IPCA
Independent Police Conduct Authority
Mana Whanonga Pirihimana Motuhake

Concern that Police failed to discharge their duty of care to man in custody

1. On Sunday, 13 June 2021, Mr Taranaki Fuimaono died after becoming unresponsive while in Police custody. Police notified us of the death as required by section 13 of the Independent Police Conduct Authority Act 1988.[1] We conducted an independent investigation, which was completed in March 2022.[2]

2. WorkSafe New Zealand charged Police for alleged breaches of the Health and Safety at Work Act 2015. We delayed the release of our report until after the conclusion of the court proceedings. In August 2024, WorkSafe decided to withdraw the charges against New Zealand Police.

3. On 11 June 2021, Mr Fuimaono was admitted into Auckland City Hospital, complaining of abdominal pain and shortness of breath. He was given a general anaesthetic and intubated (induced coma) and tests were conducted. However, staff were unable to determine the cause of his pain.

4. When removing Mr Fuimaono's clothing, hospital staff found drugs in his underwear and notified Police. On the morning of 12 June, when he was brought out of the coma, Police arrested him for possession of methamphetamine.

5. Later that day, Mr Fuimaono was discharged from hospital. He was released into Police care and taken to the Auckland Custody Unit.

6. Just after midnight on 13 June, custody staff found Mr Fuimaono unresponsive in his cell. Custody staff provided medical assistance. However, he passed away in hospital shortly before 2am.

[1] Section 13 says: "*Where a Police employee acting in the execution of his or her duty causes, or appears to have caused, death or serious bodily harm to any person, the Commissioner shall as soon as practicable give to the Authority a written notice setting out particulars of the incident in which the death or serious bodily harm was caused.*"
[2] During our investigation, we reviewed all Police records, reports and medical statements. We also visited the custody unit, and interviewed staff who were present during this incident.

7. The autopsy report says the cause of death was the *"combined effects of obesity, hypertension and obstructive sleep apnoea in a setting of methamphetamine and tramadol use".*[3] Expert medical opinion indicates Mr Fuimaono's death may have been unavoidable, that is to say that he may have died regardless of where he was.

8. Police custody staff are not medical professionals and we do not expect them to be able to identify or diagnose the medical condition of a detainee. However, detainees are considered vulnerable adults, and Police have a legal duty of care towards them. Section 151 of the Crimes Act 1961 obliges Police to maintain the health and safety of a detainee. This includes providing them with "*necessaries*" such as medical treatment. Custody staff must therefore assess and monitor detainees, and organise medical care for them when they appear unwell.

9. Custody staff are trained to check and recognise levels of responsiveness in order to determine a person's level of consciousness. The 'People in Police Custody' policy requires staff to ensure detainees are taken to hospital when in a partially unresponsive or unresponsive state. Policy provides guidance that, under the Health and Safety at Work Act 2015, individual officers have a duty to take reasonable steps to ensure their acts or omissions do not adversely affect the health and safety of detainees.

The Authority's Findings

Issue 1: **Did Police provide Mr Fuimaono with an appropriate level of care while he was in custody?**

Mr Fuimaono's custody evaluation was completed incorrectly and was not updated to reflect the officers' observations of Mr Fuimaono's condition. The custody sergeant should have ensured it was accurate and updated to include relevant information.

Mr Fuimaono should have been placed on 'Frequent Monitoring'.

Officers failed to recognise Mr Fuimaono was unwell during checks and by using the CCTV footage available. Officers should have recognised this and ensured he received medical treatment earlier.

Mr Fuimaono should have been offered his prescribed Tramadol at the specified time.

Issue 2: **Did officers arrange for appropriate medical treatment when they found Mr Fuimaono to be unresponsive?**

Once Mr Fuimaono was found to be not breathing, officers should have been quicker to commence CPR, retrieve the defibrillator, and call the ambulance.

[3] Tramadol is a prescription pain medication used for the treatment of moderate to moderately severe pain.

Background

10. At 11.30pm on 11 June 2021, Mr Fuimaono's father took him to the hospital as he was experiencing severe pain in his abdomen and shortness of breath.

11. Mr Fuimaono denied taking drugs or alcohol that night. However, urine testing at the hospital showed the presence of amphetamines and cannabis.

12. Hospital staff say Mr Fuimaono was extremely agitated and difficult to manage.

13. Mr Fuimaono was placed in an induced coma while tests, such as a CT scan, were undertaken.

14. When hospital staff were removing Mr Fuimaono's clothing, they found a package hidden inside his underwear, which they suspected contained drugs. They notified Police.

15. At 7.15am on 12 June 2021, Officers A and B picked up the package, which appeared to contain methamphetamine in the form of white crystals. They took the package to the Auckland Police Station where it was photographed and weighed at 24.6 grams.[4]

16. At 9.15am, Mr Fuimaono was brought out of the induced coma. Officers A and B told him he was under arrest for possessing methamphetamine and remained at the hospital to guard him.

