



IPCA

Independent Police
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

Wellington witness arrested for obstruction

1. At 7pm on 14 October 2022, Police received a 111 call from a member of the public saying that a group of young men were having a fight in the Freyberg Pool carpark in Wellington. The caller said the fighting had stopped but the group, believed to be in their late teens or early 20s, were still in the carpark. Four officers attended and spoke with members of the group to establish what had occurred.
2. Ms Z had been in the carpark prior to the officers' arrival. She approached Officer A to advocate for the group of young men as she believed they had not been doing anything wrong. After repeatedly questioning Officer A and challenging the presence of Police, she was arrested for obstruction and subsequently, resisting arrest.
3. Ms Z complained to us that Officer A was threatening and used excessive force on her during the arrest process, including choking her once she was placed in the back of the Police car.¹
4. We conducted an independent investigation into the matter.

The Authority's Findings

Issue 1: Was Ms Z's arrest for obstruction lawful and reasonable?

The arrest of Ms Z was lawful and reasonable in the circumstances.

Issue 2: Did officers use excessive force during the arrest process?

The force used on Ms Z was reasonable and proportionate in the circumstances.

Issue 3: Was Officer A's use of force in the back of the Police car reasonable and justified?

The force used by Officer A in the Police car was reasonable and proportionate in the circumstances.

¹ Ms Z also complained about how she was treated in the custody unit. We reviewed her time in custody and had no concerns.

Analysis of the Issues

ISSUE 1: WAS MS Z'S ARREST FOR OBSTRUCTION LAWFUL AND REASONABLE?

5. The attending officers were told by the dispatcher that:
 - there were approximately twelve males who had been physically fighting in the carpark;
 - they had *"all been drinking"* and were intoxicated; and
 - they seemed to have stopped fighting but were now all standing around the carpark.
6. Officers A and B drove to the carpark under flashing lights, arriving shortly before Officers C and D and a Police applicant who was observing.
7. Upon arrival, the officers saw the group of young men standing around in the carpark next to their cars. Officer A suspected members of the group had been fighting due to the 111-call and because two of the young men were pacing close to each other. One of the young men, Mr X, appeared particularly agitated. Officers B, C and D also believed there may have been some kind of altercation prior to their arrival.
8. The officers began speaking with the group to establish who they were and what had occurred prior to their arrival. While the majority of the group were calm and co-operative, the officers all told us they remained vigilant in case any of the young men became aggressive. Officer A was the most experienced officer present. He says he has dealt with a large number of disorder incidents and believed there was a significant risk the fight would *"spark up again"*, despite the presence of Police.
9. The officers did not see any alcohol, though suspected some of the young men *may* have been drinking before Police arrived.
10. During our investigation we were able to locate and speak with two of the young men. Mr Y was the only member of the group who agreed to an interview. He explained the group largely consisted of university students who were meeting to *"chill out"* after finishing exams that morning. As far as he was aware, Mr X was the only member of the group who was drinking alcohol.
11. Mr Y says prior to the arrival of Police, there had been: *"... just a little argument between two boys and then we thought they were going to fight but then nothing really happened. They just hugged it off..."*. Mr Y says he and other group members intervened to calm the 'boys' down and no punches were thrown.

What does Ms Z say?

12. Ms Z and her friend had been sitting in a car in the carpark for about 20-30 minutes before Police arrived. Ms Z says she took notice of the group because they had cushions and blankets in their boots set up like couches. She says they did not appear to be drinking alcohol and were all

chatting and laughing. While sitting in her car, she occasionally looked at the group through her car mirrors because she thought what they were doing was *“really nice”*.

