

Excessive use of force during arrest of youth in Tauranga

Outline of Events

1. Just after 9am on 18 March 2019, Z was picked up from his accommodation by his social worker (Ms Y) and taken to the Oranga Tamariki office on Grey Street in Tauranga.¹ Z did not want to go into the office as he thought he was going to be arrested for his behaviour at his iwi placement, which he had left a week or so earlier. While Ms Y parked her car, Z went to the Internet café underneath the Oranga Tamariki office.
2. When Ms Y got to the café, she found Z messaging associates on his Facebook account about another youth (X) who was there. Z said to Ms Y that X had “*put a hit on my mate, my mate was hospitalised and I’m going to get pay back*”. Ms Y tried to convince Z to leave the café, but he would not leave. After his Facebook account timed out, Z started to leave the café with Ms Y. He then went over to X, pushed his chair back and stood over him. Ms Y dialled 111 but did not connect the call as she wanted to wait to see what happened between Z and X. Z walked back to Ms Y and then turned and went back to X. Unbeknown to Ms Y, on this occasion Z threatened X with a screwdriver if he did not hand over his cell phone. X gave Z his cell phone. Ms Y saw the screwdriver fall from Z’s clothing. She told Z to hand it over to her, which he did, and they then went upstairs to the Oranga Tamariki office.
3. Ms Y advised her supervisor (Ms W) about what had happened and gave her the screwdriver. Ms Y then went back to the café to warn X that Z wanted to come back to the café to confront him, so he should leave. X told Ms Y he had contacted Police about his cell phone being taken by Z. Ms Y updated Ms W.
4. Officers A and B had just completed an enquiry nearby when they heard a request from Police Northern Communications Centre (NorthComms) over their radios for a unit to attend an aggravated robbery at the Internet café. NorthComms had earlier radioed that a screwdriver

¹ Z was 14 years’ old at the time and the Chief Executive of Oranga Tamariki had full custody of him under section 101 of the Oranga Tamariki Act 1989.

had been used to steal a cell phone and that Z was the alleged offender. Both officers had previously dealt with Z. At about 11.10am they arrived at the café to speak to X, but he had left. The manager of the café said he had seen Z heading toward the lift to the Oranga Tamariki office upstairs. Officers A and B went to the Oranga Tamariki reception desk. Another social worker, Ms V, spoke to them initially and confirmed that Z was in the office. She then called for Ms Y who came with Ms W. Officer B said they needed to talk to Z and search him for the screwdriver and cell phone. Ms Y told them Z had handed over the screwdriver.

5. Ms Y asked if she and Ms V could try and get Z to hand over the cell phone to prevent him from getting too agitated by Police being present and, if necessary, take him to the Police Station. The officers agreed to the social workers trying to get Z to hand over the phone but not to the social workers taking Z to the Police Station. While they waited in an office off the foyer area, Z was taken to an adjoining office and asked to hand over the cell phone.
6. The officers told the Authority that even if Ms Y was successful in getting Z to hand over the cell phone, they intended to search him under the Search and Surveillance Act 2012 to ensure he had no other weapons on him. This was not the arrangement Ms Y and Ms W believed they had reached with the officers. They thought that, if Z handed over the cell phone, the officers would have no need to search him.
7. After telling Z that Police were in the office and would search him for the cell phone if he did not hand it over, Z gave Ms Y the cell phone. He then said he wanted to find X. He went to leave the office, but was followed by Officer B who identified himself as a Police officer and told him to stop. Z said “*nah, I’m out of here*”. Ms Y gave Officer A the cell phone as they followed Officer B and Z across the foyer. Z pushed the lift button. As he walked toward Z, Officer B told him he was under arrest for theft and would need to go to the Police Station. Officer B stood between Z and the lift door to prevent him from leaving and continued to talk to him.
8. As Officer B reached behind his back for his handcuffs, Officer A lunged at Z and pushed him against a floor-to-ceiling window behind. Z was taken to the ground before being handcuffed. He was searched, but no weapons were found on him. Officer B advised Z of his rights as a youth under the New Zealand Bill of Rights Act and the Oranga Tamariki Act.
9. Z was taken to Tauranga Central Police Station. He was interviewed in the presence of Ms V and admitted the robbery. He was charged and released on bail.
10. In the course of the incident, Z suffered soft tissue damage to a shoulder and was provided with a sling to wear for several days.
11. As required by Police policy, Officer A completed a Tactical Options Report (report) on 20 March 2019. He described Z’s behaviour as “*believed to be accessing weapon from clothing*” and his assessment, prior to using the ‘restraint hold’ on Z, was that Z was actively resistant.
12. Ms Y complained to the Authority on behalf of Z. The Authority independently investigated the complaint. This report sets out the results of the investigation and the Authority’s findings.