17. Officer B says Mr Fuimaono spoke to her at times, engaging in general discussion about his family and life. She recalls Mr Fuimaono was sweaty the entire time he was at the hospital. Officer B says:

> *"During the time from arrest to discharge, Mr Fuimaono would constantly fall asleep on his bed… he would snore really loud and wake himself up. When he woke up it was quite abrupt like he got a fright. I recall finding out that he had some sort of sleep apnoea at some stage. I think I overheard staff talking about it and then asking Fuimaono about it. There was no further reference to it at all, like the staff weren't phased about it."*[5]

18. Officer A also heard a nurse mention that Mr Fuimaono most likely suffered from sleep apnoea. Mr Fuimaono's father told a nurse Mr Fuimaono was supposed to have a machine to help him sleep but he did not have one.[6]

19. At about 5pm, Mr Fuimaono was discharged from hospital. There was no definitive diagnosis, although it was believed Mr Fuimaono's abdominal pain may be caused by gastritis and his agitation was likely due to substance use.[7]

20. Officer A recalls Mr Fuimaono was unhappy at being discharged without knowing what was causing his stomach issue, and he told hospital staff that his pain was at 10 (the highest level of

[4] This amount of methamphetamine was almost five times the amount presumed to be for supply.
[5] Obstructive sleep apnoea is when a person's breathing repeatedly stops and starts while they sleep. It occurs when the muscles in the back of a person's throat relax, partly or completely blocking their throat or upper airway. Periods of not breathing can last up to 90 seconds.
[6] Officer A believed he meant a Continuous Positive Airway Pressure (CPAP) machine which helps alleviate sleep apnoea.
[7] Gastritis is when the lining of a person's stomach becomes inflamed.

pain on the 1-10 scale). However, the scans were all clear and doctors saw nothing critical which required him to remain in hospital.

21. The discharge plan was for Mr Fuimaono to have pain relief and medication to help reduce stomach acid, and to be referred to Gastroenterology Services as an outpatient. Officer A was given Mr Fuimaono's discharge papers and enough medication to last until Monday, when he would appear in court.

22. The officers placed Mr Fuimaono in handcuffs and escorted him out of the hospital. Mr Fuimaono walked unaided and was compliant and co-operative. The officers say he did not complain to them of being in pain, and, in viewing the CCTV footage, he did not appear to us to be in any obvious pain.

23. Mr Fuimaono's partner and children spent about four minutes with him outside the hospital before he was placed in the patrol car. Mr Fuimaono also spoke briefly with his father on the phone.

24. According to the officers, Mr Fuimaono was quiet during the ten-minute drive to the custody unit. He had his eyes closed but would respond when spoken to. He appeared to fall asleep at times then would wake himself up by snoring loudly.

25. Medical professionals released Mr Fuimaono, knowing he was being taken into Police custody rather than going home.

Analysis of the Issues

ISSUE 1: DID POLICE PROVIDE MR FUIMAONO WITH AN APPROPRIATE LEVEL OF CARE WHILE HE WAS IN CUSTODY?

26. In this section we consider whether Police custody staff sufficiently considered Fuimaono's condition when he came into the custody unit and whether staff accurately recorded his risks and special care requirements on his evaluation. We consider whether Mr Fuimaono was placed on an adequate monitoring regime and whether officers conducted appropriate checks on him.

27. When accepting a person into custody directly from hospital, the circumstances of their hospitalisation and discharge should be carefully considered and factored into their care. The detainee is reliant on custody staff to monitor their condition for any deterioration.

Was Mr Fuimaono's condition sufficiently considered when he was received into the custody unit?

28. Mr Fuimaono arrived at the custody unit at 5.30pm. CCTV footage shows he walked by himself and responded to officers' instructions in the receiving area. Officer A says Mr Fuimaono was walking freely and speaking normally and there was no indication he was in any pain. Officer B says he was compliant and she did not see any change in Mr Fuimaono's condition while he was being searched, having his photos taken, and being placed into a holding cell.

What did the officer in charge of the custody unit know about Mr Fuimaono's condition?

29. While Mr Fuimaono was in the holding cell, Officer A had a lengthy conversation with Officer C, the sergeant in charge of the custody unit. Officer A recalls telling Officer C that Mr Fuimaono had been suffering from stomach pain and that the hospital had not managed to find the cause. He says he explained Mr Fuimaono's medication and dosage, showing Officer C what the nurse had written down. He explained that Mr Fuimaono had not wanted to leave the hospital and had complained about this to hospital staff, and that he would most likely make further complaints about his stomach pain while in custody.

30. Officer C cannot recall whether he was made aware that Mr Fuimaono had been in an induced coma or what treatment he had been given. He says Officer A told him Mr Fuimaono had "*a hell of a lot of methamphetamine"* on him, and showed him a photo of the crystals. He recalls the conversation focused on the methamphetamine and the charges.

31. Officer A gave Officer C the hospital discharge sheet and a separate handwritten note about the medication. The hospital discharge summary contained some information that we would only reasonably expect a medical professional to understand. However, the summary clearly stated the following:

- Mr Fuimaono had presented at hospital the night prior, *"with generalised abdominal pain and shortness of breath on exertion*";
- he had tested positive for amphetamine and cannabis metabolites;
- he had deteriorated in the emergency department, with "*increasing airway concerns"* and other aspects "*worsening*";
- he had been intubated;
- the cause of the abdominal pain had not been found: "*abdo pain? gastritis*";
- *"agitation likely secondary to substance use*"; and
- he had been referred to a gastroenterologist as an outpatient.

