



IPCA

Independent Police
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

Use of Force on youth in Auckland justified

Summary of the Incident

1. On 10 October 2020, 15-year-old Ms X was admitted to a public hospital because of serious concerns for her mental health, including the risk of self-harm. Despite the presence of two Oranga Tamariki youth workers who were assigned to stay with her while she was in hospital, Ms X removed an intravenous line from her arm and absconded from the hospital.
2. Ms X ran away, bleeding from her arm, followed by the youth workers. They reported the situation to their supervisor and Police were called to assist in returning Ms X to hospital.
3. Two Police officers were tasked to locate Ms X. One of the officers located Ms X in open ground near a golf course, with the youth workers nearby.
4. The officer attempted to reason with Ms X but she would not return to hospital. She was agitated and distressed, and still bleeding from her arm. The officer decided the quickest and safest option was to physically restrain Ms X. He took Ms X to the ground and handcuffed her, before standing her up (with the assistance of the other officer), and walked her back to the Police car, holding her by the neck with one hand.
5. The youth workers felt that the officer used excessive force in detaining Ms X and reported the incident to the Authority.

Issue examined by the Authority

Issue: Was the use of force by Officer A to detain Ms X reasonable in the circumstances?

The Authority's Finding

The Authority found that:

6. Officer A was justified in his decision to detain Ms X for the purposes of returning her to hospital for care under section 109(1)(a) of the Mental Health Act (Compulsory Treatment and Assessment) 1992.

7. Officer A was justified in his decision to use force to effect that detainment of Ms X under section 41 of the Crimes Act 1961.
8. Officer A's use of force on Ms X was reasonable in the circumstances.

Analysis of the Issue

Ms X's admission to hospital

9. Ms X had been a resident of an Oranga Tamariki community residence for three weeks. On the morning of 10 October 2020, Ms X walked out of the facility, and Oranga Tamariki contacted Police to report her missing. Ms X was subsequently located by Police and taken to a public hospital because of serious concerns about her mental health, in particular the risk of self-harm or suicide.
10. Because of these concerns, two Oranga Tamariki youth workers, Ms W and Mr Y, were assigned to stay with Ms X while she was in hospital. (Ms W had supported Ms X while she had been a resident of the community residence.)

Oranga Tamariki Youth Worker Ms W

11. At around 2.30pm Ms X ran away from the hospital. According to Ms W and Mr Y, Ms X wanted to leave the hospital so that she could take her own life. As she left, Ms X removed the intravenous line from her arm, causing it to bleed. Ms W and Mr Y followed Ms X as she ran from the hospital grounds, and they lost sight of her at one point. Mr Y had meantime phoned for Police assistance and ran ahead to try and catch up with Ms X. Officers A and B were tasked with locating and returning Ms X to hospital.
12. When Ms W caught up with Mr Y and Ms X, they were near a golf course, with a small creek and bush nearby. Ms W said that Ms X looked like she was going to hide and acted like there was nowhere else for her to run to. Officer A was now also present, having caught up with Ms X.
13. Ms W saw Officer A take hold of Ms X's arm and he "*pulled her*" towards him. Ms W described Officer A as "*ordering*" Ms X to get on the ground, and that he was being "*very forceful*" with her. Ms W recalls Ms X twice saying that she would sit down, however she believes Ms X was slow to comply with Officer A's instructions because she was upset.
14. Ms W cannot recall how Officer A placed Ms X on the ground, but once on the ground she saw Officer A "*holding [Ms X's] head with his hand and his knee on her back pinning her down*". Ms W said that Ms X was distressed and crying and became "*non-compliant from this point onwards*".
15. Soon after, Officer B arrived to assist and he helped Officer A lift Ms X to her feet. Ms W stated that Ms X was being verbally abusive, and that Officer A told her to shut up, and was "*very aggressive with his actions*".

