



IPCA

Independent Police
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

Officer's use of force on child in Napier unjustified

1. On 14 November 2023, Police responded to a report concerning a young female, eleven-year-old Child Z, in central Napier. The attending officers located Child Z, who fled from the area. Child Z's twelve-year-old brother, Child Y, was close by.
2. Police located the two children, detaining and handcuffing them. They then returned the children to the care of Oranga Tamariki, who had custody of them. Once the handcuffs were removed at the Oranga Tamariki office, Child Z spat at an officer who used force to restrain her.
3. Oranga Tamariki complained to Police about the amount of force used to restrain Child Z, providing CCTV footage of the incident which appeared to show Officer A initially grabbing Child Z by the throat, pushing her against a wall and holding her there for about a minute. They also raised concerns about handcuffing children in their care. Police reviewed the matter and considered the force used by the officer to be justified.
4. Police subsequently notified us of the complaint.¹ We conducted an independent investigation.

The Authority's Findings

Issue 1: Were the children lawfully detained?

Children Y and Z were unlawfully detained and unjustifiably handcuffed. However, in our assessment, this is not a case in which Police should consider laying criminal charges or initiating disciplinary proceedings. In the circumstances of this case, we consider it is more appropriate to recommend that Police carry out additional training in relation to the areas of law engaged and amend the relevant Police policy documentation.

¹ Section 15 of the Independent Police Conduct Authority Act 1988 says: "The Commissioner shall notify the Authority of every complaint received by the Police, other than a complaint notified to the Commissioner by the Authority."

Issue 2: Was Officer A's use of force against Child Z justified?

Officer A's use of force against Child Z was excessive and therefore unjustified. In our assessment the evidence would not be sufficient to secure a conviction and we do not suggest that Police consider laying criminal charges. Excessive use of force constitutes serious misconduct under the Code of Conduct so in our view, it was open to Police to consider an employment process, but we have not made a formal recommendation to that effect in this case.

Analysis of the Issues

HOW DO WE ASSESS CONDUCT?

5. The Authority was set up by Parliament to provide civilian oversight of Police conduct. Its jurisdiction is set out most clearly in sections 27 and 28 of the Independent Police Conduct Authority Act 1988. What those provisions say about our role in relation to investigations we undertake and those undertaken by Police is that the Authority:

"... shall form an opinion on whether any decision, recommendation, act, omission, conduct, policy, practice or procedure which was the subject matter of the investigation was contrary to law, unreasonable, unjustified, unfair, or undesirable."

6. Having formed its opinion, the Authority must convey that – together with reasons – to Police, and may, in doing so, make recommendations to Police, including that disciplinary or criminal proceedings be considered or initiated against any Police employee.
7. In reaching a view as to whether to recommend disciplinary proceedings, the Authority makes its assessment having regard to the civil standard of proof (on the balance of probabilities). In reaching a view as to whether to recommend criminal proceedings, it does so having regard to the criminal standard (beyond reasonable doubt), and the Solicitor-General's Prosecution Guidelines, the primary focus of which (assuming evidential sufficiency) is the public interest.
8. In a use of force case such as this, very often the central issue is whether an officer who has used force can rely on one of the defences in Part 3 of the Crimes Act 1961, or one of the remaining common law defences such as necessity, to justify his or her actions which might otherwise be unlawful.
9. In our reports, we use the terms 'justified', 'not justified' and 'unjustified'. The term "*justified*" is defined in section 2 of the Crimes Act 1961 as meaning "*... not guilty of an offence and not liable to any civil proceeding.*"
10. Although it is not necessarily the case that the term "*justified*" carries the same meaning in the Crimes Act as it does in our legislation, to avoid confusion we employ the Crimes Act definition.
11. When we conclude that a Police officer's actions are "*justified*" we are concluding that in our assessment they do not constitute an offence or civil wrong (effectively misconduct of one sort

or another). However, when we conclude that an officer's actions are "*not justified*" or "*unjustified*", we may be finding that in our assessment they constitute either a civil wrong alone, or both a civil wrong and an offence. In such cases, we will go on to assess whether or not we recommend that Police consider or initiate disciplinary or criminal proceedings.

ISSUE 1: WERE THE CHILDREN LAWFULLY DETAINED?