32. While the medical notes made it clear that Mr Fuimaono had been agitated and difficult to manage, they did not indicate that he had been intubated for any reason other than his deteriorating condition.

33. Officer C says he focused on the parts of the hospital discharge form where it mentioned that Mr Fuimaono had been aggressive and difficult to deal with. He observed this was not how Mr Fuimaono was presenting at the custody unit.

34. Officer C says he had no issues with receiving Mr Fuimaono into the custody unit as the hospital had cleared him for discharge. He told us: "*The hospital are happy to give him to the Police, knowing that he's gonna be arrested and put in a cell and I've got to believe that there's no issues from that point of view."*

35. As Officer A was leaving, he remembered that he had heard at the hospital that Mr Fuimaono may have sleep apnoea, so he went back to Officer C to tell him this. Officer A says Officer C told him he had possibly dealt with Mr Fuimaono in the past, and that he recalled his loud snoring and that he had slept upright.[8]

36. Officer C saw that Mr Fuimaono had been prescribed an anti-nausea medication and Tramadol, which he believed was for moderate to severe pain. Officer C says he asked Mr Fuimaono if he needed a meal before taking Tramadol as he was aware it should be taken with food. Mr Fuimaono told him he would have his meal, but was just tired and needed to go to sleep. He did not have any Tramadol while in the holding cell.

37. Footage shows that, while in the holding cell by the custody receiving area, Mr Fuimaono sat slightly hunched over and appeared to fall asleep a number of times before waking himself up. At times he appeared to be taking a series of deep breaths. He periodically tapped his feet and rocked his body backwards and forwards and from side to side. At one point Mr Fuimaono stood up, holding onto a rail. He leant on the wall while hunched over and unstable on his feet and appeared to fall asleep again while standing. While Mr Fuimaono was in the holding cell, officers spoke to him three times to gather details from him.

38. Custody Officer D saw Mr Fuimaono come into custody.[9] He asked an officer (who remains unidentified)[10] to check on Mr Fuimaono as he appeared to be quite drowsy and was sitting, nodding his head, and appearing to fall asleep while sitting before waking himself. The officer checked on Mr Fuimaono and reported to Custody Officer D that he was 'all good'.

39. As previously noted, Police cannot be expected accurately to interpret medical terminology and shorthand used on discharge forms. However, there was sufficient information on Mr Fuimaono's discharge form to suggest his medical treatment had been significant. As the officer in charge of the custody unit, it would have been prudent for Officer C to take further steps to establish what had occurred at the hospital, as it was highly relevant to his assessment of Mr Fuimaono's care requirements. He could have telephoned the hospital to ask their advice, or at the very least, have asked Officer A further questions.

Was the custody evaluation completed accurately?

40. Custody evaluations are completed soon after a detainee arrives in a custody unit. The evaluation is entered into the electronic custody system. Officers record the detainee's behavioural, mental, and physical health indicators for the purpose of establishing the level of care and monitoring required. All risks and special care instructions should be recorded. Custody Officer D conducted Mr Fuimaono's custody evaluation.

[8] Officer A's and Officer B's shifts were finished at this point and they had no further dealings with Mr Fuimaono.
[9] Custody officers (or 'authorised officers') are non-sworn Police employees who have responsibility for managing the health, safety and secure custody of detainees.
[10] We are unable to determine which officer this was. Custody Officer D thought it was Officer B, but she says she had nothing more to do with Mr Fuimaono once he was in the cell.

What was Custody Officer D told prior to conducting the evaluation?

41. Custody Officer D says, prior to doing the evaluation, he spoke with Officer A who he believed to be the arresting officer.[11] Custody Officer D recalls Officer A telling him that Mr Fuimaono:

    - had been in hospital with stomach pain;
    - had been discharged from the hospital, having been *"given the all clear";* and
    - was suspected of using methamphetamine in the past couple of days.

42. Custody Officer D says he asked Officer A if the hospital gave him any specific care requirements but recalls that Officer A told him: *"No, he's basically fine."*

43. The first question in the custody evaluation is for the arresting officer to answer: "*Are you aware of any medical or psychological reasons that indicate the person in custody may require special care or may be at risk while in custody?"* The answer entered was 'no'. We are unsure who recorded this, however, the correct answer to the question was clearly 'yes'. Mr Fuimaono had just been released from hospital where he had been in an induced coma earlier that day. He was also still dealing with pain, as noted in the evaluation (see below).

44. Custody Officer D briefly read the first paragraph of the hospital discharge notes and did not see anything that concerned him.

What information did Mr Fuimaono's custody evaluation include?

45. Custody Officer D went into the cell to ask Mr Fuimaono the evaluation questions, memorising the answers so he could later enter them into the computer. He recalls asking Mr Fuimaono why he was moving as he was, and that Mr Fuimaono told him it was just because he was tired. He says he did not have any concerns with the answers Mr Fuimaono gave.

46. When completing a custody evaluation, officers are required to ask the detainee a range of set questions. The officer enters information into different sections, selecting the best option from a drop-down menu. Each section also has a space to write comments.

