

Concerns about accuracy of information relied on for Police vetting

1. In September 2020, Police officers visited a man, Mr Z, at his home on two occasions. They were following up on a complaint from a woman, Ms Y, about inappropriate behaviour when Mr Z taught her piano when she was a child. Police did not have sufficient evidence to charge Mr Z and Ms Y did not want to take things further. The visits were described as ‘prevention visits.’ For the most part, notes were written after the visits, in a Police notebook or straight into the Police database.¹
2. In October 2020, Mr Z applied for Police vetting for his job teaching piano to children at a school. He was upset to find vetting information stated he had an abnormal attraction to children and had received counselling. He disagreed with the comments and employed a lawyer to challenge them. The Police Vetting Panel reviewed the information and made some changes but said they were relying on information in the Police database. Additional applications for vetting were made and further reviews undertaken. Mr Z does not accept the outcome of any of those further reviews.
3. Mr Z complained to us in July 2021 about inaccuracies in the information contained in a vetting report and the actions of officers who interviewed him.

The Authority’s Findings

Issue 1: Did Police manage the prevention visits to Mr Z appropriately?

Officers should have taken contemporaneous notes at the visits rather than after the event.

Issue 2: Can the information be used in a Police vetting report?

¹ The National Intelligence Application (NIA) holds information about individuals who have come into contact with Police.

Parts of the proposed vetting releases were not substantiated and should not be disclosed by the Police Vetting Service.

ISSUE 1: DID POLICE MANAGE THE PREVENTION VISITS TO MR Z APPROPRIATELY?

What happened?

4. Mr Z taught Ms Y piano from 1998 to 2007, when she was aged 6 to 15 years. He taught her at various locations, including her home. The lessons ended abruptly in January 2008. Mr Z wrote a letter to Ms Y's parents saying he was reducing his home teaching. The parents were unhappy with their daughter's progress at the time the lessons ended, and they do not recall the letter.
5. In April 2020, Ms Y complained to Police about Mr Z's behaviour when he taught her piano. She said his behaviour was inappropriate and made her feel uncomfortable. She said:
 - Mr Z would sit in a chair and put it really close to her, and sometimes he would sit next to her on the piano stool with their legs touching;
 - he would put his hands on her hands almost every lesson to demonstrate;
 - often he hugged her 'goodbye' at the end of a lesson and occasionally he hugged her when she was upset; and
 - when she was about 14 years old, Mr Z asked her to play a song on her iPod and put his left ear against her chest where the ear buds were dangling to listen.
6. Ms Y's mother thought it was odd Mr Z taught with the door closed and seemed to give Ms Y too much attention.
7. The adult sexual assault and child protection teams assessed the case and considered the possibility of other victims. Police decided to take no further action because of insufficient evidence and because Ms Y did not want to take the matter further. She supported a prevention visit to Mr Z because she was concerned he was still teaching children.
8. Officer A, a detective, was assigned to carry out a prevention visit to Mr Z. Officer A asked Officer B, also a detective, to go with her because of his experience working in child protection.

What is a prevention visit?

9. Police told us the National Manager Investigations decided in about 2015 it would be beneficial for Police to speak to an alleged offender in cases where the complainant reported a sexual assault but did not want Police to take further action. If the complainant agreed, Police could advise the alleged offender of the allegation and that it has been recorded with Police, and explain about consent and the law on sexual assault.
10. Police staff call the process a prevention visit, but this has never formally been incorporated into Police policy "*because it was always dependent on various factors and what was done or said needed to fit the individual circumstances*".

11. Officers A and B told us they understand the purpose of a prevention visit is to prevent future harm when there is not enough evidence to charge the person. Officer A says it determines if the person has any issues or indecent ideations, and encourages them to recognise this and engage in programmes. She says: *“Given [Mr Z’s] position as a piano teacher, he still needed to be spoken to in relation to whether he poses an ongoing risk ... it’s basically a door knock and a conversation.”*
12. The IPCA recognises the value in Police conducting prevention visits in such circumstances, in the interests of child protection and preventing harm.

What happened at the first prevention visit?

