, you can, you can talk to her*". Officer B therefore understood that she was clothed but in fact she was only wrapped in a towel.
16. Officer B attempted to enter Ms Z's bedroom to talk with her, but she slammed the door in his face, so he asked Mr Y whether there was another entrance into the bedroom. Mr Y told him that there was an external door so Officer B went outside to that door because he did not want Ms Z to run away from the house when it might be difficult to locate her in a rural area in the dark.
17. Ms Z complained to the Authority that just after she spoke to the officer at the back door (Officer B), Officer A "*booted*" down the bedroom door from the hallway and came into her bedroom and grabbed her with no warning.
18. Officer A told us that he continued to speak with Ms Z through the bedroom door, asking her to get dressed and warning her that he would be entering the room. Ms Z then went quiet and Officer A was concerned that she might be self-harming so asked Mr Y to open the door and confirm she was at least still covered in a towel. Mr Y then entered the bedroom and from the hallway Officer A could hear that Mr Y was trying to get Ms Z to calm down, but she was very agitated and screaming at him.
19. Officer A entered the bedroom and tried to engage in a conversation with Ms Z. She ran to the back door as if she was going to leave, then opened the curtain and saw Officer B standing there. Officer A walked towards her and she ran towards the hallway door, jumping onto the bed as if to get around Officer A. Officer A told us that it was at that point that he brought out his handcuffs to use to restrain her. He said that throughout the incident she was unable to be reasoned with because of her agitated state.
20. Mr Y told us that he went into the bedroom ahead of Officer A, to tell Ms Z to get dressed so that the Police could talk to her. This account is consistent with Officer A's and we accept that Ms Z was warned before Officer A entered her bedroom.
21. Officer A's recollection is that, as he grabbed Ms Z's arm to handcuff her and prevent her from escaping, she bit down on his arm. In response he hit her in the head once to make her release her bite. Ms Z and Mr Y's recollections are that when Ms Z jumped on the bed, Officer A put her

¹ Ms Z told the Authority that the smashed glass was a result of the shower door breaking when she closed it too hard. Mr Y told the Authority that the glass came from a window in the door leading from the bathroom to the hallway.

in a headlock, so her mouth was up against his arm which is why he perceived that he had been bitten. Ms Z told us:

“I’m not sure what he’s talking about to be honest. I have a feeling that he said that to give him a reason to beat me up on the floor naked, like I don’t remember at any point how I could try and bite him. At first I was running away to the other police and he had me in a headlock so maybe my mouth was on his arm, I don’t know and on the ground my head was smashed, like I don’t understand how I could’ve tried to bite him.”

22. Officer A is adamant that the bite occurred. Both Ms Z and Mr Y recalled Officer A telling Ms Z that she should not have bitten him. He wrote in his Tactical Options Report that she had bitten him and that he believed she was assaultive. When interviewed by Police, Officer A said that when things had calmed down, Ms Z accused him of striking her with his torch and said that was why she had bitten him. Officer A told the Authority that Ms Z had bitten him. While Officer B did not witness the biting, he told the Authority that he heard Officer A say to Ms Z *“you’ve bitten me”*. Officer C recalled Officer A telling her that Ms Z had bitten him and Officer D was *“pretty sure”* that Officer A said the same thing to him. Officer A told us that he did not take photos of the bite mark and described it as not breaking the skin and there was no obvious injury.
23. By this stage Officer A, Ms Z and Mr Y were in the hallway. Officer A recalls that Ms Z’s back was to his chest, and that Mr Y was grabbing him from behind, trying to restrain him. He told the Authority that he thinks that all three of them landed on the ground and Ms Z continued to struggle with him.
24. Officer B ran back inside after being called by Officer A. He removed Mr Y from Officer A and took him out to an adjacent room before returning to help restrain Ms Z. Officer A recalls then spraying oleoresin capsicum spray (pepper spray) in Ms Z’s face to try and gain control of the situation.
25. Just after Officer A used the pepper spray, Officer C, (the female officer) and Officer D arrived. Officer D stayed with Mr Y. Officer C told the Authority that she thought she and Officer D arrived about 10 minutes after Officer A. She said that when she arrived Ms Z was lying on the ground in the hallway, naked. Ms Z had already been handcuffed by two male officers and had just been pepper sprayed. Officer C said that she and the other two officers pulled Ms Z up and stood her facing the wall to give her some privacy. Officer C was then asked to get something to cover Ms Z so she found a blanket or duvet and covered her. Being the only female officer on the scene, Officer C took over and once Ms Z was covered, she took her back to the patrol car, applied Bioshield aftercare spray to her face to help with recovery from the pepper spray, and took her to hospital.
26. Ms Z told us that after she had been handcuffed, Officer A sat her on the couch in the lounge room and abused and yelled at her *“for about five minutes”* about not biting a Police officer. Officer C said that she took Ms Z straight from the hallway to the patrol car. Officer B recalls that Ms Z was taken to the lounge after Officer C wrapped her in a blanket, but that she was not there for long because Police wanted her to be taken to hospital.