47. Custody Officer D entered the following information on Mr Fuimaono's evaluation:

Sections	Drop down option selected	Free text comments *(we have not corrected errors)*
Behavioural signs	*None*	*"calm and cooperative"*
Physical health conditions present	*Signs of being in pain*	*"went into hospital today complaining of stomach pain. has prescription medicine with him in property"*

[11] Officer B was technically the arresting officer, however, says she was not involved in the handover process.

Mental health risks	*None*	*"States nil to being known to mental health and denies any thoughts of self harm. Nil concerns at this time"*
Level of consciousness	*Alert – able to engage in a coherent conversation*	*"alert and coherent just says he's tired"*
Any other signs or indicators that care needs to be taken with this person	-	-
Health conditions	-	-
Under the influence of	*None*	*"states nil to all questions"*

What information was not included in the evaluation?

48. In the 'Physical health conditions' section, there was no mention of Mr Fuimaono having been in an induced coma earlier that morning nor any comment regarding that the cause of the pain had not been established (though potentially gastro-related), or the possibility he had sleep apnoea. Although Custody Officer D may not have known this information, Officers A, B and C had been given it. This information should have been included in the evaluation.[12]

49. Regarding Mr Fuimaono's level of consciousness, Custody Officer D did not record that Mr Fuimaono had been 'falling asleep' during the drive to the custody unit and while in the holding cell, and that he noticed Mr Fuimaono appeared drowsy. Again, this information should have been included in the evaluation.

50. Custody Officer D says he recorded nothing in the 'under the influence section' as it was only *suspected* that Mr Fuimaono had taken methamphetamine in the last few days. He took into account that the hospital had believed Mr Fuimaono was well enough to be discharged, that the arresting officer told him Mr Fuimaono was "*basically fine",* and that Mr Fuimaono was able to engage with him coherently when he was asking him the evaluation questions.

51. The likelihood that Mr Fuimaono would still have illegal drugs in his system should have been recorded. The hospital discharge sheet showed hospital staff had queried whether his agitation was due to substance abuse and recorded that amphetamine and cannabis metabolites had been found in his urine.

52. During our investigation other custody staff told us they believed Mr Fuimaono's behaviour in the cell was due to his use of methamphetamine. At 8.57pm, Officer C added a custody comment to Mr Fuimaono's charges/arrest record (not evaluation), saying: "*Possiblely [sic] been on Meth for the last week".*

[12] Information can be added to evaluations after they are initially completed.

53. A custody evaluation can be updated throughout a person's time in custody, as new information becomes known, however, this was not done in Mr Fuimaono's case. Therefore, the risk of him being 'under the influence' was not factored into his care, despite the fact officers were clearly aware he was most likely under the influence of an illegal drug.

Conclusion

54. We conclude that Custody Officer D incorrectly completed the custody evaluation, missing out vital information. He placed too much emphasis on Mr Fuimoano's responses rather than how he was presenting and the information provided in the hospital discharge summary.

55. Custody Officer D and the officers who interacted with Mr Fuimaono should have updated the evaluation while he was in custody. They should have added information concerning his care, such as that they believed he was exhibiting signs of being 'under the influence'.

56. As the officer in charge, Officer C had the responsibility to ensure the evaluation was accurately completed and included all the relevant information, which he did not do. In fact, a handwritten note on a printed copy of the evaluation, signed-off by Officer C as the supervisor, stated: *"Medical notes provided by Auckland Hospital – nil concerns."* We find it concerning Officer C reached the conclusion there were 'nil concerns', given what he knew.

57. We acknowledge that, in receiving Mr Fuimaono into custody and completing his evaluation, staff have relied upon the fact that Mr Fuimaono had been assessed by medical professionals who had deemed him well enough to be released from hospital into the care of Police. Police submitted to us that:

> *"Subsequent decisions have as a result been made against a backdrop of knowing that Mr Fuimaono had already been thoroughly assessed by a medical professional. This includes all assessments, and checks that were conducted throughout his time in Police Custody. It is likely that this has minimised the concern that may have been generated by the same behaviour had Mr Fuimaono not been previously medically assessed."*

58. We agree with Police, that staff reliance on Mr Fuimaono having been assessed and released from hospital has likely minimised their concern. In our view, this led to staff discounting or dismissing the signs that Mr Fuimaono was unwell while conducting checks, as discussed further below.

59. Although released from hospital, the cause of Mr Fuimaono's medical issue had not been determined. Police should have been mindful of this and open to the possibility that his condition might change.

Was Mr Fuimaono placed on the correct monitoring regime?

60. On the custody evaluation, each drop down option has allocated points which are used to help establish the detainee's level of risk. At the completion of the evaluation, the system recommends a monitoring regime, based on the total of accumulated points from the selected options. The accuracy of the recommendation relies upon the correct information being

entered. When relevant information and risks are not included, the recommended monitoring regime may be inadequate.

61. The Police 'People in Police custody' policy provides the following options for monitoring detainees:

- **Not in need of specific care**: the detainee must be checked at least every two hours.
- **Frequent monitoring**: the detainee must be checked at least five times per hour at irregular intervals.
- **Constant monitoring**: the detainee must be directly observed without interruption.

What monitoring regime was Mr Fuimaono placed on?

62. Upon completing Mr Fuimaono's evaluation, the lack of recorded 'high risk' key information led to the system-generated recommendation that he be placed on a 'not in need of specific care' monitoring regime.

