

Police use of force in Kaeo

1. At 5 am on 13 January 2023, the Armed Offenders Squad (AOS) executed an arrest warrant for a man (Mr Z) at a rural property near Kaeo. Police had information that Mr Z had a firearm and posed a significant risk to their safety. During the operation, Police fatally shot two dogs, and they removed another man (Mr X) out of a house, causing him a head injury.
2. We received a complaint from Ms Y alleging that Police ‘smashed’ Mr X’s head into a wall and forced him onto the ground, where he was punched and kicked.
3. Our independent investigation focused on Officer A’s use of force on Mr X. As part of our inquiry, we interviewed Mr X and seven Police officers and reviewed the relevant Police records about the operation.
4. Parallel to the Authority’s independent investigation, Police also investigated Ms Y’s complaint. We agreed with the Police investigation’s findings and have written to Ms Y with our view on the issues not addressed in this report.

The Authority’s Findings

Issue 1: Was Officer A’s use of force against Mr X justified and reasonable?

Officer A used reasonable and proportionate force to pull Mr X out of the house and to restrain him on the ground.

There is no evidence of the use of excessive force. We are unable to determine what caused Mr X’s head injury.

Issue 2: Did Police provide adequate medical care for Mr X’s head injury?

Police breached their ‘head injury’ policy by not providing the required medical care for Mr X’s head injury.

Analysis of the Issues

THE AUTHORITY'S ROLE

5. After supervising a Police investigation or conducting an independent investigation, the Authority's statutory responsibility is to:

"... form an opinion on whether or not any decision, recommendation, act, omission, conduct, policy, practice, or procedure which may be the subject matter of the investigation was contrary to law, unreasonable, unjustified, unfair or undesirable."

6. The Authority must convey its opinion to Police, and may make whatever recommendations it regards as appropriate. The Authority's jurisdiction is wide-ranging and expressly includes reaching a view as to whether or not the Police should consider commencing civil (disciplinary) or criminal proceedings.

ISSUE 1: WAS OFFICER A'S USE OF FORCE AGAINST MR X JUSTIFIED AND REASONABLE?

7. Here, we will consider whether the officer's use of force was unjustified (judged by the civil standard: on the balance of probabilities).

What legal provisions apply to the incident?

8. Besides executing an arrest warrant, Police had invoked a warrantless search power, enabling them to search the property and any persons for suspected firearms. They had the authority to detain the occupants to search them. Failure to comply constituted obstruction of a Police process.¹
9. Section 39 of the Crimes Act 1961 allows Police officers to use necessary force to overcome any resistance that prevents them from carrying out an arrest or lawful process.²

What happened?

10. When the AOS first approached Mr Z's house, he ran out the back door and fled into nearby bushland. The AOS surrounded the house and instructed the remaining occupants to come out.
11. Officer A positioned himself in a grassy ditch that ran along the back wall of the house.³ A scaffold plank covered in wire or plastic mesh extended from the back door to the opposite bank.
12. Mr X was standing at the back door and yelling at Police. After telling Mr X that he was arrested for obstruction, Officer A grabbed hold of him and pulled him out of the house. Mr X resisted being handcuffed, and he was brought to the ground and handcuffed by Officer A with the help

¹ See paragraphs 49-52.

² See paragraph 53.

³ The ditch was about one metre deep.

of Officer B. Officer A picked Mr X up and noticed what he assessed as being a minor injury to his forehead. He handed him over to Officer F, who applied basic first aid.

What does Mr X say about the force used against him?

13. Mr X told us that Police were yelling at the occupants of the house from outside. He repeatedly asked them: *"Please calm down; you're scaring the kids."* Mr X says he moved to the open back door to comply with their instructions and was pulled out of the house without warning.

14. Mr X says that after he was pulled out of the house, he landed on his elbows atop the plank that bridged the ditch. Mr X relates:

"That's when, you know, I remember I got whacked, and then my head was bleeding... but I remember landing like this and thinking: 'Oh, I'm all right', and then it was like bam-bam-bam... I was getting like pummelled... I believe I was hit two or three times."

