



IPCA

Independent Police
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

Police officer in Auckland punching woman in self-defence

1. On 8 April 2022, Officer A arrested Ms X in Auckland for breach of her bail conditions. Ms X was handcuffed and placed in the back of a patrol car. Officer A opened the car's door and Ms X tried to exit. Officer A placed his hands on her shoulders to stop her, and Ms X bit him on his left forearm. Officer A punched Ms X to the left side of her face.
2. Ms X complained to us about her arrest, saying that:
 - Officer A opened the car's door and accused her of having a history of assaulting Police; he then punched her in the left eye, for no reason, and she lost consciousness for about a minute.
 - After she regained consciousness, Officer A tried to place a safety belt on her, and she tried to bite him. Officer A then punched her in the face, a second time.
3. After her release from Police custody, Ms X went to the Auckland Hospital where a doctor recorded that she had a cut above her left eye and bruising to the surrounding tissues.
4. Police undertook a criminal investigation, but Ms X did not engage with them. The criminal investigation determined that without Ms X's account, there was not enough evidence to charge Officer A for assaulting her.

The Authority's Findings

Issue 1: Was Officer A justified in punching Ms X?

The force Officer A used was not reasonable as he had other, less forceful options available to him.

Issue 2: Did Police provide adequate medical care to Ms X for the injury she sustained?

Police failed to provide adequate medical care to Ms X.

Issue 3: Should Police have photographed Ms X's injuries?

Police should have photographed Ms X's injuries.

Analysis of the Issues

ISSUE 1: WAS OFFICER A JUSTIFIED IN PUNCHING MS X?

What happened when Officer A punched Ms X?

5. Officer A was working with two colleagues, Officers B and C, when they got called to a family harm incident in Mount Wellington. Mr Y told Police that his mother, Ms X, had been drinking and had caused damage to his property. Mr Y did not want her charged but wanted her removed from his home (Ms X did not live at the property).
6. Officer A saw that one of the bedrooms was “*tipped upside down*” and the windows were broken. Ms X admitted that she had caused the damage. Officer A checked Ms X on the Police data base and saw that she had an active bail condition: “*Not to threaten, or cause violence, against any persons or property*”. Officer A arrested Ms X for breach of this bail condition.
7. After he told Ms X that she was under arrest for breaching the bail condition, she lay down (on her back) on the floor inside the house. She refused to get up and go with Police to the patrol car. Officer A instructed Officers B and C to help him carry Ms X to the patrol car. Officers B and C each took an arm, and Officer A took hold of Ms X’s legs. Ms X kicked Officer A several times in the legs during this process; this was witnessed by Officers B and C. Officer A assessed that Ms X was assaultive and resisting the arrest.¹
8. Officer A handcuffed Ms X’s hands behind her back and put her in the back of the patrol car. Officers B and C left Officer A alone with Ms X and went back into the house without telling him.
9. Ms X started kicking the seats and centre console from inside the patrol car. Officer A called Officers B and C on the Police radio, but they did not answer. Ms X then started to kick the rear passenger window with her bare feet. Officer A was concerned that she could break the window and injure herself. Officer A says he had to take action to prevent this, and he opened the car’s door to tell Ms X to stop kicking the window.
10. Ms X swore at Officer A, and asked why she was arrested. She wanted to get out of the patrol car and Officer A told her to stay inside the car. Ms X kicked Officer A several times on his legs and managed to put her feet on the ground, outside of the patrol car. Ms X tried to stand up to exit the patrol car.

What does Ms X say happened?

11. Ms X admitted that she kicked the car’s door to get Officer A to open it. She says that, after he opened the car’s door, the officer accused her of having a history of assaulting Police and he then punched her in the left eye, without any reason. Ms X remembers falling backwards and thinks she lost consciousness for about a minute.

¹ ‘Assaultive’ in the Tactical Options Framework includes someone who displays intent to cause harm, through body language/physical action.