63. Officer C says he was comfortable with Mr Fuimaono being assessed as being 'not in need of specific care'. He says he watched Mr Fuimaono's demeanour while he was being searched, and thought: "*He's fine and complying, just like every prisoner we have most of the time."* He says nothing 'jumped out at him' to make him believe Mr Fuimaono needed to be on 'frequent monitoring'.

64. Officer C says he had not had any specific training relating to working within the custody unit and therefore, did not know he could override the recommended monitoring regime. We find this concerning, the ability to do this is clearly stated in policy. Officer C had already been in the custody supervisor role for nine months and therefore would likely have had cause to increase the monitoring level for other detainees. It is fundamental that officers in charge of custody units know they can do this.

Conclusion

65. Mr Fuimaono had come from hospital where he had been in an induced coma that same day, he had tested positive for illegal drugs while in hospital, he kept 'falling asleep', and he was still dealing with unresolved pain. The hospital had been unable to establish the cause of the pain, though suspected it was gastro-related with a referral made to look into this further. Given this, our view is that it was inappropriate for Mr Fuimaono to be considered 'not in need of specific care' and to have remained on this monitoring regime throughout his time in custody.

66. Mr Fuimaono should have been placed on 'frequent monitoring'. This would have ensured he was checked about every 10 - 15 minutes. Instead, the regime he was placed on meant a check was only required 'at least every two hours'.

What occurred in the hours leading up to Mr Fuimaono being found unresponsive in his cell?

67. Mr Fuimaono walked unaided to his cell at 6.26pm.[13]

68. Mr Fuimaono's cell had a raised ledge around two sides, about 30cm off the ground, on which he could sit and place his mattress. The cell was equipped with a toilet, with a basin and water fountain above it. There were two frosted windows, one of which was in the top half of the door.

69. When he was first placed in the cell, Mr Fuimaono placed the mattress against the wall and sat on it. He spoke with Custody Officer D through the door hatch, signed a piece of paper and passed it back to him. Custody Officer D spoke to Mr Fuimaono about his medication, which he noted were mostly ones that help manage pain. He asked Mr Fuimaono if he was in any pain. Mr Fuimaono told him he had last received pain medication that morning, that he was not in any pain, and that he did not need anything.

70. Custody Officer D says Mr Fuimaono looked tired, but seemed fine. He was coherent, alert, and answered his questions appropriately. Custody Officer D ensured CCTV footage from Mr Fuimaono's cell was fed to one of the large TV screens so custody staff in the custody control room could closely monitor him (discussed further in paragraph 95). He says he wanted Mr Fuimaono monitored like this: *"… at least for an hour just to see if anything changed in his behaviour just cause he had come from the hospital… it wasn't a big concern, it was just another precaution…."*

71. Although CCTV footage 'froze' at times over the next 25 minutes, it shows Mr Fuimaono appeared agitated, kicking his legs out frequently while lying on the bed. He continued to 'fall asleep', sometimes appearing to wake with a start.

72. At 7.00pm, Custody Officer F gave Mr Fuimaono his dinner and a hot chocolate. Footage shows Mr Fuimaono sat on the bed to eat. The hot chocolate slowly slipped from his hand, spilling on the floor. He tried to pick the cup up but then left it on the floor and began eating his dinner.

73. CCTV footage shows that over the next couple of hours, Mr Fuimaono appeared medically distressed, unsteady and unwell. He first moved the mattress then drank from the water fountain. He sat on the edge of the bed, rocking and twisting his body, lay down, then sat up again. He took his sweatshirt off and lay back down, kicking his legs and constantly moving. He was visibly struggling to take deep breaths and made at least three unsuccessful attempts to sit up before laying back down on his side. He moved to the cell door, where he stood slumped over before staggering around the cell. Upon sitting back on the bed, Mr Fuimaono was swaying, slipping, and struggling to sit back up. He then took his t-shirt off so he was topless, and frequently wiped sweat from his head.

74. At about 8.52pm, Officer C viewed the camera in Mr Fuimaono's cell via his computer screen, He saw that Mr Fuimaono was lying on his back, "*cycling"* his legs in an unusual manner and punching the air, so told Custody Officers D and F to conduct a check. Custody Officer D recalls he looked into the cell and saw that Mr Fuimaono's feet were twitching and he was snoring

[13] Timings are based on those on the CCTV footage.

loudly. The officers then opened and stood by the door. Mr Fuimaono sat up on the bed and spoke with them for about 50 seconds. Custody Officer D says he was alert and coherent. He says Mr Fuimaono's voice was calm and clear and it appeared nothing had changed from when he had spoken to him earlier in the holding cell.

75. When asked if he normally moves a lot when sleeping, Mr Fuimaono told the officers he was *"just fighting my demons*". Custody Officer F told us he believed 'fighting demons' meant *"dealing with your own stuff in your own head"* rather than being a physical issue, or that maybe Mr Fuimaono had been dreaming. Custody Officer D took it to mean he was having bad dreams. Officer C was told of the comments, and says he thought it was related to Mr Fuimaono being a heavy user of methamphetamine and the damage it causes psychologically.

76. Custody Officers D and F had no concerns about Mr Fuimaono's health following the check. They recall he told them he was okay and asked for a glass of cold water.