12. In this section we describe what happened up until the point Children Y and Z were detained and handcuffed. We then assess whether the Police's response was appropriate, lawful and complied with Police policy on arrest and detention and mechanical restraints. Police policy requires officers to:
- have a legislative power to arrest or detain a person, and the arrest or detention must be reasonable or necessary in the particular case;
 - not detain a person suspected of committing an offence for questioning or while enquiries are made unless acting under legislation or arresting the person;
 - consider what risks a person poses in the circumstances when deciding to use mechanical restraints; and
 - handcuff a person only in response to a clear and identified risk (unless the person is being arrested).

What happened?

13. At about 2pm on 14 November 2023, Officer A, who is a senior youth aid officer, was patrolling in her vehicle within the centre of Napier township. She says she came across an unknown person (Child Z), running down the street, kicking over rubbish bins, yelling and looking upset. Soon after, there was a transmission over the Police radio about Child Z's behaviour. Officer A responded, transmitting that she was at the scene.
14. Officer A told us she then drove down the street and parked next to Child Z, who was by that stage accompanied by a man with a dog. The man started shouting at Officer A through her open driver's window. At the same time, Child Z continued to yell and started throwing palm fronds at Officer A's patrol vehicle. Officer A felt threatened and unsafe in the situation, so remained in her vehicle and called for backup over the radio.
15. Other officers headed to the scene, including Officers B and C who were in separate vehicles. Officers B and C both told us they had a limited understanding of what had gone on, but were nonetheless alerted to Officer A's call for backup.
16. Officer A said the sound of Police sirens caused Child Z to flee. Once the other officers arrived, Officer A directed her attention towards the man, warning him for disorderly behaviour and telling him to go on his way.

17. As this was happening, Officers B and C drove around the corner and saw Child Y down the street near the scene. The officers believed Child Y was somehow involved in the incident, so Officer B got out of his vehicle and called out to Child Y. Child Y approached Officer B and provided his name and date of birth when requested. There is a conflict between Officers B and C as to Child Y's behaviour at the time. Officer B describes Child Y as being compliant and nonaggressive, whereas Officer C says Child Y was pushing away, as well as yelling and swearing.
18. On balance, we prefer Officer B's account. Officer B had a surer recollection, and freely conceded that he handcuffed Child Y despite saying Child Y was compliant. Although Officer C said Child Y was pushing away at the time, Officer C also told us he did not need to assist Officer B with the handcuffing. Officer B's description of Child Y's behaviour is also consistent with Officer A's recollection of Child Y as being "*calm*", the CCTV footage of Child Y at the Oranga Tamariki office, and Officer C's later recollection of Child Y "*calming down a lot*".
19. Officer B told us that although Child Y was compliant when he was dealing with him, he believed Child Y had just fled from an incident that involved aggressive behaviour. He says his belief was based on an officer (Officer A) having requested backup over the radio. Officer B detained Child Y and handcuffed him, purportedly to make the situation safe and establish his involvement in what had just occurred. Officer C assumed Officer B had detained Child Y for disorderly behaviour but did not have a conversation with him to find out the reason Child Y was detained.
20. Officer B then searched Child Y's name in the Police system and determined that Child Y was the subject of a custody order.² Officer B told us that as Child Y was not accompanied by a social worker, the custody order gave him the power to return Child Y to Oranga Tamariki and use reasonable force if necessary. Officer B then further detained Child Y on this basis.
21. Soon after this, Child Z came running past Officers B and C and stopped across the road. Child Z started yelling at the officers to leave her brother alone. Officer B asked Child Z to come and talk to him. She refused, swearing and yelling at the officers before leaving. Officer C ran after her and caught Child Z. Officers B and C then detained and handcuffed Child Z to ascertain her involvement in the incident and make the situation safe. After being handcuffed, Child Z continued to be aggressive and spat at the ground and a patrol vehicle.
22. Officer B told us he then identified Child Z and believed she too was subject to a custody order. He detained Child Z to return her to Oranga Tamariki.
23. Neither Officers B or C explained to the children their rights, or informed them why they were detained. Officer B recalls the conversation with the children being centred more around their parents and to whom they should be returned.
24. Officer A then drove around the corner and met with Officers B and C. The officers organised transport for Children Y and Z to be returned to Oranga Tamariki to meet with their social

² As we will discuss further, a custody order pursuant to section 101 of the Oranga Tamariki Act 1989 is a court order placing a child or young person in the custody of another person, in this case the chief executive, Oranga Tamariki.

workers. There was no discussion between the officers as to the specific reason why Children Y and Z were handcuffed or detained.