13. On 14 September 2020, Officers A and B visited Mr Z at home. The visit was a surprise and Mr Z was shocked to hear the allegations. Mr Z has no criminal convictions and was cooperative and open with Police. He told them he did not remember doing the acts alleged.
14. Officer A recorded her recollection of the conversation with Mr Z in her Police notebook, including:
 - *“he remembered liking [Ms Y] as a student, but is very conscious not to touch his students inappropriately”;*
 - *“may pat his students on the back but is weary[sic] of students taking this the wrong way”;*
 - *“may sit on the same piano stool only to demonstrate on the keys”;*
 - *“wanted to let her know he is sorry but he was insistent he didn’t remember doing the acts alleged”;*
 - *“[Ms Y] could tell that he liked her” and “thought [Ms Y] was attractive ... although he would never have acted on this”;*
 - *“has thought about seeking help but has never crossed the line physically”;*
 - *“has ‘liked’ 3 girls in the past”;* and
 - *“wants to self refer to [counselling]”.*
15. Officer A recalls writing these notes in her notebook in the car, and possibly back at the Police station. Mr Z recalls Officer A writing some notes and being told they would *“be filed”*. Mr Z was not shown the notes for review. The notes formed the basis of an entry in the Police database a week later.
16. Officer B says he cannot remember mentioning Police vetting to Mr Z as it was not something he considered at the time. He says he usually gets suspects to sign notes if they are to be used as evidence. However, *“that is not something that we’d do in a prevention visit.”*

What happened after the first visit?

Entry in the Police database on 16 September 2020

17. On 16 September 2020, Officer C, a sergeant and supervisor to Officers A and B, wrote a case review about the matter in the Police database which used the words “*abnormal attraction*”:

“When spoken to the suspect told police that he did have an abnormal attraction to children. [Counselling has] been engaged.”

18. Officer C says the word “*abnormal*” came directly from either Officer A or B and he entered the review into the database in their presence. Officer C believes the comments are accurate and describe the behaviour exhibited. He told us he had to balance the potential for Mr Z to be an offender and provide information that can protect children.
19. Mr Z describes the words “*abnormal attraction*” as a judgement by officers, and told us: “*These are not my words as stated but are an interpretation of what I said*”.

Entry in the Police database on 21 September 2020

20. Officer A says she made an entry into the Police database about the 14 September visit based on her notes. There is more specific detail entered into the Police database than in her notebook, including:

- Mr Z would sit on a separate chair from the students and does not recall sitting on a piano stool with [Ms Y];
- he does not recall putting his hands on her hands, putting his ear against her chest to listen to music, or hugging her;
- although sexual attraction to younger females is something that he struggled with, he feels he is managing it. We note, the words “*sexual attraction to younger females*” were not used in the notebook.

Referral to counselling

21. Mr Z referred himself for a counselling assessment as suggested by the officers, as he wanted to do the right thing. He had a counselling assessment, but told us: “*I never received counselling for child harm or anything, they didn't deem it necessary to have sessions on that.*”

What happened at the second prevention visit?

22. On 25 September 2020, Officers A and B visited Mr Z again to discuss strategies for staying safe around young people.
23. Neither officer took notes of the conversation in their notebook during the visit or after.
24. Officer A says: “*To avoid doubling up, I went back to the station and recorded the conversation I had just had into [the Police database].*” The entry included that Mr Z:

- has not been sexually attracted to younger (teenage) females in a long time. The last he remembers was Ms Y and that was more of an emotional connection, and some hugs (he said he did not remember the hugs but *“trusts that [Ms Y] is telling the truth”*);
- said the feeling of being sexually attracted to younger females is brought out in him, but he can control it;
- was not in a good state of mind when he was teaching Ms Y”;
- discussed strategies he could use;
- was scared by Ms Y’s allegation and that another student may make up allegations; and
- is now hypersensitive to distance from his students.

25. Mr Z says during the visit the officers told him the file and investigation were closed. He was not aware Officer A entered notes into the Police database about the second visit. On 27 September 2020, an entry in the Police database concluded: *“Matter for filing. No offences committed and as much prevention conducted as possible.”*

Where did the words “sexual attraction” and “abnormal attraction to children” come from?

26. Mr Z says at no point during the first visit were the words *“sexual attraction”* mentioned. However, the entry in the Police database after the first visit uses those words. The words are repeated in the Police database entry after the second visit.
27. Mr Z says it was only on the second visit that Officer A asked him directly if his attraction to Ms Y was sexual and he replied: *“No, it was affectionate.”* Mr Z says Officer A *“claimed that I had been sexually attracted to students in her notes but these were her words written after the meeting and not mine.”*
28. The fact that the officers took few contemporaneous notes of the interviews, but instead recorded from memory what had been said at various times after the event, was in the Authority’s view poor practice. It gave rise to the potential for inaccuracies, since the officers would inevitably have been prone to recreate the conversation in their own words. That subjective retelling of Mr Z’s answers may well explain why the words *“sexual attraction”* and *“abnormal attraction to children”* crept into the narrative. Given the nature of the conversation, we doubt that these words accurately reflect Mr Z’s account of events.

FINDING ON ISSUE 1

Officers should have taken contemporaneous notes at the visits rather than after the event.

ISSUE 2: CAN THE INFORMATION BE USED IN A POLICE VETTING REPORT?

What does the Police Vetting Service do?