13. Police also investigated and initially found the force used by Officer A was justified. However, Police reviewed their investigation and Officer A was subsequently charged with assault against Z. Police also charged Officer A with two counts of assault and a charge of injuring with reckless disregard in relation to a separate matter involving force used during the arrest of a man on 21 September 2018. The Authority will be releasing its public report on that matter at the same time as it releases this report.
14. Officer A pleaded guilty to of injuring with intent on the other matter. He applied for discharge without conviction which was declined. Officer A was sentenced in relation to the other matter on 19 October 2021. The assault charge on Z was withdrawn. Officer A resigned from Police before the Court outcome was finalised.
15. We have delayed the release of this report until the conclusion of the District Court proceedings.

The Authority's investigation

16. We interviewed Ms Y and Ms W in the Oranga Tamariki office where the incident took place. Officers A and B were also interviewed. Z declined to be interviewed. The Police file was also reviewed.
17. CCTV footage in the public area of the Oranga Tamariki office captured Z's attempt to leave the office and the subsequent use of force on him. This was important to the Authority's investigation because we relied on the footage to assist with the factual analysis of what happened at the scene.
18. The Authority identified and considered the following issues:

Issue 1 Were Police justified in arresting Z?

Issue 2 Was the force used by Officer A on Z justified and reasonable?

The Authority's findings

19. The Authority is of the view that:
 - a) While the arrest of Z was lawful, it was undesirable and could have been avoided.
 - b) Officer A's use of force on Z was unjustified. Even if it had been justified, the degree of it was unreasonable and excessive.

Analysis of CCTV footage

20. The versions of events provided by Officers A and B at interview with us in August and November 2019 are directly at odds with the CCTV footage in the following respects:
- Officer A told the Authority that Z was “*continually pressing*” the lift button which showed an intent to leave the building without Police. The footage shows Z walk to the lift and press the lift button once before Officer B steps between the lift and Z.
 - Officers A and B said, after Officer B stepped between him and the lift, Z appeared to be agitated and in a slightly staunch stance indicative of him getting into a defensive mode and preparing to be assaultive. The footage shows Z take a step or two back as Officer B moves between him and the lift. The footage does not show Z getting into any kind of stance or defensive mode. Officer A does not mention Z being in a stance in either of his job sheets or in his use of force report. It is not until his Police statement made on 25 June 2019 that he mentions that Z’s stance was “*quite defensive*”.
 - Officers A and B said that Z seemed to run a hand across his waistband or fumble in the pocket of his hoodie or with the front of his waistband and they were concerned that he might have another weapon secreted on him. Officer A also told the Authority that Z was “*fidgiting around with his hands*” while Officer B was talking to him. Z’s left arm is sufficiently visible throughout the interaction to see that he initially touches his face with his left hand and then puts it down at his side where it remains until Officer A pushes him against the window. Z’s right arm is obscured for most of the interaction because Officer B is standing in front of him. However, there is a moment when Z walks backwards and his right arm is visible. At this point, Z’s right arm is at his side.
 - Officer A told the Authority that he took hold of Z “*by his upper right arm by reaching across the front of his body. I twisted him around, so his back was against my chest while at the same time pulling him down towards the ground*”. He described this as a “*restraint hold*”. Officer A’s description of what occurred is not borne out by the footage which shows him lunge at Z from close range. He puts both of his hands around Z’s neck and slams him into the window behind. Z is not taken to the ground in a trained or controlled manner, as Officer A seems to suggest by saying he executed a “*restraint hold*”.

ISSUE 1: WERE POLICE JUSTIFIED IN ARRESTING Z?