27. Both Ms Z and Mr Y compared the handling of the incident by Officer A to the experience they had a few weeks prior to this incident when an officer came to the address in similar circumstances. Mr Y said that it was because of how that earlier officer handled the situation that he thought to call the Police again on this occasion. Mr Y told the Authority how that officer dealt with Ms Z's agitation and that when Ms Z told him to get out of the house he left. He then dealt with the situation from outside, where he managed to calm both Ms Z and Ms Y down by talking them through a series of questions. When describing that officer's actions, Mr Y said, "*he was up there for probably a half an hour and we were both calm, both talking to each other again both, yeah, it's indescribable the two different outcomes.*" Ms Z told us that the officer in the earlier incident made her feel safe.
28. By contrast, Ms Z told us that Officer A made her feel "*ganged up on*". From the way in which she spoke to our Investigator well after the incident, it was clear that she was still upset by the recollection of how Officer A handled the incident.
29. As events transpired, Officer C, the female officer, arrived only minutes after Officer A. Given that Ms Z was naked and in a very vulnerable and unstable mental state, once Officer A arrived and had assessed the situation, it would have been prudent to call NorthComms to find out how far away the next unit was and whether there was a female officer coming. Officers A and B could then have monitored the situation until Officer C arrived, avoiding the physical altercation and aftermath that resulted.
30. We explored with all the attending officers the possible alternative of calling Mental Health Services. There was consensus that this is only a feasible option when the person is cooperative enough to be open to talking over the phone to Mental Health Services because they rarely come to an address. In this instance, Ms Z's agitated demeanour meant that this was not a viable option.
31. Although contacting Mental Health Services may not have been a viable option in the circumstances, we believe that there were other options available to attending Police. A calmer approach may also have allowed Ms Z the space to get dressed before speaking with Police, potentially reducing her distress and making her more amenable to help.

FINDING ON ISSUE 1

Within the limits of their training, the officers acted in a way that they thought was necessary to ensure the welfare of the complainant. However, there may have been better ways to communicate with her and avoid the escalation that occurred.

ISSUE 2: WAS OFFICER A JUSTIFIED IN GRABBING AND RESTRAINING MS Z WHEN SHE TRIED TO LEAVE THE BEDROOM?

32. The circumstances in which Officer A grabbed and restrained Ms Z are set out in paragraphs 18-19. In his Tactical Options Report, Officer A stated "*if she exited the bedroom there are large*

pieces of glass and access to the kitchen for knives” and he relied on section 14 of the Search and Surveillance Act 2012 and section 41 of the Crimes Act 1961 for his legal justification.²

33. Section 14 of the Search and Surveillance Act 2012 allows Police to enter a house and “*take any action that he or she has reasonable grounds to believe is necessary*” to avert an emergency that risks the life or safety of a person.
34. Section 41 of the Crimes Act 1961 states that anyone is justified in using “*such force as may be reasonably necessary*” to prevent a suicide.
35. In his Police interview, Officer A said:

“My concern was that she was harming herself, we’d been called to an incident where the only text we had was to get there urgently. There was blood and glass everywhere. Upon arrival at the incident I’d been briefed by her boyfriend, [Mr Y] I think it is, who advised me that she had a shower cord around her neck, and that she had been choking as a result of the pressure applied to her neck. I know that through the job injuries or pressure around the neck can be very dangerous, and there can be broken bones or crushed windpipes, which would not have an effect immediately, but can within 24 or 48 hours cause some serious injury or, if not, death. I knew that she needed medical attention and needed to prevent suicide”.