29. The purpose of the Police Vetting Service is to keep people safe through the review and provision of information held by Police about a person to an approved agency. This includes, for example,

the vetting of unregistered employees and contractors and their employees who work at schools under the Education Standards Act 2001. The Vetting Service reviews information held in the Police database about a person (conviction and non-conviction information) and provides relevant information to approved agencies to make decisions on whether a person poses a risk.

30. In 2016, the Authority and the Office of the Privacy Commissioner conducted a joint review of the Police Vetting Service (the 2016 Review). The 2016 Review found:

“The Police consider any information they hold to be within scope of the Police Vetting Service’s assessment. However, ... the amount of “Police information” is growing significantly, and inevitably includes information that is subjective and has not been tested, for example, through the court process.”

31. When the Vetting Service considers what information to include in a vetting release, they must take reasonable steps to determine whether vetting information is relevant and substantiated (whether there is enough evidence to support it) before releasing it. The Police Vetting Service Manager (the Manager) acknowledges this is “tricky” where information has not been tested in the courts or the person has not admitted to the behaviour.
32. Where there is concern about the risk someone might pose, but information lacks substantiation, vetting staff can escalate the case through vetting officers, advisors, and up to a Vetting Review Panel.²
33. If the proposed vetting release is likely to be a surprise for the applicant, staff send a letter to the applicant with the information. This gives the person an opportunity to challenge the content and/or refuse consent for the information to be released. If the person refuses consent for the vetting to be released to the agency, the Vetting Service rejects the vetting application and informs the agency that the applicant has withdrawn consent.

Background

34. About a month after the second prevention visit, the Vetting Service received a vetting request for Mr Z. They sent a letter to Mr Z with the proposed release of information. Mr Z was concerned the information was inaccurate and engaged a lawyer.
35. The Vetting Service checked the notes in the Police database with Officer A, who confirmed Mr Z had a “concerning sexual attraction to young females” and was advised to seek counselling. The service then escalated Mr Z’s case to the Panel to consider.
36. Over the next year and a half, the Police Vetting Service produced five versions of the proposed vetting release.

² The Panel has senior staff from various work groups across Police, including legal and privacy experts and operational staff.

37. Mr Z challenged the proposed releases and refused consent for them to be disclosed to his employers, believing parts to be inaccurate, misleading or “*subjective interpretations by the Police*”.

Was the information in Mr Z’s proposed vetting release relevant?

38. Information in the Police database was relevant to the vetting requests because the circumstances were similar, involving teaching piano to children.

Was the information in Mr Z’s proposed vetting release substantiated?

39. In the 2016 Review, Police advised it considers that behaviour is substantiated where the information held indicates the alleged behaviour is ‘more likely than not to have occurred’.³ If the nature of the role the person is being considered for is particularly sensitive, and the issues of potential concern arising in an individual’s past are particularly serious, it may be appropriate to release unverified information.⁴
40. Ms Y’s allegations against Mr Z are of behaviours that she considers inappropriate and made her feel uncomfortable when she was a child/young person (aged 6 to 15 years). There are potential issues of protecting a child and a power imbalance between a child/young person and a teacher to consider. This is to be weighed against the type of inappropriate behaviour alleged, the lack of corroborating information, and the fact Mr Z denies any sexual intentions.
41. We recognise the Vetting Service’s role in providing risk information to agencies who have a duty of care towards the safety of children. We acknowledge the Vetting Service adopted a robust process and took reasonable steps to check the information they relied on. They considered Mr Z’s comments, verified the information with Officer A and checked the file, and escalated the matter to the Panel.
42. However, we consider the words “*abnormal attraction to children*” and “*sexual attraction*” should not be included in the vetting release because these were not taken from contemporaneous notes and in our view are unlikely accurately to reflect the nature of the conversation or to meet the substantiation threshold.
43. With that exception, we think that the release of information as to the allegation and Mr Z’s response to it should be released.

FINDING ON ISSUE 2

Parts of the proposed vetting releases were not substantiated and should not be disclosed by the Police Vetting Service.

³ This is a ‘balance of probabilities’ standard and a lower threshold than the ‘proven beyond reasonable doubt’ standard required for criminal proceedings.

⁴ “*In some cases, a balance of probabilities standard is appropriate; in other cases (such as where the anticipated behaviour is child sexual abuse), it should be lower. If the nature of the role is particularly sensitive and the issues of potential concern arising in an individual’s past are particularly serious, a lower threshold for release of unverified ‘intelligence’ information may also be appropriate.*”

Recommendation

We recommend the Police Vetting Service amend the proposed vetting release for the individual to remove the words "*abnormal attraction to children*" and "*sexual attraction*".

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

26 September 2023

IPCA: 21-8227

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 Kenneth Johnston KC.

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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