12. After regaining consciousness, she saw Officer A sitting in the back of the patrol car with her and trying to fasten her safety belt. She says, it was at this point that she tried to bite him because he had punched her earlier without any reason. According to Ms X, she did not manage to bite Officer A, but she believes that some saliva may have dripped onto his arm, as she was bringing her mouth towards it. She recalls Officer A punching her a second time, in the forehead.
13. Ms X believes that a female officer (Officer D) was present and in the driver's seat of the patrol car, when Officer A punched her. Officer D apparently excused Officer A's actions on the basis that she had bitten him (this is further discussed in paragraph 20).

What does Officer A say happened?

14. Officer A placed his hands on Ms X's shoulders to stop her from getting out of the car. He felt a sudden pain in his left forearm and looked down to see Ms X biting him. Officer A recalls feeling pressure on his arm as Ms X was biting him.
15. Officer A described what happened then: *"I looked down, and I see her mouth over my, my arm. So yeah, it happened so quick, I remember looking down and going 'shit, what? I'm being bitten! I need to do something!'"* Officer A says he reacted instinctively in punching Ms X.
16. Officer A says that the punch was not very hard, according to him: *"It wasn't a knockout punch. It wasn't anything hard or vicious or anything in it... it was just a quick little tap, enough to get her jaw, and mouth off my arm."* After the punch, he quickly moved his arm away from Ms X.
17. He later noticed that Ms X had blood running down the side of her head (near her left eye). Officer A suffered little injury to his arm, and we note that there were no teeth marks, or broken skin.

Which account do we prefer?

18. There is a clear conflict in the accounts of Ms X, and Officer A, about the force used. There are no other witnesses who saw what had happened.
19. Ms X believes that Officer A punched her twice. When she went to the Auckland Hospital, she also told the attending doctor that she had been punched twice: once to her left eye, and once to the right side of her forehead. The doctor who examined Ms X recorded that: *"She has no other or right-side face sx (signs and symptoms) of trauma or contusion, although she feels she was hit on the right-side forehead as well."* The medical examination ultimately only found injuries to the left side of Ms X's face.
20. Ms X is a vulnerable person. In her interview with us, we found her to be credible, but she struggled to focus and would confuse general sequences of facts. For example, she believes that there was a female officer in the driver's seat when she was punched; Officer D (the only female officer) arrived only after Ms X was punched but did drive her to the custody unit. Ms X was moderately intoxicated at the time of the incident. This might have affected her memory, resulting in her account being inconsistent with others and unreliable.

21. We believe Ms X was honest when she spoke to us about her experiences. However, for the reasons outlined above, we cannot rely on her account as an accurate version of what had happened.
22. Officer A's account, on the other hand, was consistent with what Officers B, C, and D told us about what had happened; although we note that none of them saw the use of force by Officer A. Police records show that Officer A did call Officers B and C over the radio when he was alone with Ms X at the patrol car. This evidence supports his account of what happened.
23. We also believe that Officer A was honest when he spoke to us about what had happened. Because his account is, overall, more consistent with the other accounts, and the result of Ms X's medical examination, we accept it as reliable.

Was Officer A justified in punching Ms X?

24. Officer A believes he was justified in punching Ms X, under section 48 of the Crimes Act 1961, which allows for officers to use reasonable force in self-defence.²
25. In order to rely on this defence, Officer A's actions must be assessed on both a subjective and an objective basis. This assessment involves three questions:
 - 1) What were the circumstances as Officer A believed them to be?
 - 2) Did he punch Ms X for the purpose of defending himself?
 - 3) Was the punch reasonable in the circumstances?

What were the circumstances as Officer A believed them to be?

26. Officer A believed Ms X was biting his arm and that the pressure of her bite showed an intention to continue biting. As a result, he assessed her as being "assaultive". He believed it was necessary and reasonable to act immediately to stop Ms X from continuing to bite him.

Did Officer A use force for the purpose of defending himself?

