

## Inappropriate behaviour amounting to serious misconduct

1. In October 2023, Police notified us of a complaint made by a junior female officer (Officer B) about sustained inappropriate behaviour, including comments of a sexual nature towards her, by a senior male officer who was also her supervisor (Officer A).
2. The inappropriate behaviour occurred throughout Officer B's two-month secondment to Officer A's section but intensified towards the end. While Officer A's behaviour was verbal, the frequency and nature of it over the secondment created an increasingly uncomfortable atmosphere for Officer B, to the point where she believed the behaviour could escalate and become physical, and she felt unsafe working alongside Officer A.
3. Once the secondment ended, Officer B made a formal complaint. In addition to making their own inquiries, Police advised the Authority of the complaint, and we undertook an independent investigation.
4. Our investigator considered the law in relation to sexual harassment in the workplace; reviewed Police values and policies; reviewed an independent report from July 2022 commissioned by Police about the workplace culture within the relevant area;<sup>1</sup> and interviewed Officer B, Officer A, four other officers and one former officer.

### What were our findings in relation to Officer B's allegations?

5. In respect of Officer B's allegations, we concluded that:
  - a) Officer A became overly involved in his colleagues' private lives and, as a result, his behaviour was at times inappropriate. His attitude and comments in relation to both female officers and female victims of crime lacked judgement and failed to maintain professional boundaries. In our assessment, as someone in a position of leadership, Officer A should have exercised better judgement and professionalism in his behaviour towards others (including Officer B).
  - b) Although it may not have been his intention, Officer A's behaviour towards Officer B nonetheless falls within the definition of sexual harassment as defined by section 108(1)(b) of the Employment Relations Act 2000 and therefore constituted a breach of section 62 of the Human Rights Act 1993. It was also a breach of Police values, policies and code of conduct.
  - c) Officer A lacked insight into, and was not prepared to take responsibility for, his behaviour.

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<sup>1</sup> New Zealand Police is divided into twelve districts, with each district divided into areas.

6. The Authority's examination of these matters also raised concerns in relation to the way Police conducted their inquiries into Officer B's allegations. This is discussed further below.

### What employment process did Police undertake?

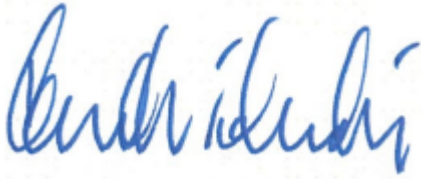
7. When a complaint of sexual harassment is received, employers must inquire into the facts and, if satisfied the behaviour occurred, prevent that behaviour happening again.<sup>2</sup> We acknowledge that the method of inquiring into the facts is a matter for the employer to determine and, in this instance, Police chose to move straight to a disciplinary meeting.<sup>3</sup>
8. Officers A and B both raised concerns about how Police conducted the employment process. In particular they were both concerned about the limited and informal nature of the inquiry, the lack of communication around the process itself and possible outcomes. Officer A was also concerned there was an element of predetermination.
9. After an extended period of leave, and before the disciplinary meeting could be convened, Officer A resigned from Police. Subsequently, Officer A provided Police with written responses to the allegations and Police later confirmed that, given Officer A's resignation, they would take no further disciplinary action.
10. In respect of the process, we concluded that:
  - a) By failing to take formal accounts from Officers A and B, Police did not properly inquire into the allegations of sexual harassment.
  - b) Police should have conducted a more formal employment investigation to ensure concerns about Officer A's behaviour were comprehensively examined. Moving directly to a disciplinary meeting implied, or at least invited those involved to infer, that Officer B's allegations had already been accepted.
  - c) The wording of the letter inviting Officer A to a disciplinary meeting also implied acceptance of the allegations.
  - d) Predetermination is contrary to natural justice or procedural fairness and Police's Employment Resolutions and Disciplinary Process, and inconsistent with an employer's obligations to act in good faith.
  - e) Communication from Police to both Officers A and B throughout the process was infrequent, informal and, at times, inaccurate. The lack of communication about the progress and likely outcomes of the employment process, together with a failure to provide adequate support to the officers involved, appears to be contrary to Police's Employment Resolutions and Disciplinary Policy and Guidelines as well as their Unacceptable behaviour – Kia Tū policy.
  - f) Police should have considered suspending, moving or making some other arrangement for Officer A for the duration of the employment process.
  - g) Because the matter potentially involved serious misconduct, Police should have completed the employment process, despite Officer A's resignation, and made a finding on the alleged conduct.

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<sup>2</sup> Section 117(3)(4) of the Employment Relations Act 2000.

<sup>3</sup> A disciplinary meeting is an option available when there is enough information for a decision-maker to make a preliminary decision without further investigation. The decision-maker makes the final decision after considering the response of the employee to the allegations.

11. Before publishing this report, our draft findings were provided to Police as part of our standard process.<sup>4</sup> Police provided a contrary view to some of our findings in relation to the employment process. We acknowledge the explanations Police have provided but our position remains unchanged.



**Judge Kenneth Johnston KC**  
Chair  
Independent Police Conduct Authority

30 October 2024

**IPCA: 23-20140**

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<sup>4</sup> Section 31 of the Independent Police Conduct Authority Act 1988.