16. While walking back to the car with Ms X, Ms W said that Officer A “*grabbed the back of [Ms X’s] neck aggressively*”, holding her neck for “*about 30 seconds*” before letting go. Meantime, Ms X was distressed and crying.
17. On arrival at the Police car, Ms W searched Ms X, finding two pieces of broken glass in her pocket.
18. Following Ms X’s return to hospital, Ms W discussed the incident with Mr Y. Ms W believed that Officer A’s actions had been “*excessive and too aggressive*”.

Oranga Tamariki Youth Worker Mr Y

19. Together with Ms W, Mr Y followed Ms X as she ran from the hospital. He recalls that Ms X was very distressed in hospital, and he had concerns for her safety. Mr Y described Ms X as “*anxious, unsettled and strongly verbalised suicidal ideation. She was in and out of bed trying to leave, she was very up and down and emotional.*”
20. As Ms X left the hospital, Mr Y called Police for assistance. Mr Y decided to not follow Ms X too closely. He said: “*I didn’t want to get close to her because I feared that if she were to see me then she would jump in front of a car or something*”.
21. Mr Y caught up with Ms X in an area that backed onto a golf course, with a creek and mangroves nearby. He had been calling to Ms X, but she was trying to hide in the trees. He also noticed that she was bleeding from her arm.
22. Mr Y recalls that Officer A approached Ms X “*calmly with hands open. He was talking [to Ms X] and I had no concerns*”. Mr Y then turned away to call his supervisor, to advise that Ms X had been located and Police were assisting. When Mr Y looked back, he saw that Ms X was on the ground and being restrained by Officer A with “*his knee on her upper leg or lower back and one of his hands on her shoulder*”.
23. At this point Officer B arrived and assisted with helping Ms X to stand.
24. Mr Y noted that, while walking back to the Police car, Officer A was holding Ms X’s neck and that he “*squeezed*” her neck, causing her to say, “*You are hurting me.*” Mr Y said: “*When I saw that I thought it was a bit much.*”
25. On return to hospital, Mr Y and Ms W had a brief discussion about Officer A’s actions. Mr Y stated:

“[Ms W] spoke about how [Ms X] was restrained. [Ms W] thought that [Officer A’s] action in restraining [Ms X] was excessive.

I personally thought how [Officer A] restrained [Ms X] on the ground while she was on the ground was warranted. She had blood from her arm, and I guess this would have been a factor in [Officer A’s] assessment for his safety so taking control was required.

The only thing I thought was may have been questionable is the time when [Officer A] was walking [Ms X] back [to the patrol car] with his hand around her neck and it appeared he squeezed it."

Ms X

26. Ms X gave a statement to Oranga Tamariki six weeks after the incident. She described leaving the hospital and tampering with her intravenous cannula, so that blood "*started gushing ... out*". She stated that when Police arrived, she "*surrendered....*", and was "*put on the ground*" and held down with a knee on her back and a hand on her neck. She did not describe having her neck "*squeezed*" as she was escorted to the Police car.
27. In her subsequent interview with the Authority, Ms X said that she "*surrendered*", with her hands up, and an officer "*threw her*" on the ground. She repeated her description of being held down on her back and neck and described having her arms pulled behind her and handcuffed. Ms X acknowledged resisting the officer, kicking out at him and using abusive language.
28. When specifically asked, Ms X could not recall her neck being squeezed as she was being led to the patrol car. She says she suffered no physical injuries as a result of the incident.