77. A couple of minutes later, Custody Officer F gave Mr Fuimaono some water through the hatch. He noticed Mr Fuimaono was sweating "*quite a lot*" but did not think this was unusual for someone who had been sleeping. Custody Officer F also recalls Mr Fuimaono was breathing quite heavily, but says he was not concerned as he had also noticed him doing this when being processed. He believed it was due to Mr Fuimaono's large size. He recalls asking Mr Fuimaono if he was "*All good?"* and Mr Fuimaono replying: *"Yes".*

78. Custody Officer F asked Mr Fuimaono if he would like some Tramadol or Paracetamol and says he "*seemed quite keen for his Tramadol*". Two Tramadol were provided through the hatch at 8.57pm.

79. Over the next 80 minutes or so, Mr Fuimaono continued in a similar manner, moving between standing, sitting, and lying down in an agitated manner. He continued swaying and slumping while standing and continued appearing to fall asleep before waking himself. He frequently wiped sweat off his head using his t-shirt, rubbed his lower legs with his hands, and took laboured breaths. He repeatedly rolled from side to side in bed, moving his arms and legs about. Mr Fuimaono frequently appeared to gasp for air and, at times, his stomach was visibly 'sucking' in and out.

80. At 10.22pm, Officer G looked towards Mr Fuimaono's cell for a second as he passed it to check other detainees nearby.[14] A short time later he briefly looked towards his cell again when Mr Fuimaono's "*snoring or his breathing"* caught his attention. He went to Mr Fuimaono's cell window and observed him for about twelve seconds.[15] Officer G believed Mr Fuimaono was falling asleep while sitting up but was not concerned about this. He recalls Mr Fuimaono was moving his arms about in a *"fidgeting"* manner. He told us this is something he sees when detainees have consumed methamphetamine. Officer G did not attempt to have a conversation

[14] Officer G was the Custody Sergeant coming on duty for the next shift, however, Officer C remained in the role throughout Mr Fuimoano's time in the custody unit.
[15] This was recorded as a 10.28pm check in the Electronic Custody Module (ECM). This is where staff record risk information, any special care instructions, and everything that happens in relation to a detainee, from their processing to their release.

with him as Mr Fuimaono was not looking at him and he felt "*quite happy that he was conscious and breathing*".

81. Following this check, footage shows Mr Fuimaono moved between sitting on the edge of the bed and lying down, in the same manner described above. He also lost control of his bladder and urinated.

82. At 11.49pm, Mr Fuimaono slid off the mattress onto the floor, visibly struggling to breathe. His head and right shoulder lay against the raised ledge in a position that, in our assessment, was unnatural. Mr Fuimaono remained in this position for a further three minutes or so before rolling onto his left side on the ground, in a position similar to the recovery position.

83. From 11:55pm, Mr Fuimaono lay completely still and there were no more visible attempts to breathe.

84. Fifteen minutes later, at 12:10am, Officer G conducted a check and found Mr Fuimaono to be unresponsive. It had been about 47 minutes since his last check.

Were checks completed adequately?

85. Mr Fuimaono's monitoring regime was inappropriate as it allowed for him to remain unchecked for periods of up to two hours. However, officers conducted the required checks in accordance with the 'not in need of specific care' regime Mr Fuimaono was on.

86. Police policy sets out the three types of checks that officers carry out on detainees:

- Observation – Observe the detainee through a 'cell view port' (such as a cell window). If the detainee's well-being cannot be confirmed, complete a verbal check.
- Verbal check - Verbally rouse the detainee to establish well-being. If there is no response, complete a physical check.
- Physical check – Enter the cell and physically check the detainee to establish well-being.[16]

87. Policy provides the following guidance around establishing the levels of consciousness of detainees, specifically relating to *"Detainees affected by drugs/alcohol or medical complications"*:

> *"If the person is…*
>
> ***Alert** - able to engage in a coherent conversation …THEN - follow the procedures for custody area staff.*
>
> ***Drowsy or confused** - responds to voice and able to reply. May need some assistance to walk …THEN - follow the procedures for custody area staff. Be aware that the level of consciousness may change over time due to intoxication or medical complications.*

[16] Policy says detainees should not be physically roused at every check unless the officer's risk assessment indicates the detainee needs specific care, are intoxicated, or exhibits any risk identifiers.

> ***Partially responsive*** *- responds to pain only (e.g. nail-bed pressure) ...THEN - treat this as a medical emergency and arrange for the person to be taken to hospital.*
>
> ***Unresponsive*** *- does not respond to any stimuli ...THEN - this is a medical emergency and immediate hospitalisation is required. If you expect a delay in the ambulance's arrival or the person's condition calls for immediate action, use a Police vehicle."*

Did officers adequately assess Mr Fuimaono's condition during checks?

88. We are satisfied that when officers conducted the physical checks on Mr Fuimaono, they acted in accordance with policy; observing him through the cell windows, using verbal checks, and in the final check, entering the cell to attempt to rouse him when unable to confirm he was responsive.

89. However, because the monitoring regime was inadequate, the officers failed to recognise Mr Fuimaono's poor condition. Custody staff missed significant visible signs that indicated Mr Fuimaono was unwell, and dismissed some signs due to assumptions.