13. Ms Z believed Police had been called *“by some racist who made the entire thing up as an act of violence”*. She wholeheartedly believed the group had not engaged in any behaviour that could be deemed to be ‘fighting’ or threatening.
14. Ms Z says Officer A got out of his car and was immediately hostile, yelling: *“What’s going on here?”*
15. Ms Z says she approached the officers with the intention of letting Police know that the boys had not been doing anything wrong. She told us: *“I went up to be a witness because it was obvious to me that somebody had weaponised the Police...”*. However, Ms Z says the officers were *“very clearly not interested in knowing what was happening. They were very interested in punishing these boys for a situation that they thought had happened.”*
16. We note Ms Z believed there were two Police cars initially at the scene, with a third Police car arriving during the incident. She believed there were nine officers who attended overall. Our investigation found this to be incorrect.

What happened when Ms Z approached the officers?

17. Officer A says Ms Z began yelling almost immediately after he got out of the Police car, and it was apparent from the outset that Ms Z was *“quite issue-driven”*. He says: *“... we’d literally pulled up and were walking over to speak with these guys and she was yelling that we were just there because of their skin colour”*.
18. Ms Z approached Officer A as he began to speak with one of the young men. He thought she must be involved with the group in some way, though it transpired she was unknown to them.
19. Ms Z says she asked questions and made comments such as:
 - *“I don’t know why you need four cops and two cop cars for this situation.”*
 - *“Why are you being so aggressive?”*
 - *“You should want to know what’s going on here. Don’t you want to understand what’s happened here?”*
 - *“Can I talk with one of you about this? I’ve been here for like at least 20 minutes and nothing is wrong.”*
20. Ms Z says none of the officers would engage with her, and kept deferring to Officer A. She recalls Officer A twice telling her that if she was not involved in the situation she needed to move back or they would lock her up. Ms Z began recording the interaction on her mobile phone.
21. The officers and Mr Y each provided similar accounts, that Ms Z repeatedly yelled questions and challenged the presence of Police.

22. The officers recall Ms Z was moving closer to Officer A and believe she was stopping him from being able to speak with the young men. The officers all indicated they found her actions problematic given Police were outnumbered by the group of young men who they reasonably believed might become volatile.

23. Mr Y told us:

"[Ms Z] just came out of nowhere and then she started walking and then that's when she started shouting and stuff... the cops are being like nice with us and they knew we weren't in trouble and then she just came, started yelling and stuff and that's when they arrested her and she was like right next to them..."

What does the footage show?

24. The footage taken on Ms Z's phone is 1.38 minutes long. It begins with Ms Z asking Officer A what he was going to lock her up for and ends with Officer A arresting her. At the beginning of the footage, two of the young men can be seen speaking with Officers A, C and D.

25. Throughout the footage, Ms Z appears to be about 2–3 metres away from Officer A. She repeatedly questions him in the manner described. Officer A makes attempts to speak with a member of the group with his back to Ms Z. He stops and turns towards Ms Z three times, to address her and warns her three times that she will be arrested for obstruction. At one point he asks her: *"Why are you such a busy body?"*

26. About 25 seconds into the footage, Ms Z says: *"I don't understand why you need four cops."* One of the young men (off-screen) says: *"Yeah, why do you need four here?"* Other members of the group tell him to *"Shut up"*. Mr X then appears on-screen, from behind Officer A. He moves towards Officers A and D, saying: *"Who do you want me to take it up with?"* Another young man places a hand on Mr X's arm and says: *"Nah, nah, nah. Shut up, bro."* Mr X concedes and walks away from the officers towards the group's cars.

27. Ms Z then moves to stand approximately one metre away from Officer A while saying: *"You've gotten a call 'cause there's brown people hanging out in a car park."* Officer A told us he now believed Ms Z was *"way too close"* for him to be comfortable.

28. Footage shows Officer A takes two steps towards Ms Z, while pointing his phone at her. He again warns her she will be locked up for obstruction, telling her to: *"Go away now"*. Ms Z responds by asking what he can legally arrest her for. Officer A then tells her she is under arrest.² Ms Z begins screaming, saying: *"Literally, what the fuck for?"*

Why did Officer A not treat Ms Z as a witness?