36. Officer A believed that Ms Z had attempted to commit suicide and was still in a highly volatile state, trying to get away from those around her including her boyfriend, Mr Y. In these circumstances, Officer A’s concern that she might try and find something else to harm herself with, such as glass or kitchen knives, was warranted and reasonable. He also believed Ms Z might try and harm herself if she were able to leave the address and he used reasonable force to prevent her from doing so. This was justified under section 41 of the Crimes Act 1961.

FINDING ON ISSUE 2

Officer A was justified in grabbing and restraining Ms Z when she tried to leave the bedroom.

ISSUE 3: WAS THE OTHER FORCE USED AGAINST MS Z BY OFFICER A JUSTIFIED AND PROPORTIONATE?

Strike to the head

37. While Ms Z did not specifically complain about Officer A striking her to the head, in his Tactical Options Report Officer A stated that when he felt her bite him he punched her in the head “*from a close range*” which caused her to “*come off [his] arm*”. He told us that he could not recall whether his fist was closed when he struck her or where the blow landed because it all happened so quickly.

² A Tactical Options Report is a report that an officer is required to complete when he or she has used force on a member of the public. The report includes each tactical option and a description of the force used and the reasons for using it. Section 14 is set out in full at paragraph 68 and section 41 is set out at paragraph 69

38. Each party's version of events surrounding the alleged bite are set out in paragraphs 21 and 22. Having considered these accounts and noted that Ms Z has acknowledged that her mouth may have been on Officer A's arm during the struggle, the Authority finds that it is likely Ms Z did bite Officer A either deliberately or inadvertently.
39. To justify the strike, Officer A relied on section 48 of the Crimes Act 1961, which allows anyone to use force in self-defence.³
40. To rely on this justification for his use of force, Officer A's actions must be assessed against the following three questions:
- 1) What did Officer A believe the circumstances were at the time he struck Ms Z to the head?
 - 2) Was Officer A acting in defence of himself?
 - 3) Was Officer A's use of force reasonable in the circumstances as he believed them to be?

What did Officer A believe the circumstances were at the time he struck Ms Z to the head?

41. The circumstances are set out in paragraphs 21 to 22. Officer A was attempting to restrain Ms Z because he was concerned that she would run from her bedroom and find something to harm herself with. As he restrained her, she bit him on his arm.

Was Officer A acting in defence of himself or others?

42. Officer A told the Authority "*she's bit down on my arm and I would have whacked her off. Certainly wouldn't let her sit there with her mouth on my arm*". The Authority accepts that the reason Officer A hit Ms Z in the head was to make her release her bite from his arm and protect himself.

Was Officer A's use of force reasonable in the circumstances as he believed them to be?

43. Officer A struck Ms Z once to the head. We find that this was a reasonable use of force in the circumstances as he believed them to be because he needed to act immediately in a situation where he was already in a physical struggle with Ms Z. In the time it would have taken him to get pepper spray or a baton out she could have inflicted quite a serious bite.

Was Ms Z smashed onto the ground?

44. Ms Z stated in her complaint that Officer A "*smashed*" her to the ground after he had put her in a headlock when she was trying to run out of the bedroom. Officer A told the Authority that after Ms Z bit him and he struck her to the head there was a "*wrestle*" and Mr Y jumped on his back and they all ended up on the ground. Officer B told the Authority that Ms Z was not "*smashed*" to the ground. Mr Y said "*a sort of scuffle happened and everybody sort of tumbled over*".

³ This legislation is set out in paragraph 68.

45. The Authority finds that from the description of all the witnesses, including Ms Z who at one point said that they all “fell” to the ground, it is likely that in the course of the scuffle Officer A, Ms Z and Mr Y all fell to the ground, as opposed to Officer A deliberately taking Ms Z to the ground with intentional force.