90. As discussed above, despite the custody evaluation not indicating Mr Fuimaono might be affected by methamphetamine, several officers say they believed this to be a significant contributing factor in his behaviour. This appears to have meant they did not consider that his behaviour may be due to a medical event or complication. Policy specifically states:

> *"Police employees need to be aware of the masking effects of intoxication regarding any medical condition and the risk posed by the mixture of alcohol, drugs and current or pre-existing medical issues."*

91. Some staff told us they believed Mr Fuimaono's heavy breathing was due to his size and that the episodes where he would 'fall asleep' and his snoring were merely because he was tired. This is despite the fact that policy specifically states: "*Note: Loud snoring is a sign the person is deeply unconscious."*

92. We previously investigated and reported on the death of Mr Alan Ball while in Police custody in 2019.[17] In our investigation report, there was considerable discussion around the risk posed to detainees when staff in custody units do not consider that loud snoring may be a sign that a person is suffering a medical event and may be deeply unconscious.

93. Staff responsible for Mr Fuimaono's care did not turn their minds to the possibility that his loud snoring and frequent episodes of 'falling asleep' may be due to a medical complication or may indicate a loss of consciousness. This is concerning, given they suspected he was likely still affected by methamphetamine and that he had been received into the custody unit directly from hospital.

[17] 16 DECEMBER 2021 IPCA PUBLIC REPORT - Police fail in their duty of care to Allen Ball in Hawera.pdf.

Did officers notice Mr Fuimaono's condition when observing his movements on the CCTV monitors?

94. While policy makes it clear that CCTV is not an authorised means of monitoring or carrying out observation checks, it is available to monitor the movement of detainees from their arrival in the custody unit until their release.

95. Custody Officer E sat at the custody control desk, near Custody Officer D, performing a variety of tasks which included monitoring the CCTV screens. He initially put CCTV footage of Mr Fuimaono on one of the four large main screens to be monitored, as requested by Custody Officer D (see paragraph 70). This allowed officers to see Mr Fuimaono in his cell when they were in the control desk area.

96. Later in the evening, Custody Officer E took footage from Mr Fuimaono's cell off the large screen because other detainees needed to be monitored on them. Custody Officer E says he still monitored footage from Mr Fuimaono's cell occasionally throughout the evening, pulling footage from the cell camera up on his own computer screen. He believed Mr Fuimaono's sleepiness was a result of having been given Tramadol and other medications at the hospital.

97. Officer C explained there were two high-risk detainees in the unit at the same time as Mr Fuimaono who were requiring a significant amount of his attention. Subsequently, he did not access Mr Fuimaono's CCTV footage on his computer screen regularly throughout the evening. However, he recalls doing so when Mr Fuimaono was having his dinner, once when he was asleep on his side, and again when he saw him 'cycling' his legs at 8.52pm.

98. A respiratory and sleep physician reviewed snippets of the CCTV video. He said once Mr Fuimaono removed his shirt (at 8.42pm), there were:

> *"… clear cut, and repeated, episodes of paradoxic breathing where the chest and abdomen move opposite to each other rather than in sequence.… There are several short episodes where he appears to make no breathing effort at all… ".*

99. Our assessment of the CCTV footage is that Mr Fuimaono was clearly have difficulty breathing. While we do not expect custody staff to diagnose breathing issues, such as paradoxic breathing, we do expect them to notice clear signs of abnormal breathing such as Mr Fuimaono was presenting with.

100. As already indicated, in our assessment, CCTV footage shows Mr Fuimaono appeared unwell for the majority of his time in the cell. However, it appears that none of the officers noticed that Mr Fuimaono was unwell when looking at the large CCTV screens or monitoring Mr Fuimaono through their smaller computer screens.

Did officers re-assess Mr Fuimaono and revisit his monitoring regime?

101. Police policy states: "*Remember that a person's status may change requiring a re-evaluation"* and that *"a detainee's monitoring level can be increased at any time…."*

102. There is no indication staff considered reassessing Mr Fuimaono's status or revisiting his monitoring regime. If staff had revisited and increased Mr Fuimaono's level of monitoring, they may have registered his distress and sought medical assistance sooner.

Conclusion

103. Based on accounts and footage, it appears Mr Fuimaono was drowsy when he came into the custody unit. There are times where he appears to have been only partially responsive, though we cannot reach any firm conclusion in relation to this because staff did not conduct a responsiveness test at any time when Mr Fuimaono appeared to be asleep. It is possible that Mr Fuimaono lay in an unresponsive state for about 15 minutes before staff became aware of this. We note that this is less likely to have occurred had Mr Fuimaono been frequently monitored.

104. Custody staff properly checked Mr Fuimaono in accordance with the monitoring regime. However, they did not adequately assess his well-being based on the information they knew about his condition prior to entering Police custody and what they could see in terms of his behaviour and level of alertness. Regardless of the cause, Mr Fuimaono's condition was changing. Given his immediate medical history and specific warning guidance in policy, custody staff should not have assumed that his drowsiness and snoring was 'normal' for him. Mr Fuimaono's circumstances required a level of caution that Police did not bring to it.