29. Ms Z says the issue could have been avoided if she had been treated as a witness instead of threatened with arrest.

² Ms Z's arrest occurred about six minutes after the officers had arrived in the carpark.

30. When we put this to Officer A, he told us: *“She didn’t really give us a chance, to be honest. She was just yelling at us.”* He said the priority was to deal with the young men because there was a risk they might become volatile. He says he intended to speak to any witnesses afterwards, but her actions did not allow for this.
31. We agree that it was appropriate for the officers to focus on the group of young men, although Officer A may have missed an opportunity to de-escalate the situation by not assuring Ms Z an officer would listen to her concerns after they had spoken with the young men.
32. Ms Z questioned and challenged Officer A primarily out of a genuine belief that the young men were being unfairly targeted by Police. We acknowledge her engagement was annoying to Officer A. However, she was lawfully entitled to ask him questions.³

Was the arrest legally justified?

33. The law allows for officers to arrest a person who *“resists or intentionally obstructs, or incites or encourages any other person to resist or obstruct... any constable... acting in the execution of his duty.”*⁴ The law does not stipulate that obstruction must be physical.
34. Ms Z could be considered to be obstructing Officer A if she was intentionally hindering his ability to do his duty.
35. Officer A was attempting to gather information about what had occurred from one of the young men at the time of the arrest, and trying to ensure no fighting took place. He was executing his duty.
36. Officer A says Ms Z was preventing him from performing his duties as she made him feel unsafe:
 - Ms Z was approaching Officer A from out of his line of sight. Officer A says: *“I was repeatedly turning towards her in case she were to assault me”*. He did not know who Ms Z was, her history, or how she may be connected to the young men.
 - Officer A believed he may be assaulted by a member of the group while his attention was diverted by Ms Z, especially given some members of the group appeared agitated. He was mindful that some of his colleagues had recently been seriously injured while distracted by others when policing a crowd.
 - Officer A also believed Ms Z’s comments may be agitating the group.
37. Officer A says he was hoping Ms Z would heed his warnings and allow him to speak with the group. However, she did not.
38. In our assessment, it was reasonable for Officer A to instruct Ms Z to move away, allowing him to focus on speaking with the young men.

³ Section 14 of the New Zealand Bill of Rights Act 1990 states: *“Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.”*

⁴ Section 23(a) of the Summary Offences Act 1981.

39. Instead, Ms Z moved closer to him and persisted in engaging with him.
40. While Ms Z was not physically preventing Officer A from executing his duty, we accept Officer A reasonably assessed her actions were obstructing him from doing so. Therefore, he was justified in arresting her for obstruction.

FINDING ON ISSUE 1

The arrest of Ms Z was lawful and reasonable in the circumstances.

ISSUE 2: DID OFFICERS USE EXCESSIVE FORCE DURING THE ARREST PROCESS?

Was excessive force used when Ms Z was placed in handcuffs?

41. Ms Z says she was “*forcefully attacked*” by Officer A when he placed her in handcuffs.⁵ She says Officer A yanked her left arm, holding it in an unnatural position while pulling it in the wrong direction. He then bent it “*hard and fast*” behind her back to the point that she thought her shoulder would dislocate. She recalls panicking and screaming: “*Help me, help me. He is arresting me for asking him questions... he is kidnapping me.*”
42. The officers say the handcuffing followed standard procedures and that the force used was minimal. Officer A says he put one cuff on Ms Z, and she immediately began resisting, pulling her arm back. Officer C went to assist Officer A after seeing Ms Z pull away from him. Officers A and C each took hold of one of Ms Z’s arms and placed them behind her back to be handcuffed. Ms Z remained standing, though wriggling her body around.
43. Mr Y’s account corroborated the accounts of the officers. He recalls Ms Z screaming and swearing and “*just going crazy*” while she was placed in the handcuffs. He says he and some other members of the group were mindful there were young children around, so tried telling her to be quiet, “*but she didn’t want to listen*”. He believed the officers acted professionally, saying they “*kept it pretty calm to be honest*”.
44. None of the witnesses saw Ms Z’s arm yanked in the manner described by Ms Z. While Ms Z may have felt as though her arm was yanked, most likely this came about by her pulling away from the officers. We are satisfied that neither officer yanked her arm excessively.
45. Ms Z also believes Officer A may have kned her hard in the back, between her shoulder blades during the handcuffing, though says she is not certain of this. Officer A denies kneeling her, saying he would never use that tactic and could not have physically done so, given she was standing. None of the witnesses saw either officer place a knee in her back. We are satisfied Officer A did not knee Ms Z in the back.