15. Mr X says that he did not hit his head on the way down and that he landed on the plank with his elbows. He says he felt a blow to the back of his head, and when he lifted his head to look at what was happening, he felt a blow to his forehead. He says he could not see what caused the blows because it was still dark outside. Mr X says that Officer A then slammed him to the ground, grabbed his arm, punched him, and kned him in the back. Officer A restrained him by applying zip ties to his hands. When he was lifted, he noticed significant bleeding from the injury to his forehead. Mr X was adamant that Officer A was the only officer involved in restraining and handcuffing him. However, based on other accounts, we are satisfied that Officer B assisted Officer A with this.

16. The doctor who treated Mr X at the hospital documented that Mr X claimed that a Police officer had hit him on the head with a metallic object. When asked about what he told the doctor, Mr X first explained that he could not remember due to suffering a head injury from a car crash that occurred sometime after this incident. When asked if he mentioned a metallic object, Mr X said he might have told the doctor that he was hit on the head with it when he looked up.

17. We directed Mr X's attention to his initial account, wherein he said it was dark and he could not see what hit him on the head. Mr X responded:

"Can I say this? There were a couple of things that the doctor had written down, and I went over it and thought: 'Hang on, that's not exactly what I said.' It was along the lines of what I said, but it wasn't exactly what I said, and that's why I left the doctor's early."

18. We asked Mr X if he disagreed specifically with the doctor's report that he had been hit on the head with a metallic object, to which he responded:

"Could have been. I'm not too sure. I can't comment on that because if I was to I would be lying. At this point in time, after having two massive head injuries, it's hard for me to quite recall exactly why it happened."

19. We noted that there were discrepancies in Mr X's accounts which he provided an explanation for.

What does Officer A say about the force he used against Mr X?

20. Officer A says he heard gunfire as he approached the back door, though did not immediately know who had fired and the reason for the gunfire. He positioned himself inside the ditch near the back door and instructed Mr X several times to exit the house, or he would be arrested for obstruction. Officer A believed it was unsafe to enter the house, and by not coming out when instructed, Mr X was obstructing the execution of a lawful process.
21. Officer A says when Mr X approached the open door, he told him that he was under arrest for obstruction and grabbed his arm. Mr X resisted by trying to move back into the house. In response, Officer A pulled Mr X out of the doorway and into the ditch, where they both stood upright. Officer A tried to handcuff Mr X, who continued to resist by refusing to offer his hands.
22. Officer A pulled Mr X down onto the ground, where he continued to resist the attempt to handcuff him. Officer B arrived and helped secure Mr X's hands. Officer A lifted Mr X off the ground, noticing a *"small amount of blood"* on his forehead. He took Mr X to the corner of the house, where Officer F took over custody.
23. Officer A denies punching, kicking, or hitting Mr X with an object. He is unable to explain the cause of Mr X's head injury but suggests it might have occurred when he took him to the ground.

What do the other officers say about the force used against Mr X?

24. Officers B, C, D, and E covered the back of the house. They all say that Mr X refused to exit the house when instructed and that he was yelling abuse at the Police.
25. All the officers say that Mr X was pulled from the house and then taken to the ground. None of them saw any punching, kicking, or Officer A hitting Mr X on the head with an object.
26. Officer B, who helped Officer A restrain Mr X, says that Mr X was lying face down on the ground, and Officer A was struggling to secure his hands to handcuff him. Mr X resisted by trying to turn over and stand up. Officer B says he approached Mr X and knelt on him, putting his weight on his back to hold him down so that Officer A could secure his hands. Mr X thrashed about, and it took them approximately a minute to handcuff him. When Mr X was lifted, Officer B also noticed a *"small cut"* to his forehead.
27. Officer F, who took custody of Mr X, saw the blood on his forehead. When asked about it, Mr X told Officer F, *"The cops done it."* When he asked again what had happened, Mr X merely said: *"They know."*
28. The AOS Commander spoke with Mr X after his arrest and saw his head was bandaged. According to him, Mr X did not say anything about being punched, kicked, or struck on the head with an object. However, the AOS Commander also says he did not specifically ask Mr X how he got injured.