Officer A

29. Officers A and B were tasked to assist with returning Ms X to hospital.
30. On arrival in the area where they believed Ms X to be, Officers A and B separated, to cover more ground in search of her. Officer A was first to locate Ms X, with the two youth workers nearby.
31. Officer A says he noticed blood dripping from Ms X's arm, and in his view "*she was in imminent danger of further [harm] and also that I needed to be aware to avoid any contamination of blood on myself and the [Oranga Tamariki staff].*"
32. In his Tactical Options Report (TOR),¹ Officer A described his assessment of the situation:

" ... [Ms X] was at risk to herself ... I felt that I needed to return her to hospital to seek medical intervention. Initially, I tried to communicate with [Ms X], however, this had little or no effect. From my perception, using force was the only means left available to me. As [Ms X] was presenting as actively resistant ... it was my assessment that using empty handed tactics² and handcuffing were the most appropriate [tactics] in the circumstances."
33. Officer A says that Ms X was verbally abusing him, and that she pulled away when he tried to hold her arm. Seeing blood dripping from Ms X's arm, Officer A decided that the risk of harm to her was "*real and ongoing*", and that he needed to "*detain her for her own protection so*

¹ An officer is required to complete a TOR when he or she has used a certain level of 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.

² Empty hand techniques are close-quarter skills using arms, hands, legs and feet to control or defend against a subject.

that she did not continue to harm herself, and also to get treatment from what was an obvious wound”.

34. Officer A estimated that he spoke to Ms X for 30 seconds to a minute trying to persuade her to come with him, but *“she made it clear she was not going to stop, was abusive, was not going to come with me, [so] I made the decision to escalate the use of force”*. Officer A decided that the *“quickest, safest and most effective way of detaining [Ms X] was putting handcuffs on her for her safety and mine”*.
35. Officer A says he believed the best way to handcuff Ms X was to take her to the ground. In his TOR Officer A described having to *“wrestle”* Ms X to the ground to handcuff her because of her resistance. He estimated that she was on her stomach for about 30 seconds while he placed her in handcuffs. By then, Officer B had arrived, and they helped Ms X to her feet, supporting her on each side.
36. Officer A accepts that he used *“firm”* language to attempt to get Ms X to stop resisting, but that the intent was to *“impress on her the need to stop resisting or it would likely result in more harm to her”*.
37. Walking Ms X back to the Police car, Officer A said he held Ms X’s neck, to keep her walking towards the Police car, and also to prevent her from *“head-butting”* either himself or Officer B.
38. Ms X was returned to hospital, accompanied by Ms W and Mr Y.

ISSUE: WAS THE USE OF FORCE BY OFFICER A TO DETAIN MS X REASONABLE IN THE CIRCUMSTANCES?

39. Officer A justified his decision to use force pursuant to Section 48 of the Crimes Act 1961, which relates to the use of force in self-defence, or the defence of others. In his TOR, Officer A stated that his rationale for referring to Section 48 of the Crimes Act 1961 was because Ms X was at risk of harming herself through loss of blood, or from any other self-harming action. We believe Officer A was mistaken in his reliance on this section, as it does not extend to the use of force to prevent a person from self-harming.
40. We accept that Officer A was justified in detaining Ms X under section 109(1)(a) of the Mental Health Act (Compulsory Treatment and Assessment) 1992 which states:

“If any person is found wandering at large in any public place and acting in a manner that gives rise to a reasonable belief that he or she may be mentally disordered, any constable may, if he or she thinks that it would be desirable in the interests of the person or of the public to do so, ... take that person to a Police station, hospital, or surgery, or to some other appropriate place”