25. Officer A told us she was surprised to see Child Y, who she recognised, as she did not see him during the incident. Officer A assumed Child Y had been arrested afterwards for disorderly behaviour or assault along with Child Z, whose name she now recognised from her role as a youth aid officer.
26. Officer A accompanied Child Y and Z to the Oranga Tamariki building with two other officers, where they met two social workers in the foyer area. Officer A told us she directed the other officers to remove the handcuffs from Child Y, saying Child Y was “*really calm and compliant*”. Both of the social workers told us that during this conversation the officers said that Child Y had not done anything wrong and that he was not involved in the incident.

Was the initial detention of the children to ascertain their involvement and make the situation safe lawful?

27. Detention without arrest is unlawful. Officers B and C handcuffed Child Y before searching for him in the Police system and establishing he was subject to a custody order.
28. When we asked Officer B explicitly what power he relied on when detaining Child Y, Officer B told us it was:

“... to control the situation in the circumstance, because you can’t know whether or not if he’s [Child Y] the one involved without interacting with him somehow, you can’t know what offences have been committed, you don’t know if he’s subject to a 101 custody order, if there is any other range of factors at place until you’ve had some interaction with him, but that interaction can’t take place until he’s secure and he’s safe, he’s not a threat... so the measure of handcuffing was to first get control of the situation and then explore what is happening and what needs to happen next.”

29. Both Officers B and C also told us they relied initially on similar reasoning to detain Child Z.
30. Absent a legislative power of arrest, it is unlawful for an officer to handcuff and detain a person in order simply to look into a situation. While the officers were entitled to ask questions of the children to ascertain their involvement, they had no lawful basis for handcuffing and detaining them.

Did Officer B lawfully detain the children once he established they were subject to a custody order?

What is the extent of Police power under section 104 of the Oranga Tamariki Act?

31. Under section 104(2), any custody order shall provide authority for any officer to place the child or young person in the custody as directed. In order to place any child or young person in any residence, an officer may use such force as is reasonably necessary. That authority can be

exercised *"from time to time in order to return the child or young person to that person or residence."*³

32. Officer B told us that his understanding of custody orders was that a child is in breach if they are not accompanied in a public place by their custodian, in this case an Oranga Tamariki social worker or other agent. Officer B said that, based on his knowledge that a child was kicking bins and had fled when a call for backup was made, he assumed that a social worker wasn't present, and the child was therefore in breach of a custody order.
33. The purpose of the Act is: *"to promote the well-being of children, young persons and their families, whānau, hapū, iwi and family groups."*⁴ In exercising powers conferred under Part 2 (including section 104), any authorised person must adopt *"as the first and paramount consideration, the well-being and best interests of the child."*⁵
34. Although section 104 allows Police to *"return"* a child or young person to a residence, we do not accept that this can extend to every situation in which Police find a child or young person subject to a custody order unaccompanied in a public place. Such a reading of the section has the potential to lead to absurd results, such as Police intervening to return a child or young person to a residence where that child or young person is authorised to be on their own, such as where he or she was walking to or from school. It cannot be correct that Police are entitled to pick a child up and return them to a residence merely because they are the subject of a custody order. This would be contrary to the purpose of the Act, and the requirement to act in the best interests of the child.
35. We consider that the legislation only entitles Police to return children to their place of residence when there are proper grounds to conclude that they are not authorised to be at large, for example where the child had been reported missing. No such circumstances applied in the case of Children Y and Z.
36. We therefore consider Officer B's detention of the children to give effect to the custody orders under section 104 in the circumstances to be unlawful.

Could Officers B or C have arrested the children instead?

37. Officer B told us the detention under the custody orders avoided the need to arrest the children. Officer B also said he believed there were grounds to do so for kicking the bins, which amounted to disorderly behaviour. Officer C told us he thought both children were guilty of disorderly behaviour and so could be arrested.

When can an officer arrest a person for disorderly behaviour?

38. The Summary Offences Act 1981 provides an officer may arrest a person without warrant if they have good cause to suspect the person has committed certain offences, including disorderly

³ Section 104(3)(b) of the Oranga Tamariki Act 1989.

⁴ Section 4 of the Oranga Tamariki Act 1989.