21. As Z was 14 years’ old at the time, he was a “*young person*” for the purposes of the Oranga Tamariki Act 1989. Section 214 of the Act sets out when a young person can be arrested without a warrant (see paragraph 37). One of the reasons set out in section 214(1)(a) and the condition set out in subsection (2) must be met to justify such an arrest.
22. As required, Officer A completed an ‘Arrest/Removal of Child/Young Person’ form on 18 March 2019. The stated reason for Z’s arrest was to prevent further offending (section 214(1)(a)(ii) of the Oranga Tamariki Act). However, the report does not detail why the officers considered there was a possibility that Z might offend further or the nature of that offending. Officers A and B told us that they were concerned that Z might be concealing further weapons, might become

assaultive and was in a publicly accessible area of the Oranga Tamariki office that could put them, the social workers, and members of the public at risk (and even more so if he were able to leave the office and go back to the café).

23. Z was known to both officers as they had met him when attending previous incidents in which he was involved, either as a victim or an alleged aggressor. They were aware he had an alert in the Police database for assaulting Police, from an event in 2014. Z was also alleged to have used a knife as a weapon against a family member in an earlier incident.
24. By the time Officer B arrested Z, he had handed over the screwdriver. He had also handed over the cell phone, but we accept Officer B would not have been aware of this at the time he arrested Z. Both officers were also unaware that Z had specifically told Ms Y he wanted to go back to the café to confront X. They were though concerned generally about Z leaving the building, possibly with other weapons and potentially returning to the café or to find the victim of the aggravated robbery.
25. We accept it was open to Officers A and B to arrest Z as they reasonably believed this was necessary to prevent further offending under section 214(1)(a)(ii) of the Oranga Tamariki Act. However, given Z's age and his increased agitation around Police, the preferable option in this instance would have been for Police to have told Ms Y that, if she managed to get Z to hand over the cell phone, he could be interviewed at the Oranga Tamariki office in the presence of his social worker and then summonsed to appear in Court. This would have avoided the need to arrest Z and take him to the Police Station to interview and charge him.

FINDING ON ISSUE 1

The arrest of Z was lawful, but it was undesirable and could have been avoided.

ISSUE 2: WAS THE FORCE USED BY OFFICER A ON Z JUSTIFIED AND REASONABLE?

Was the force justified?

26. Section 39 of the Crimes Act 1961 allows officers to use reasonable force to overcome any force used by a person who is resisting arrest. As required by policy, Officer A completed a Tactical Options Report setting out the force he used and the reasons for this. He recorded section 39 as a legal justification for his use of force. We do not agree. The CCTV footage clearly shows that Z did not use any force to resist arrest. He simply walked away from Officer B before any attempt was made to arrest him. Officer A was therefore unable to claim section 39 as justification for his use of force.
27. Section 48 of the Crimes Act allows an officer to use reasonable force in self-defence or in defence of someone else. Officer A also recorded this as a legal justification for his actions. 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 pushed Z against the window?

- 2) Was Officer A acting in defence of himself or others?
- 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 to be at the time he pushed Z against the window?

28. Officer A told the Authority:

“Even though [Z had] handed over a screwdriver he could have potentially still been in possession of further weapons and his alert for carrying weapons in NIA reinforced this. [Z] still appeared agitated. He began to fumble, either in the pocket of his hoodie or the front of his waistband, at this point I had closed to within two metres from [Z] and I was slightly to his left side. Based on the belief I had formed that [Z] could become assaultive and could be attempting to access weapons from his clothing for my protection as well as [Officer B], OT staff and the general public, because this was a public area, I made a decision that [Z] needed to be restrained and handcuffed. To prevent the possibility of escape or harm to myself I took hold [of Z] by his upper right arm by reaching across the front of his body. I twisted him around, so his back was against my chest while at the same time pulling him down towards the ground.”