⁵ Ms Z and the Police applicant believed Officer B assisted in placing her in handcuffs and took her to the Police car, however, based on the accounts of other officers and Mr Y, it was Officer C who assisted.

Was excessive force used when Ms Z was taken to the Police car?

46. Ms Z says she was dragged by the officers to the Police car. She says she was not refusing to walk, but rather, was being pulled downwards and to the side to the point where she felt she may fall. She says she told the officers: “... *let me walk, you’re pulling me in different directions, I can’t walk.*”
47. Officers A and C stood on either side of Ms Z and held her by the arms to escort her to the Police car. Officer A says Ms Z initially walked with them, but then began picking her legs up and swinging them. He says Ms Z: “... *sort of swung up and tried to kick me several times*”. Although other witnesses did not specifically see Ms Z attempting to kick Officer A, some recalled seeing her kicking her legs around.
48. As they got to the back of the Police car, Ms Z used the officers as leverage, swinging up to kick the car. Ms Z says she only put her leg up onto the back of the car and pushed off in an attempt to stabilise herself. However, Officer A thought she was trying to damage the vehicle.⁶
49. Ms Z got into the rear, left side of the car on her own and was placed into a seatbelt without incident.
50. Mr Y told us: “... *there wasn’t really that much force used. She was just jumping around everywhere, they kept her pretty calm and just told her to hop in.*”
51. Section 39 empowers Police to use “*such force as may be necessary*” to overcome any force used in resisting an arrest or the execution of a process (such as handcuffing).⁷
52. In our view, it was reasonable for Officer A to believe Ms Z was using force to resist arrest, given she was wriggling around and swinging her legs. This is corroborated by the accounts of the witnesses.
53. We are satisfied the force used by Officers A and C during this process was low-level and that it was reasonable and proportionate in the circumstances.

FINDING ON ISSUE 2

The force used on Ms Z was reasonable and proportionate in the circumstances.

ISSUE 3: WAS OFFICER A’S USE OF FORCE IN THE BACK OF THE POLICE CAR REASONABLE AND JUSTIFIED?

54. Officer A closed the door and left Ms Z to sit in the car on her own in the hope that she would calm down. However, after one or two minutes she was still screaming and agitated, so he

⁶ Officer A says he considered whether to charge Ms Z with attempting to kick him and kicking the car, however decided not to as Ms Z had not connected with him during the kick, had not damaged the Police car, and had no history with Police.

⁷ See paragraphs 75 to 79 for Police policy on the use of force.

decided to take her to the custody unit. Officer A got into the back seat with Ms Z and Officer B got into the driver's seat.

55. Ms Z says when Officer A got into the car, he told her: *"This will teach you for being such a busy body."* She says she began trying to degrade Officer A, and that he retorted, calling her a 'bitch'. Officer A denies this.
56. Ms Z alleges Officer A then 'choked' her by holding her neck against the window with his forearm. Officer A says he did not 'choke' Ms Z, but rather, directed her head away from him in self-defence.

What led to the use of force?