⁵ Section 13(1) of the Oranga Tamariki Act 1989.

behaviour.⁶ Whether an officer has good cause to suspect can also be determined by objectively assessing the information which came to the notice of the arresting officer. An officer's view as to the weight of such information is irrelevant.⁷

39. In order for behaviour to be disorderly, it must be disruptive of the public order, in the sense that it must substantially disturb the normal functioning of life in the environs of the place. To meet this test, the behaviour must cause anxiety or disturbance at a level that is beyond what a reasonable citizen should be expected to bear, having regard to the time, place and circumstances. It is not sufficient that the behaviour annoys or even wounds the feelings of others.⁸
40. For an officer to arrest a child or young person for an offence, they must also satisfy certain criteria under Oranga Tamariki Act 1989, which include, for example, the officer needing to be satisfied on reasonable grounds the arrest is necessary to ensure the child or young person's appearance in court, or to prevent further offending.⁹

Could Officers B or C have arrested Child Y?

41. The incident was recorded in the Police system at the time as one involving disorder. However, there was limited information recorded, and no description of the circumstances. All that was transmitted over the Police radio, was that there was a verbally aggressive female in the area and that Officer A saw her kick over a rubbish bin. There was no mention of a young male, and no description given of the female. Following Officer A's request for assistance, she also transmitted, *"No big rush they are just being a pain in the ass in Clive Square."*
42. Although Officers B and C both considered Officer A's call for backup meant the situation was urgent, they still did not know the reasons why the call was made. Officer C told us, *"I don't know exactly know what had gone on and to this day I still don't actually know exactly what went on."* Neither Officer B nor Officer C had any interaction with any other officers at the scene prior to interacting with Child Y.
43. From an objective assessment of the information available to Officers B and C, we do not consider the behaviour of Child Y to have come even close to disorderly behaviour and the officers could not reasonably have suspected them of the offence. Yelling abuse in public, or kicking rubbish bins, does not meet the threshold, especially during the day in a busy city square.¹⁰ The test for disorderly behaviour could not reasonably be thought to have been met from the information the officers had to hand.
44. Further, there was little if any basis to suspect that Child Y was even involved. Officers B and C suspected Child Y of being involved only because he was near the scene at the time.

⁶ Sections 4 and 39 of the Summary Offences Act 1981.

⁷ *Caie v Attorney-General* [2005] NZAR 703 (HC).

⁸ *Brooker v Police* [2007] NZSC 30, [2007] 3 NZLR 91.

⁹ Section 214 of the Oranga Tamariki Act 1989.

¹⁰ *Brooker v Police* [2007] NZSC 30, [2007] 3 NZLR 91.

45. Officer C did ask Officer A about Child Y's involvement over the radio. The sergeant at the scene with Officer A responded, telling him the youth was "*just being disorderly*" and to "*tell him to get lost*". Officer C acknowledged the transmission, though there was no discussion on the point. Officer B did not recall the transmission and so it could not have featured in his thinking in relation to be grounds for suspecting Child Y had committed an offence. Officer C also told us he could not recall when the transmission occurred in the sequence of events. On balance, we consider it was after Child Y had been handcuffed and detained.
46. Even if the officers had good cause to suspect disorderly behaviour, they would still need to satisfy the additional criteria in the Oranga Tamariki Act 1989 to arrest a child, which we do not consider would have been satisfied here.
47. In our assessment, there was no good cause to suspect disorderly behaviour and that the officers therefore had no power to arrest Child Y.

Could Officers B or C have arrested Child Z?

48. There was at least a basis for Police to conclude that Child Z was connected to the incident. She was aggressive and the information over the radio was that a female was involved. However, in considering the information available to the officers, our view is that this was insufficient for Officers B and C reasonably to suspect Child Z had committed an offence.
49. We considered whether Child Z's behaviour in front of the officers, continuing to yell and swear at them, could meet the threshold for disorderly behaviour as the officers thought. Officer B told us there were members of the public watching the interaction. Officer C told us that in addition to Child Z pulling the middle finger at him, he also thought Child Z yelled at a member of the public something like "*What the fuck are you looking at!*"
50. Although the actions of Child Z may have been frustrating for the officers, the law is clear. There must be disruption to the public order, a *substantial* disturbance to normal functioning of life in the area. We consider the fact that members of the public may have witnessed Child Z's behaviour, even if she did yell at one or more of them to be insufficient basis upon which to form a reasonable suspicion of disorderly behaviour.
51. We accept that Child Z's action in throwing tree branches at Officer A's patrol vehicle was potentially criminal, and that section 214 may have been satisfied for Officer A who did not know the identity of Child Z at the time. However, such information was not accessible to Officers B and C, who later identified Child Z, and so could not have factored their behaviour into their thinking.
52. Our view is that Officers B and C did not have a power to arrest Child Z.