29. As set out in paragraph 20, the CCTV footage does not show Z fumbling in his hoodie pocket or with the front of his waistband.
30. In addition, the footage does not show Officer A taking hold of Z's upper right arm by reaching across the front of his body and then twisting Z around. The footage shows Officer A lunge at Z. He has both his hands around Z's neck as Z is violently pushed against the window behind him before being taken to the ground.
31. Officer B told the Authority that his threat assessment of Z was *“passive aggressive vocally and by stature and ... my assessment would be is (sic) he was about to become assaultive with us”*. He added that he was at the point where he was also considering using force to restrain and handcuff Z.
32. We do not believe that Z was acting as if he were going to remove a secreted weapon from his clothing, nor do we believe that Officer A thought he was doing so. We are of the view that, as Officer A walked over to the lift, he had made up his mind to use force on Z because Z was not complying with Officer B's instructions, and this was frustrating Officer A.

Was Officer A acting in defence of himself or others?


33. Given that we believe Officer A fabricated his account, we do not accept that he genuinely believed that Z posed a threat to him or Officer B, and therefore do not accept that Officer A used force because he genuinely feared for his safety or the safety of Officer B, the social workers, or members of the public.

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

34. Even if it were considered that Officer A had acted in self-defence or in defence of Officer B or others, the level of force used was unreasonable and disproportionate given the threat posed by Z.
35. Officer A should have considered the range of tactical options that were available to him and should have communicated with Officer B. If Officer A genuinely believed Z may have been secreting a weapon, it would have been reasonable for him to have taken hold of Z's left arm while instructing Officer B to take hold of Z's right arm, enabling Z to be placed in a wrist lock or arm bar hold.² Z could then have been easily handcuffed without resorting to the level of force that was used. Officer A's takedown of Z was not controlled and had the potential to cause serious injury to Z.
36. We note that, despite his comment that he was considering whether to use force on Z himself, Officer B continued to communicate with Z and reached for his handcuffs instead of resorting to using force and he was in a much better position to see what Z was doing.

FINDINGS ON ISSUE 2

Officer A's use of force on Z was unjustified. Even if it had been justified, it was unreasonable and therefore excessive.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

5 May 2022

IPCA: 18-2118

² These are techniques that officers are trained in at Police College and receive refresher training in annually.

Appendix – Laws and Policies

ORANGA TAMARIKI ACT 1989

37. Section 214 of the Oranga Tamariki Act states:

“214 Arrest of child or young person without warrant

(1) Subject to section 214A and sections 233 and 244, where, under any enactment, any enforcement officer has a power of arrest without warrant, that officer shall not arrest a child or young person pursuant to that power unless that officer is satisfied, on reasonable grounds, —

(a) that it is necessary to arrest the child or young person without warrant for the purpose of —

(i) ensuring the appearance of the child or young person before the court; or

(ii) preventing that child or young person from committing further offences; or

(iii) preventing the loss or destruction of evidence relating to an offence committed by the child or young person or an offence that the enforcement officer has reasonable cause to suspect that child or young person of having committed, or preventing interference with any witness in respect of any such offence; and

(b) where the child or young person maybe proceeded against by way of summons, that proceeding by way of summons would not achieve that purpose.”

(2) Nothing in subsection (1) prevents a constable from arresting a child or young person without warrant on a charge of any offence where —

(a) the constable has reasonable cause to suspect that the child or young person has committed a category 4 offence or category 3 offence for which the maximum penalty available is or includes imprisonment for life or for at least 14 years; and

(b) the constable believes, on reasonable grounds, that the arrest of the child or young person is required in the public interest.

USE OF FORCE

Law on use force

38. Section 39 of the Crimes Act 1961 provides for law enforcement officers to use reasonable force in the execution of their duties such as arrests and the enforcement of warrants. Specifically, it provides that officers may use *“such force as may be necessary”* to overcome any force used in resisting the law enforcement process unless the process *“can be carried out by reasonable means in a less violent manner”*.

39. Section 48 of the Crimes Act 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.”*

40. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

Police policy on use of force

41. 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.
42. Police policy provides a Tactical Options 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.
43. Police officers must 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), give 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).
44. Wherever possible and appropriate, officers should use tactical communication throughout an incident, alone or with any other tactical options. Tactical communication is crucial to safely de-escalating an incident with uncooperative subjects. Tactical communication should be attempted in every incident where Police action is necessary in response to uncooperative subjects, including those that may require force to be used.
45. A key part of an officer's decision to decide 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. Ultimately, legal authority to use force is derived from the law and not from Police policy.
46. 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.

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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