Was Ms Z hit on the head with a metal object?

46. Ms Z stated in her complaint that after he “smashed” her to the ground, Officer A hit her in the back of the head with something heavy and metal around 20 times. She told us:

“His whole body weight was on my back and I was naked at that point and he got something out of his pocket that was definitely metal but I’m not sure what it was and he just started bashing me in the back of the head.”

47. Mr Y did not see Officer A deliberately hit Ms Z on the head with anything. Officer A denied hitting Ms Z in the back of the head with a metal object. He did say that when he removed his metal handcuffs from his belt they got caught in Ms Z’s hair and it did take some time to remove them. It is possible that in the struggle, the handcuffs were what Ms Z felt. Officer A accepted that in the struggle Ms Z could have felt his torch, or anything else attached to his body armour. Officer B told us that he did not see Ms Z being hit in the head multiple times with a metal object by Officer A.
48. We find that, given the evidence, Ms Z was not hit on the head around 20 times with a metal object by Officer A. It is, however, possible she may have been inadvertently hit by Officer A’s handcuffs multiple times because they were caught in her hair during the struggle. We have seen photos of bruising behind Ms Z’s ear but we are not in a position to determine the cause of that injury.

Pepper spray

49. Ms Z complained that Officer A pepper-sprayed her eyes from one centimetre away while she was handcuffed, and that he then used his hand to rub the pepper spray into her eyes and all over her face as hard as he could. She also alleged that Officer A pepper-sprayed her entire body.
50. Officer A told us that he used pepper spray to try and control the situation when they were on the ground after Ms Z had bitten him but before he applied handcuffs. He said that he sprayed it at Ms Z’s face area while trying to control her arms, and that there is no way he would have rubbed it into her eyes and face because doing so would have contaminated his hands. In his Police interview, Officer A said that he deployed the pepper spray at arm’s length and felt it was necessary to do so to prevent further harm to himself and control the situation:

“But to me that was my only option at that point. I didn't have control of the situation. I was getting a scratch in my mouth. Her hands, I was unable to control them and was getting attacked from behind and the situation I just grabbed the spray and sprayed in order to diffuse the whole situation.”

51. Officer A reported in his Tactical Options Report that his legal justification for pepper-spraying Ms Z was section 41 of the Crimes Act 1961 because he was trying to restrain her to prevent her from attempting suicide again.

52. Police policy allows pepper spray to be used when an officer assesses a person's behaviour as being at or beyond "*active resistance*" and the situation cannot be resolved by less forceful means. Its use must be reasonable and proportionate to the threat posed.
53. Once Officer A was in a physical altercation with Ms Z, he was justified in using pepper spray to try and regain control of the situation and because Ms Z was actively resisting. Empty-hand tactics had been unsuccessful and Ms Z's demeanour meant that communication was not a viable alternative by this stage.⁴ The Authority is therefore satisfied that Officer A resorted to the use of pepper spray only when he felt that he had exhausted other tactical options, and that it was impractical in the circumstances to warn Ms Z that he was about to pepper spray her.
54. Ms Z's perception that Officer A sprayed pepper spray over her body was likely caused by the fact that she was naked, so instead of clothing absorbing the spray it was able to run down her body.

Was Ms Z slammed into the wall?

55. Ms Z complained to the Authority that when she was stood up after being pepper sprayed and handcuffed, Officer A slammed her into the wall repeatedly. She described: "*He was slamming me and then bringing me back*" and "*elbowing me in my back*".
56. Officer A recollected that once Officer C, the female officer, arrived just after Ms Z was pepper-sprayed, he let her deal with Ms Z as much as possible because he felt that was more appropriate. Officer B told us that, when Ms Z was stood up, she was placed against the wall, not "*slammed*", but was held there because she was still not cooperating. As described in paragraph 25, Officer C recalled that she and Officers A and B stood Ms Z up against the wall to give her some privacy and that she then went to find a blanket to cover Ms Z with before taking her to the car. Our view is that Ms Z was not slammed into a wall but had to be held quite firmly against a wall while Officer C covered her up.