Were there any other possible grounds to detain the children in the circumstances?

53. The officers could have considered detaining the children for being unaccompanied.¹¹ However, in addition to the children needing to be found in a situation where their physical or mental health is likely to be impaired, detention for this reason is intended to be invoked for the care and protection of the children and only in serious circumstances.¹²
54. With respect to Child Y, there was no indication his health was likely to be impaired. Insofar as Child Z is concerned, whilst the issue is more finely balanced, ultimately, the circumstances in which she was found, yelling abuse during the day in the middle of town near the Oranga Tamariki office, were not sufficiently serious.
55. We also considered whether Officers B and C could have detained Child Y and Z for being out of school at the time. The officers may have been within their rights to question the children as to why they were not in school. However, there would have been no power to use force should the children not comply.¹³ Children Y and Z were no longer enrolled in schooling at the time and in a transitional period of being referred to alternative education programmes. In short, we do not accept that this would have provided the officers with any grounds for detaining the children.

Conclusion

56. In our assessment, there were no lawful grounds for Officers B and C to detain Child Y or Child Z.
57. Officer B told us his rationale for handcuffing the children was that they were being detained pursuant to the custody orders. Not only do we consider such detention to be unlawful, we have concluded that there were no other grounds that would have justified Police detaining the children. Accordingly, we do not consider the use of handcuffs to be justified.
58. Police and the officers made submissions to us on this report. Police agreed that the officers' use of section 104 to uplift the children in the circumstances was not justified and that there was no power to arrest and handcuff Child Y. However, Police queried whether in the case of Child Z there may have been grounds to arrest and handcuff her.
59. In considering the submissions, we acknowledge that the officers were trying to manage the unfolding situation in good faith. They were presented with a distressed Child Z and thought the circumstances also extended to Child Y. However, this does not render the detentions lawful. While the matter was more complex in relation to Child Z, we have found that at the time each child was detained, the officers had neither a detention power under the Oranga Tamariki Act 1989, nor an arrest power.
60. In our view, inadequate communication between the officers contributed to the outcome. We consider that rather than detaining the children as they did, it would have been prudent for the

¹¹ Section 48 of the Oranga Tamariki Act 1989.

¹² *Ruissen v Minister of Police* [1990] NZHC M1502/90.

¹³ Under the Education and Training Act 2020.

officers to seek further information to satisfy what, if any, grounds they had to detain them. For example they may have spoken to the Police dispatcher, the informant, other attending officers or Oranga Tamariki. We have recommended that Police carry out additional training in the relevant areas of law, and review and update the relevant Police policy.

FINDINGS ON ISSUE 1

Children Y and Z were unlawfully detained and unjustifiably handcuffed. However, in our assessment, this is not a case in which Police should consider laying criminal charges or initiating disciplinary proceedings. In the circumstances of this case, we consider it is more appropriate to recommend that Police carry out additional training in relation to the areas of law engaged and amend the relevant Police policy documentation.

ISSUE 2: WAS OFFICER A'S USE OF FORCE AGAINST CHILD Z JUSTIFIED?

61. Here we consider whether Officer A's use of force was unjustified and if so whether we recommend Policy consider charging Officer A or initiating disciplinary proceedings.

What happened?

62. Different officers brought Children Y and Z to the Oranga Tamariki office. Officer A remained, saying she would leave after removing Child Z's handcuffs. The children entered a separate room (equipped with a CCTV camera in the corner, which doesn't record audio) followed by the two social workers and Officer A. Child Z was obviously agitated and sat down on a couch at the far end of the room. As Officer A explained to the social workers what had happened, Child Z swore and kicked out at a table in front of her. Officer A went to take the handcuffs off Child Z, but she refused to get up from the couch and continued to swear at the officer. Officer A left the room, saying she would come back when Child Z had calmed down.
63. After talking with Child Z, one of the social workers went and asked Officer A to return. Officer A came back into the room and positioned herself next to the couch to remove Child Z's handcuffs. On the other side of Officer A was a table and her back was about a metre away from the far corner of the room. Officer A was behind Child Z, so that Child Z was between her and the exit. Although there is a conflict between the two social workers as to how much space Officer A had to move at the time, we accept that this was limited.¹⁴
64. As Officer A removed one of the handcuffs, Child Z pushed out at the officer and slumped off the couch to the ground, crying out in pain. One of the social workers told Officer A that Child Z had recently broken her arm. Officer A then carefully removed the other handcuff.
65. Once the other handcuff was released, Child Z immediately stood up and faced Officer A. She was less than a metre away. Child Z swore at Officer A and spat directly at the officer's face.