27. Officer A admits he did not think through or plan his response and did not specifically think of the punch as an intentional act in self-defence. However, he says he was scared, and his punch was an instinctive, reflex reaction to immediately stop her from continuing to bite him. He says the punch was not intended to be "malicious" and was not a retaliation to being bitten.
28. We accept Officer A punched Ms X in response to being bitten by her. The force was therefore used for the purpose of self-defence.

² See appendix, paragraph 51.

Was the force used reasonable in the circumstances as Officer A believed them to be?

29. Officer A acknowledges that he had an obligation to use the least amount of force necessary to stop Ms X's assault. We asked him about other tactical options he had available to stop the assault.
30. Officer A does not believe that pulling his arm away, was a viable option at the time, as Ms X's mouth was already clenched onto his arm, and he could feel pressure as she was biting down. He believes pulling away would likely have caused more serious injury, and possible infection.
31. We accept that it was not viable for him to simply pull his arm away from Ms X.
32. When asked why he did not push Ms X's head away. Officer A says that he needed to act decisively to stop injury to himself, and he didn't believe a push would suffice.
33. Police told us that punching is not a tactic that officers are trained to use in self-defence.³ Officers are taught to use open-palm strikes; however, these do not include striking the head, face, or throat.
34. Officer A acknowledged that he was not taught to punch someone with a closed fist, as part of his Police tactical training. When asked what tactics he was trained to use in these circumstances, he responded: "*All sorts, open palm strike.*" When asked why he did not use an open palm strike, rather than a closed fist, to stop Ms X from biting him, he explained that it was not something he had thought of at the time.
35. The test for determining if the punch to Ms X's head was objectively reasonable, is finely balanced in this case. We accept that some force was necessary to stop Ms X from continuing to bite Officer A. However, we believe that an open-palm strike was the appropriate response in this situation because it is less likely to result in a serious injury.
36. We conclude that the punch was not reasonable in the circumstances and was an excessive use of force.

FINDING ON ISSUE 1

The force Officer A used was not reasonable as he had other, less forceful options available to him.

ISSUE 2: DID POLICE PROVIDE ADEQUATE MEDICAL CARE TO MS X FOR THE INJURY SHE SUSTAINED?

37. It is clear from the custody footage, when Ms X was received and processed at the Auckland custody unit, she had blood visible on the left side of her head.
38. Ms X told us that she was not provided with medical care, while at the custody unit. She went to seek medical help at the Auckland Hospital immediately after her release. Police records show that Ms X was given a painkiller while at the custody unit.

³ See the Authority's report: [Excessive uses of force while in custody in Tauranga.](#)

39. Police policy on 'Head injuries' states that any potential head injury, occurring as a result of Police activity, must be assessed by a medical practitioner. This includes instances where someone is punched in the head, whether an injury can be seen or not (in this case Ms X's injury was visible). Accordingly, consistent with their own policy, Police should have called a doctor to assess Ms X when she came into their custody.
40. Police records show that Ms X's risk evaluation was incomplete; her injuries were not adequately recorded, and she was not afforded the medical care she should have received for a head injury. Police have a duty of care towards people in their custody; Police failed to provide adequate medical care to Ms X for her head injuries.

FINDING ON ISSUE 2

Police failed to provide adequate medical care to Ms X.

ISSUE 3: SHOULD POLICE HAVE PHOTOGRAPHED MS X'S INJURIES?