57. Officer A and Ms Z believe the use of force, which occurred as the car began to move out of the carpark, was triggered by different events.
58. Officer A says Ms Z was still screaming at him and was so agitated that spit was flying from her mouth, landing on his face. He did not believe she was intentionally spitting at him at this point. He told her: *"You're spitting on me... Can you just calm down?"* He says Ms Z stopped talking, got *"a look in her eye"*, paused, and inhaled as if to gather saliva in her mouth. Based on previous experiences, he believed she was about to intentionally spit on him.
59. Ms Z denies doing anything that would have led Officer A to think she was going to spit at him. She says: *"It reached that boiling point when I called him 'bent' and he was literally red in the face."*

How does Ms Z describe the use of force?

60. Ms Z says Officer A brought his right forearm swiftly towards her throat and with pressure pushed her against the window. She estimates he held his arm on her throat for about six seconds and recalls thinking: *"I actually can't breathe."* She says Officer A then removed his forearm of his own accord.
61. Ms Z says while Officer A was 'choking' her, she could see Officer B looking at her through the rear-view mirror.

How does Officer A describe the use of force?

62. Officer A says he placed his left forearm against Ms Z's ear, then directed her head away from him, towards the window to ensure that she could not spit at him.
63. Officer A says this is a technique he has also used successfully on other occasions to avoid being spat at. He always ensures his forearm is across the ear, not the throat.
64. Officer A believes he held Ms Z this way for about 30 seconds. He let her go as soon as she stopped screaming and when he believed she was no longer going to spit at him.

Are there any other witnesses?

65. Officer B says she cannot recall seeing Ms Z through the mirror and did not see the use of force. Nor did Officers C and D who had returned to speak with the young men.
66. Mr Y recalls Ms Z just kept screaming while in the car but did not see any force used on Ms Z while she was in the Police car.
67. The Police applicant heard Ms Z continue yelling in the back seat of the car. He saw her head moving from side to side as the car drove past him. He did not see Ms Z's head being held against the window.
68. Ms Z told us her friend later told her one of the young men had said: "*Why has he got his arm on her throat?*" This of course is third-hand hearsay. We cannot corroborate this as Ms Z's friend did not want to provide us with an account.⁸

Was Officer A's use of force legally justified?

69. Section 48 of the Crimes Act provides that any person, including a Police officer, is legally justified in using reasonable force in defence of themselves or another.
70. To rely on a defence under section 48, the individual officer's actions must be assessed on both a subjective and an objective basis. This assessment involves three questions:
 - a) What were the circumstances as the officer believed them to be? (a subjective test)
 - b) Was the officer's use of force against Ms Z for the purpose of defending himself or another? (a subjective test)
 - c) Was the officer's use of force against Ms Z reasonable in the circumstances as the officer believed them to be? (an objective test)

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

71. We accept Officer A's evidence that he believed Ms Z had tried to kick him while being escorted to the car, that she had deliberately kicked the car before getting in, and that, inside the car, she was preparing to spit at him so that he had to act immediately to prevent this.

Was Officer A's use of force for the purpose of defending himself?

72. Accordingly, regardless of whether Ms Z was intending to spit on Officer A, we accept that Officer A acted to defend himself and prevent her from doing so.

⁸ The young men told Officers C and D they did not know who Ms Z was. The officers were satisfied no offences had been committed and the young men were able to leave the carpark.

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

73. By all accounts, including her own, Ms Z was in a highly agitated state. She resisted arrest. It is also evident her challenges and verbal taunting was directed at Officer A.
74. We accept Officer A's evidence as to the nature of the force he employed, and in our assessment this was proportionate and reasonable in the circumstances as he believed them to be.

FINDING ON ISSUE 3

The force used by Officer A in the Police car was reasonable and proportionate in the circumstances.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

12 December 2023

IPCA: 23-16549

Appendix

'USE OF FORCE' POLICY

75. The Police's '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, retrain 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.
76. Police policy provides a Tactical Options Framework (TOF) 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 assessment as the TENR (Threat, Exposure, Necessity and Response).
77. 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).
78. 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, the legal authority to use force is derived from the law and not from Police policy.
79. 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 take 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.

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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