¹⁴ In addition to Officer A saying she was at the rear of the room with no escape route, the CCTV footage corroborates that she was restricted in moving to either side and somewhat backwards.

66. Officer A told us that she put her arms up and pushed Child Z to the wall with force. In fact the CCTV footage shows Officer A initially grabbing Child Z by the throat momentarily, before then wrapping an arm around the top of her torso and forcefully pushing Child Z head first into the wall. She then forced Child Z into a chair, where she sat as Officer A restrained her by the neck for approximately seven seconds before pushing her head down toward her lap.
67. As Officer A held Child Z, she asked the social workers how old Child Z was. They confirmed she was eleven years old. Both of the social workers told us that Officer A then said to Child Z, *“Don’t you dare spit at me.”* Officer A told us she could not recall saying that.
68. Officer A held Child Z down for about a minute, during which time Child Z continued to scream and swear. As Officer A released Child Z, she told Child Z to calm down and she would let her go. Once released, Child Z sat up against the chair and again swore at Officer A. The Officer then left.
69. Neither Officer A nor Child Z were injured during the incident.
70. Officer A did not complete a tactical options report in relation to this encounter. She said the force she used was trifling and so a report wasn’t necessary.¹⁵ Officer A also provided inaccurate detail in the Police system when describing the struggle, saying that Child Z still had a handcuff on when she spat at her and that Child Z was restrained in order to remove the handcuff. During our interview, Officer A accepted that the description was wrong.

Did Officer A use excessive force?

71. Section 48 of the Crimes Act 1961 provides that any person, including a Police officer, is legally justified in using reasonable force in defence of themselves or another. Under section 48, we must assess Officer A’s actions by reference to 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 Child Z for the purpose of defending themselves or another (also a subjective test)?
 - c) Was the officer’s use of force against Child Z reasonable in the circumstances as the officer believed them to be (an objective test)?

What did Officer A believe the circumstances to be?

72. Although Child Z was eleven years old at the time, Officer A told us she initially believed that Child Z was a lot older. They are of similar sizes. Both of the social workers told us that Child Z

¹⁵ Officers are required to complete a tactical options report when they have used 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. Uses of empty hand techniques must be reported unless they consist of, *“touching, guiding, escorting, lifting, and pushing where a person is not physically forced to the ground.”*

and Officer A are similar height, and one said that Child Z often gets mistaken for being sixteen years old.

73. There is no question that Officer A was assaulted by Child Z, when she spat in her face. Officer A also said that she could not have retreated as her back was to the wall, which we accept.
74. Officer A told us she believed that after Child Z spat at her, she believed she was going to assault her again, by spitting, punching or kicking. Officer A said this was due to Child Z's behaviour throughout the incident. Officer A also said there have been previous unreported and similar assaults by Child Z on different officers in the past where she had spat at them and otherwise acted violently.
75. However, during our interview, Officer A accepted that she could not refer us to any behaviour by Child Z that suggested Child Z was about to punch or kick her, at the time, instead saying that Child Z had been spitting and kicking the table. The CCTV footage shows Child Z shoving the table forward about half a metre.
76. The CCTV footage also shows that having spat at Officer A, Child Z turned her back to the officer and took two steps away. Officer A initially flinched, and then moved towards Child Z and grabbed her by the throat. Child Z moving away is consistent with what the two social workers told us happened.
77. Officer A told us she doesn't recall Child Z turning around and moving back, and we accept it may have taken Officer A time to register the movement after the spit. However, given the inconsistencies in Officer A's description of events, our assessment is that Officer A could not have genuinely believed that Child Z was in a position *immediately* to assault her again. We do accept that Officer A believed Child Z still posed a risk, but not that that risk was imminent.

Was Officer A's use of force for the purpose of defending herself or another?