What caused Mr X's injuries?

29. There is a conflict in the accounts of Mr X, Ms Y, and the Police about how Mr X sustained the injury to his forehead. Although Ms Y was the complainant, she did not see what happened when Mr X was pulled from the house.
30. Although Mr X's account of what happened is inconsistent at times, we accept that, given his subsequent head injury, he cannot remember what happened. However, this also means that Mr X's account cannot be relied on as an accurate record of what had happened.
31. Officers B, C, D, and E's accounts do not support Mr X's claim of being intentionally punched, kicked, or hit on the head with an object. However, it is important to note that none of the officers continuously observed Officer A or Mr X, so we cannot completely rule out the possibility of this occurring.
32. Mr X's medical notes record that he had several bruises over his torso. Given his resistance and subsequent restraining on the ground, it is possible that the bruises were sustained during the course of his arrest.
33. On the available evidence, we cannot determine how Mr X sustained the head injury and are consequently unable to say whether it occurred as a result of an intentional action by Officer A or accidentally as part of Mr X's being taken to the ground.

Was Officer A justified in using force?

34. Section 39 of the Crimes Act 1961 empowers Police to use "*such force as may be necessary*" to overcome any force used in resisting an arrest or the execution of any sentence, warrant, or process. "*Necessary*" force in this context is generally accepted as meaning "*reasonable*" and "*proportionate to the degree of force being used to resist*".
35. Under section 39, the Authority must consider:
 - a) Did the officer genuinely believe that the person was using force to resist (a subjective test)?
 - b) If so, was it reasonable for the officer to conclude it was necessary to use force to overcome that resistance (an objective test)?
 - c) If so, was the officer's use of force to overcome that resistance reasonable (an objective test)?

Did Officer A believe Mr X was resisting arrest?

36. Officer A first appealed to Mr X to come out of the house and thereafter warned him that he would be arrested for obstruction if he did not. Other officers positioned at the back of the house heard the instructions and say that Mr X responded by yelling abuse at Police.

37. Officer A says:

“I told him he was under arrest and I grabbed him, grabbed him by his arm and he immediately tried to pull back inside the address, was trying to rip his arm free”

38. Officer A says that after pulling him down into the ditch, Mr X was yelling, screaming, pulling his arms away, and *“trying to fight me off basically.”*

Was it reasonable for Officer A to conclude it was necessary to use force to overcome that resistance?

39. Officer A was aware that Mr Z was possibly armed and that the AOS were used to assist with Mr Z’s arrest because of the serious risk involved. When Officer A heard the initial gunfire, he did not know that it was the Police who had fatally shot a dog; this information was only transmitted after Mr X’s arrest over the Police radio. In the circumstances, we conclude Officer A reasonably assessed that it was too dangerous to go into the house and that it was necessary and urgent to get Mr X out of it.

40. We accept it was reasonable for Officer A to believe Mr X was using force to resist arrest, given he was refusing to comply with instructions, tried to move backwards into the house when Officer A first took hold of him, and pulled his arms away from Officer A.

Was Officer A’s use of force reasonable in the circumstances?

41. Officer A says that when Mr X pulled back, *“I grabbed him with two hands and pulled him out of the doorway down to where I was ... in the culvert.”* Officer A explained he was a metre below Mr X, within a tight space, standing in a gap between the door and the plank. He says he pulled Mr X down towards himself.

42. Officer A’s technique for pulling Mr X from the house does not appear to us to be dangerous or out of the ordinary.

43. We conclude that there is no evidence of any use of excessive force. In the circumstances, under section 39 of the Crimes Act 1961, Officer A used reasonable and proportionate force to overcome Mr X’s resistance.