FINDINGS ON ISSUE 3

Officer A's strike to Ms Z's head was justified under section 48 of the Crimes Act 1961 as it was done in self-defence.

Officer A did not "*smash*" Ms Z to the ground, but Ms Z did fall to the ground when struggling with Officer A and Mr Y.

Officer A did not deliberately hit Ms Z over the back of the head with a metal object, but it is likely that Officer A's handcuffs got caught in Ms Z's hair during the struggle.

Officer A's use of pepper spray against Ms Z was justified and he did not rub it into her face or body after spraying her.

Ms Z was not "*slammed*" into the wall, but was held there by Officers A and B while Officer C retrieved a blanket to cover her.

Officer A's use of force, while unfortunate given the circumstances, was proportionate and reasonable.

⁴ 'Empty hand' refers to a weaponless use of force, such as grabbing hold of, pushing, or punching a person.

ISSUE 4: WAS MS Z VERBALLY ABUSED OR CALLED NAMES BY OFFICER A DURING THE INCIDENT?

57. In her complaint to the Authority, Ms Z alleged that Officer A yelled at her, calling her a “*fucking bitch*” and said, “*get this dirty bitch some clothes*”. When we asked Mr Y if he heard any yelling or swearing, he responded: “*Yeah, just, “settle down, settle fucker down,” and he was saying some other stuff, yeah.*” When specifically asked if he heard name calling like “*dirty bitch*” he said that he had.
58. Officer A told us that he did not call Ms Z a “*bitch*” and that he did not hear any other officer use that language. In his interview with Police, Officer A said that “*bitch*” is not a word he uses and that he does not generally swear at members of the public. He said that he potentially said “*fuck*” at some point in the struggle because he was being assaulted.
59. Officer B told us that he did not hear any name-calling by any Police officer. Officer C did not recall hearing Officer A swear or call Ms Z any names. Officer D thought that the swearing he heard came from Ms Z and that he did not hear any officers swearing at Ms Z or calling her names.
60. We are mindful that Ms Z’s emotional state, particularly once she got into a struggle with Officer A, may have affected her accurate recollection of language used. Mr Y only said he heard the name calling when the words were specifically put to him, and not when he was describing Officer A’s language generally. We think that it is likely that Officer A swore reactively when Ms Z bit him, it is not possible to determine whether he swore at Ms Z or called her names in the demeaning manner she alleges.

FINDING ON ISSUE 4

It is likely that Officer A did swear during his struggle with Ms Z but we cannot determine whether he verbally abused her or called her names.

ISSUE 5: DID OFFICER A THREATEN TO ARREST MR Y AND TO HIT HIM WITH A BATON?

61. During the struggle in the hallway, Mr Y tried to pull Officer A off Ms Z. Officer B, who had run back inside, pulled Mr Y off Officer A and took him to an adjacent room to calm him down and prevent him from getting involved again. In Ms Z’s complaint to the Authority she stated that Officer A told Mr Y that he would “*lock him up and batten [sic] him*” but said that she did not witness this. Mr Y told us that after Ms Z had been taken to hospital, Officer A told him that he was lucky he didn’t handcuff him and charge him for assaulting a Police officer. Officer A told him “*you never touch the boys in blue*”. Mr Y went on to say Officer A spoke :

“right in my face and I’m crying more than I was before because he’s yelling at me like, telling me he’s gonna handcuff me and baton me, or lucky that he didn’t or something”

62. Officer A told us that after Ms Z had been put in a patrol car, he told Mr Y that he could have been arrested for assaulting a Police officer and, although he understood why Mr Y had tried to intervene, they had come to the address after Mr Y called to ask for Police help. He said that he did not threaten Mr Y with a baton: *“A baton’s not a tool I have ever used in my career. It’s a horrible thing”*.
63. Officer B told us that Officer A spoke to Mr Y after Ms Z had been taken to hospital and that he heard him say something along the lines of *“you could have been arrested”* and *“look what you’ve done, you didn’t really help the situation”*.
64. Ms Z was not present when Officer A had the conversation with Mr Y. Based on the evidence of Mr Y, Officer A and Officer B, we are satisfied that Officer A did not threaten Mr Y with arrest or the use of a baton, nor was there any intention to do so. On the contrary, Officer A told Mr Y that he was lucky he did not arrest him.