41. Ms X had absconded from hospital where she had been admitted with significant concerns for her mental health, including a risk of self-harm and Officer A had been called to the hospital to locate and detain her in order to return her to hospital for care. However, while section 109(1) enabled Officer A to “take” Ms X to the hospital (and by reason of section 109(5) detain her for that purpose, the Mental Health Act (Compulsory Treatment and Assessment) 1992 is silent in respect of the use of force to do so. In relation to Officer A’s use of force, we have therefore analysed his actions under section 41 of the Crimes Act 1961.
42. Section 41 of the Crimes Act 1961 provides justification to use force to prevent the commission of suicide. To rely on it, Officer A’s use of force must have been for the purpose of preventing suicide or to prevent any act that he believed on reasonable grounds would amount to suicide.
43. Ms X had been in hospital because of serious concerns about her mental health and her risk of self-harm. Both Mr Y and Ms W were concerned that she may self-harm and Mr Y specifically says that prior to absconding Ms X had strongly verbalised suicidal ideation and was unsettled and emotional. Further, Mr Y stated that he took care not to follow Ms X too closely as he was concerned she may deliberately step into traffic. When located by Officer A, Ms X was also bleeding heavily from her arm, having pulled out an intravenous line.
44. In this context, we accept that Officer A had a reasonable belief that there was a significant risk that Ms X may cause harm to herself so as to end her life if she was not quickly restrained and returned to hospital care.
45. We acknowledge that Ms X found this incident distressing. However, we are satisfied that Officer A was in a difficult situation where he genuinely and reasonably believed force was necessary to detain Ms X and return her to hospital care because of concerns she could cause herself serious harm which may have resulted in her death. This was also a concern expressed by Mr Y and Ms W who were present at the time. In the circumstances, we find that Officer A’s use of force in taking Ms X to the ground and holding her down on the ground for a short time in order to apply handcuffs was reasonable.

FINDING ON ISSUE

Officer A was justified in his decision to detain Ms X for the purposes of returning her to hospital for care under section 109(1)(a) of the Mental Health Act (Compulsory Treatment and Assessment) 1992.

Officer A was justified in his decision to use force to effect that detainment of Ms X under section 41 of the Crimes Act 1961.

Officer A's use of force on Ms X was reasonable in the circumstances.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

2 November 2021

IPCA: 20-5353

Appendix – Laws and Policies

USE OF FORCE AND POWER OF DETENTION

Law

46. Section 41 of the Crimes Act 1962 states:

“Every one is justified in using such force as may be reasonably necessary in order to prevent the commission of suicide, or the commission of an offence which would be likely to cause immediate and serious injury to the person or property of any one, or in order to prevent any act being done which he or she believes, on reasonable grounds, would, if committed, amount to suicide or to any such offence.”

47. Section 109 of the Mental Health Act 1992. Section 109(1)(a) states: “If any person is found wandering at large in any public place and acting in a manner that gives rise to a reasonable belief that he or she may be mentally disordered, any constable may, if he or she thinks that it would be desirable in the interests of the person or of the public to do so, ... take that person to a Police station, hospital, or surgery, or to some other appropriate place”

Police policy

48. The Police ‘Use of Force’ policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest, or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, Tasers and firearms.
49. Police policy provides a framework for officers to assess, reassess, manage and respond to use of force situations, ensuring the response (use of force) is necessary and proportionate given the level of threat and risk to themselves and the public. Police refer to this as the TENR (Threat, Exposure, Necessity and Response) assessment.
50. The overriding principle when applying TENR is that of “safety is success”. Public and Police employee safety are paramount, and every effort must be made to minimise harm and maximise safety.
51. The TENR risk assessment must balance the ongoing exposure to harm, with the current threat and the necessity to respond. This will determine the Police response.
52. Police officers must also constantly assess an incident based on information they know about the situation and the behaviour of the people involved, and the potential for de-escalation or escalation. The officer must choose the most reasonable option (use of force), given all the circumstances known to them at the time. This may include information on: the incident type, location and time; the officer and subject’s abilities; emotional state, the influence of drugs

and alcohol, and the presence or proximity of weapons; similar previous experiences; and environmental conditions. Police refer to this assessment as an officer's Perceived Cumulative Assessment (PCA).

53. A key part of an officer's decision about when, how, and at what level to use force depends on the actions of, or potential actions of, the people involved, and depends on whether they are: cooperative; passively-resisting (refuses verbally or with physical inactivity); actively resisting (pulls, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or presenting a threat of grievous bodily harm or death to any person.
54. The policy states that any force must be considered, timely, proportionate and appropriate given the circumstances known at the time. Victim, public and Police safety always takes precedence, and every effort must be taken to minimise harm and maximise safety.
55. Ultimately, the legal authority to use force is derived from the law and not from Police policy.

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. 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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