FINDINGS ON ISSUE 1

Officer A used reasonable and proportionate force to pull Mr X out of the house and to restrain him on the ground.

There is no evidence of the use of excessive force. We are unable to determine what caused Mr X’s head injury.

ISSUE 2: DID POLICE PROVIDE ADEQUATE MEDICAL CARE FOR MR X’S INJURY?

44. The Police ‘Head injury’ policy requires Police staff to have all head injuries assessed by a medical practitioner.⁴ Police did not ensure this occurred.

⁴ See paragraph 54.

45. Officer A quickly picked Mr X up and briefly looked at his face, noticing a small amount of blood. Officer B also noticed what he thought was a “*small cut.*” It is possible the two officers did not notice the extent of the injury because it was still dark, and their focus was on safely securing the house and arresting Mr Z.
46. Conversely, Officer F noticed that Mr X had a “*bad cut*” on his forehead. He says he believed it was “*bad*” due to its length, but he did not know how deep it was. He offered to render first aid, but Mr X initially refused. Later, Mr X allowed Officer F to bandage his injury to stop the bleeding. Officer F explained that he did not call an ambulance for Mr X's injury because he thought his supervisor, aware of the injury, would assess the need and contact an ambulance if required.
47. The AOS Commander says that he was unaware of the extent of Mr X's injury. He spoke with Mr X and says: “*He didn't appear to be suffering any adverse effects, apart from the bandage. His eyes weren't – pupils weren't dilated any more than they normally were for someone like that. He didn't appear to be concussed or anything.*” He explains that he would have arranged for an ambulance to be called if he had known the extent of Mr X's head injury.
48. The AOS Commander acknowledges that the Police should have called a medical practitioner to assess Mr X's head injury and has since implemented a process to prevent a recurrence.

FINDING ON ISSUE 2

Police breached their ‘head injury’ policy by not providing the required medical care for Mr X's head injury.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

15 October 2024

IPCA: 23-16797

Appendix – Laws and Policies

Section 7 of the Search and Surveillance Act 2012

49. A constable may enter a place, without a warrant, to search for and arrest a person unlawfully at large and reasonably believe that the person is there. (Unlawfully at large refers to a person for whose arrest a warrant, other than a fines warrant, is in force).

Section 18 of the Search and Surveillance Act 2012

50. A constable who has reasonable grounds to suspect that any one or more of the circumstances in subsection (2) exist may, without a warrant:
- a. search the person
 - b. search any thing in the person's possession / control
 - c. enter a place to carry out the above.
2. The circumstances are that the person is carrying arms, or is in possession of them, or has them under his or her control, and:
- a. he or she is in breach of the Arms Act 1983 that, under the Family Violence Act 2018, a protection order is in force against the person.

Section 118 of the Search and Surveillance Act 2012

51. If any constable exercises a search power in relation to a place, that constable may, for the purposes of determining whether there is any connection between a person at the place and the object of the search, detain any person who is at the place at the commencement of the search. A detention commences when the constable exercising the search power directs that person to remain at the place and ends when that person is told by the constable that he or she is free to leave the place or vehicle.

Section 23 of the Summary Offences Act 1981

52. Every person is liable to imprisonment/fine who resists or intentionally obstructs any constable acting in the execution of his duty.

Section 39 of the Crimes Act 1961

53. Where any person is justified, or protected from criminal responsibility, in executing or assisting to execute any sentence, warrant, or process, or in making or assisting to make any arrest, that justification or protection shall extend and apply to the use by him or her of such force as may be necessary to overcome any force used in resisting such execution or arrest, unless the sentence, warrant, or process can be executed or the arrest made by reasonable means in a less violent manner.

'Head injury' policy

54. Any suspected head injury must be assessed by a Health Practitioner. 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 a concussion, a blood clot, or a bleed to the brain.

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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