78. Officer A told us she needed to restrain Child Z to defend herself from further assault.
79. One of the social workers told us Officer A appeared angry about Child Z spitting at her. The other social worker told us that, "[Officer A] just kind of saw red and then it was all on." Although Officer A does not recall saying so, we accept that she said, "Don't you dare spit at me". Officer A initially grabbing Child Z by the throat as a first reaction also suggests her response arose from anger. The cumulative effect of these factors lead us to the conclusion that the force Officer A used was primarily retaliatory, rather than defensive.
80. We accept that Child Z still posed some risk to Officer A, and that some level of force would have been justified by way of defence of herself.
81. We have also considered whether Officer A might have used force in defence of the social workers who were in the room at the time with Child Z. However, both of the social workers told us they did not feel threatened by Child Z, and the CCTV footage shows that Child Z's aggression was solely directed at Officer A. We do not accept this factored into Officer A's decision to use force.

82. Although we have some reservations as to this, we are prepared to accept that Officer A's use of force was for the purpose of defending herself.

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

83. Officer A told us she felt she had to control Child Z until Child Z calmed down in order to safely leave the room.
84. Officer A said she is trained to take a person to the ground to restrain them, but she thought that it would be kinder to instead force Child Z to the wall. Police told us the tactics used by Officer A are not trained as best practice in control and restraint, but were obviously improvised in a fast unfolding situation.
85. Officer A acknowledged that she could have instead used force to redirect Child Z after being spat at and then left the room, but told us she would then be, *"...moving away from someone that's really angry with my back to her...with people and obstacles in my way to get out of there."* This is not convincing as Officer A still had to turn her back to Child Z after using the force that she did.
86. Officer A told us she had to use force as Child Z was thrashing about and trying to get free, but that her intention was to get out of there as quickly as possible and have no further interaction with Child Z. One of the social workers told us Officer A pushed Child Z across the room to the wall with full force, and both social workers told us that Officer A also used considerable force to restrain Child Z against the wall, despite Child Z not appearing to them to be resisting.
87. We have accepted that Officer A likely believed that Child Z would assault her again, but not that this risk was imminent. There was, therefore, a realistic and less violent option available, namely, to redirect Child Z, move past her, and leave. We consider the force Officer A used on Child Z, was excessive and disproportionate to the risk that we view Officer A as having perceived.

Conclusion

88. Officer A made submissions justifying her use of force, which we have considered.
89. In our assessment, the situation was badly managed from the beginning when Officer A sent the other officers away, placing herself in a position of having to deal with Child Z alone.
90. Given the situation that developed, the appropriate level of force for the officer was to redirect Child Z, get past her and leave as she says she wished to do.
91. We do not consider that the evidence is sufficiently compelling to establish beyond reasonable doubt that Officer A could not rely on section 48 to justify her restraint of Child Z. In short, in our view, there is no reasonable prospect of a successful criminal prosecution and we do not suggest Police consider laying assault charges.

92. We do consider that, on the balance of probabilities, Officer A was unjustified in using the force that she did which would constitute misconduct at one level or another.
93. On that basis we take the view that it was open to Police to consider an employment process in this case. However, we do not propose to make a formal recommendation to that effect here.

FINDING ON ISSUE 2

Officer A's use of force against Child Z was excessive and therefore unjustified. In our assessment the evidence would not be sufficient to secure a conviction and we do not suggest that Police consider laying criminal charges. Excessive use of force constitutes serious misconduct under the Code of Conduct so in our view, it was open to Police to consider an employment process, but we have not made a formal recommendation to that effect in this case.

Subsequent Police Action


94. In response to the complaint from Oranga Tamariki, Police reviewed the matter and considered the force used by Officer A to be justified.
95. Prompted by the Authority's decision to carry out an independent investigation, Police then carried out their own investigation and again concluded the force used by Officer A to be justified. Police also at first considered the grounds for detaining Children Y and Z to effect a custody order were lawful. However, in providing submissions on this report, Police later acknowledged that the use of the custody orders to detain the children in such a way was not justified in the circumstances.
96. Police have since amended the custody order alerts on their national database for Child Y and Child Z to reflect our agreed view of the legislation.

Recommendations

97. We recommend that Police:

- 1) carry out additional training concerning the law around detention; and
- 2) review and update their youth justice policies to include a section on custody orders and the application of section 104 of the Oranga Tamariki Act 1989.

98. Police have subsequently agreed to these recommendations.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

3 December 2024

IPCA: 23-20478

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.



Mana Whanonga Pirihimana Motuhake

PO Box 25221, Wellington 6140

Freephone 0800 503 728

www.ipca.govt.nz