105. Police submitted that it is not uncommon for detainees to be distressed, moving around and "*fidgety*" when in a cell. The Authority acknowledges this. However, signs that a detainee is agitated or distressed should not ever be dismissed. Rather, agitation and distress should be assessed and factored into the decision-making around detainees and their required level of care.

Was Mr Fuimaono given his medication correctly?

106. Records show Mr Fuimaono was due to be given Tramadol at about 7pm. However, it was not given until two hours later, at 8.57pm, when he chose to take his Tramadol rather than the Paracetamol which was due (see paragraph 78).

107. Officer C told us it is likely Mr Fuimaono did not receive the Tramadol until almost 9pm due to being asleep. However, footage shows he was not asleep a lot of the time between 7pm and 9pm. We can only conclude the failure to provide the medication earlier was an oversight.

108. We understand Mr Fuimaono had expressed concern about taking pain medication at the hospital, as he was concerned about potentially becoming addicted to it. We accept he may have chosen not to have the medication when Officer C asked if he needed a meal before taking Tramadol, and again when Custody Officer D asked soon after placing him in the cell (see paragraphs 36 and 69). However, Mr Fuimaono should have been offered his pain relief again at 7pm (which was around the time he had his dinner) and periodically after that if he still declined it.

FINDINGS ON ISSUE 1

Mr Fuimaono's custody evaluation was completed incorrectly and was not updated to reflect the officers' observations of Mr Fuimaono's condition. The custody sergeant, Officer C, should have ensured it was accurate and updated to include relevant information.

Mr Fuimaono should have been placed on 'Frequent Monitoring'.

Officers failed to recognise Mr Fuimaono was unwell during checks and by using the CCTV footage available.

Mr Fuimaono should have been offered his prescribed Tramadol at the specified time.

ISSUE 2: DID OFFICERS ARRANGE FOR PROMPT MEDICAL TREATMENT WHEN THEY FOUND MR FUIMAONO TO BE UNRESPONSIVE?

What did officers do upon finding Mr Fuimaono unresponsive?

109. At 12:10am, Officer G conducted a check. He looked through the window but could not confirm that Mr Fuimaono was breathing. He opened the hatch and watched Mr Fuimaono for nine seconds. Mr Fuimaono appeared unresponsive, so Officer G went to the custody control area to get assistance. He returned one minute later with Custody Officers D and E. They opened the door and stood looking into the cell at Mr Fuimaono for about ten seconds, briefly discussing Mr Fuimaono's lack of breathing and the need to be mindful of their own safety when entering the cell.

110. Officer G entered the cell and moved Mr Fuimaono's hand with his boot to see if he was responsive. Custody Officer D also then entered and tapped Mr Fuimaono's unresponsive hand with his foot.

111. Custody Officer D checked for Mr Fuimaono's pulse, first on his wrist and then on his neck. He says he thought he felt a faint pulse but was unsure. Custody Officer E and Officer C also checked for Mr Fuimaono's pulse.

112. At 12.13am, Custody Officer E went to get the first aid bag and portable defibrillator.[18] At the same time, the ambulance service was called to attend.

113. At 12.14am, Custody Officer E placed the defibrillator pads on Mr Fuimaono. However, after completing a check, the defibrillator's voice prompt advised not to administer a shock.[19]

114. Custody Officer H helped move Mr Fuimaono towards the centre of the cell where he was placed flat on his back. At 12:15am, he began Cardiopulmonary Compressions (CPR) on Mr Fuimaono and Custody Officer E used an air bag to inflate Mr Fuimaono's lungs. Other custody officers then assisted, taking turns to continue CPR.

[18] Automated External Defibrillators (AED) are portable devices that apply an electric charge or current to the heart to restore a normal heartbeat.
[19] If an AED detects an irregular heart rhythm it uses voice prompts to tell the operator that a shock is needed. If a defibrillator cannot find a fibrillating heart rhythm, it will not shock a patient.

115. Ambulance officers arrived about six minutes after the officers began CPR.

116. From the time Officer G first finished observing Mr Fuimaono through the hatch when he believed he may be unresponsive, it took approximately:

- One minute and 20 seconds for an officer to enter the cell and a further 20 seconds before his pulse was checked;
- Three minutes for the defibrillator to be brought to the cell and for the ambulance to be called; and
- Four minutes and 30 seconds for officers to begin CPR.

Conclusion

117. The evidence is that the officers were unlikely to be able to save Mr Fuimaono's life once they found him to be unresponsive. However, this would not be the case for all detainees who suffer medical events. Custody staff must always seek to provide urgent medical assistance to detainees as soon as possible after they are found to be unresponsive.

118. Once officers found Mr Fuimaono to be not breathing, it took too long for them to retrieve the AED, to call the ambulance, and to begin CPR.

FINDING ON ISSUE 2

Once Mr Fuimaono was found to be not breathing, officers should have been quicker to commence CPR, retrieve the defibrillator, and call the ambulance.

Subsequent Police Action

119. Police say that, as a direct result of this incident, they have updated training to staff. The algorithm used in the electronic custody management console now gives a stronger weighting to recent hospital care, forcing a higher level of care for any detainee in similar circumstances.

Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

4 March 2025

IPCA: 21-7913

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.

PO Box 25221, Wellington 6140
Freephone 0800 503 728
www.ipca.govt.nz