41. Officer A did not have broken skin where Ms X bit him. According to Officer A, he sustained a graze mark where he was bitten. Soon after being bitten, he took a photograph of his left fore-arm. This photograph is not very clear, and the bite mark is not identifiable. When asked why he took the photograph, Officer A explained he did this to record the evidence of Ms X's assault on him. Police have since determined that best practice would be for such evidence to be independently recorded by another, uninvolved officer.
42. No photographs were taken of Ms X's injuries. Officer A agreed this should have been done, but says that it was not something he thought of at the time. Officer A also did not think it would be appropriate for him, as the officer who used the force, to take photographs of Ms X's injuries, as she was upset and would likely be uncooperative.
43. Documenting Ms X's injuries should have occurred as part of Police's evidence gathering process. The use of force by a Police officer may at any time become the subject of an investigation. As such, all available evidence should be gathered in a professional and unbiased manner. In addition to not photographing Ms X's injuries, her custody evaluation failed adequately to record her injuries; this, notwithstanding the presence of visible injuries in the custody footage.
44. Obviously, it is not appropriate for Police to record the injuries officers sustain and omit to record the injuries of others; particularly when those injuries were caused as a result of Police action. This is not an isolated occurrence and we have noticed the same happening in other cases.
45. Photographs of Ms X's injuries would have been helpful in determining if she was punched only once, or twice, as she claims.

46. Officer E was tasked with reviewing Officer A's Tactical Options Report (TOR),⁴ in which he explained the force he used. As part of her duties, Officer E had to determine if the force was: *"justified, reasonable, necessary, proportionate, and timely"* based on the information Officer A provided. The reviewing officer does not normally have access to other material and usually makes a decision on the basis of the information an officer self-reports in his/her TOR. In cases where there are Taser, or CCTV footage, a reviewing officer may request the relevant footage to assist in making a determination.
47. In this case, Officer E relied on Officer A's self-reported account in determining that the force was justified. We accept that a review of this nature is not the same as an investigation; as such, we do not think it necessary for reviewing officers to look at all the material related to an incident. However, we think that the reasonableness and proportionality of force used can only be adequately assessed if reviewing staff also consider the degree of force used. Photo evidence of injuries are essential in determining the degree of force that was used. Officer E suggested that Police should consider developing a function for the TOR system, where photos of injuries can be uploaded and looked at, as part of the review of individual Tactical Options Reports.
48. Police have since told us that the TOR system has the function for photos to be uploaded and looked at as part of the review process. It appears that some Police staff are unaware of this function in the TOR system.
49. Police should have photographed Ms X's injuries. This should have been done by staff that were not involved in the use of force incident (preferably at the custody unit). We believe that, had a mandatory process been in place, that required photographing of Ms X's injuries at the custody unit, her injuries would likely also have been recorded in her custody evaluation and appropriate treatment would have been given.

FINDINGS ON ISSUE 3

Police should have photographed Ms X's injuries.

⁴ An officer is required to complete a TOR (Tactical Options Report) 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. See the appendix for Police policy on TORs.

Recommendations

50. We recommend that Police:

- 1) develop guidelines for appropriate staff to photograph injuries caused to both officers and people, as a result of Police actions taken; and
- 2) develop guidelines requiring photographs of injuries (taken by Police as a result of a use of force incident) to be uploaded into the Police Tactical Options Report system; and requiring reviewing officers to consider these photos as part of the review process.

A handwritten signature in blue ink, appearing to read 'Kenneth Johnston', is centered on the page.

Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

30 August 2023

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Appendix – Laws and Policies

LAW

51. 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.”
52. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

POLICY

‘Use of force’ policy

53. 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.
54. 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.
55. The overriding principle when applying TENR is that of “safety is success”. Public and employee safety are paramount, and every effort must be made to minimise harm and maximise safety.
56. 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.
57. 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).
58. 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.

59. 'Empty hand tactics' refers to a weaponless use of force, such as grabbing hold of, pushing, or punching a person. Officers can use empty hand tactics to distract or control someone and also to defend themselves or others.
60. 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.
61. Ultimately, the legal authority to use force is derived from the law and not from Police policy.

'Head injury' policy

62. The policy states that Police have a responsibility to ensure that people in their custody are managed appropriately in the event of a potential head injury. A head injury may not always be immediately evident, and signs and symptoms can be delayed. Head injuries can result from a knock or punch to the head, the head hitting the ground or an object, being hit by an object, a fall, or a vehicle accident. This may result in concussion, a blood clot, or a bleed to the brain. Any potential head injury occurring as a result of Police activities must be assessed by a medical practitioner.

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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