FINDING ON ISSUE 5

Officer A talked to Mr Y after Ms Z had been taken to the patrol car, but he did not threaten to arrest him or to hit him with a baton.

Conclusion

65. In 2015 we released the report *‘Review of Police Custodial Management’*. It dealt in detail with the limitations of Police dealing with mentally impaired persons. While it was looking specifically at people detained in Police custody, we made findings in that report that are applicable here. In particular, it noted that:

“Police lack appropriate methods and strategies for managing mentally impaired people who act in a way that poses a risk to themselves or others. Instead, officers deal with these situations by using containment and control strategies designed to deal with violent or aggressive detainees”

66. It acknowledged that, *“the use of these tactics is largely unavoidable because officers lack the necessary expertise to deal with such people appropriately.”*⁵

⁵ IPCA *‘Review of Police Custodial Management’*, March 2015, Paragraphs 243–244.

67. This complaint highlights that many of the concerns we raised in 2015 remain. Police continue to frequently be first responders for emergencies involving people with mental health impairments. They are required to assist in performing a health function that does not sit comfortably with their predominant law enforcement function.⁶ This is despite officers commonly lacking the skills and strategies to deal with mentally impaired people in a way that effectively reduced their mental distress and de-escalates the situation.⁷



Judge Colin Doherty

Chair
Independent Police Conduct Authority

1 December 2020

IPCA: 18-0970

⁶ IPCA 'Review of Police Custodial Management', March 2015 Paragraph 231.

⁷ IPCA 'Review of Police Custodial Management', March 2015 Paragraph 332.

Appendix – Laws and Policies

LAW

68. Section 14 of the Search and Surveillance Act 2012 allows Police to enter a house and *“take any action that he or she has reasonable grounds to believe is necessary”* to avert an emergency that risks the life or safety of a person.
69. Section 41 of the Crimes Act states that anyone is justified in using *“such force as may be reasonably necessary”* to prevent a suicide.
70. Section 48 of the Crimes Act 1961 states: *“Everyone is justified in using, in the defence of himself or herself or another, such force as, in the circumstances as he or she believes them to be, it is reasonable to use”*.
71. Under section 62 of the Crimes Act 1961 anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

POLICY

Use of Oleoresin Capsicum (Pepper) Spray

72. Before using pepper spray, Police are to consider communication and other less serious tactical options (e.g. control and restraint techniques or empty hand tactics not needing equipment) for resolving and controlling an incident. You must be satisfied when using pepper spray that the person is resisting (by more than passive resistance) or attempting to prevent police from lawfully controlling or arresting them.
73. Before using pepper spray, unless impractical, Police must:
 - warn the person that non-compliance will result in them being sprayed;
 - give the person a reasonable opportunity to comply before being sprayed; and
 - warn other people nearby that spray may be used.
74. After using pepper spray Police must:
 - Minimise any residual effects caused by the spray by providing proper decontamination and proper aftercare as in the ‘Oleoresin Capsicum Spray Training Manual’

People with mental impairments

75. Police policy sets out an initial procedure that should be followed when dealing with a person with a mental impairment, including:
 - seeking help from the person’s doctor, family, friends and associates;

- where possible having someone the person trusts as a support person;
- trying to establish whether the person is physically ill or injured; and
- if necessary asking health professionals for any helpful information about the person and their disorder.

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.

We are not part of the Police – the law requires us 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. We do not answer to the Police, the Government or anyone else over those findings. In this way, our 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 and may choose to investigate:

- complaints alleging misconduct or neglect of duty by Police;
- complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- notifications of incidents in which Police actions have caused or appear to have caused death or serious bodily harm; and
- referrals by Police under a Memorandum of Understanding between the Authority and Police, which covers instances of potential reputational risk to Police (including serious offending by a Police officer or Police actions that may have an element of corruption).

The Authority's investigation may include visiting the scene of the incident, interviewing the officers involved and any witnesses, and reviewing evidence from the Police's investigation.

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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