

Custody officer used unjustified force in Manukau Custody Unit

1. On 14 November 2023, a 19-year-old man, Mr Z, was received into the Counties Manukau Police Custody Unit. While in a holding cell, he began banging his head backwards against the concrete wall. Custody officers told him to stop and warned him that he would otherwise be placed in a restraint chair.¹ However, Mr Z banged his head a further three times.
2. While a restraint chair was being prepared, Custody Officer A went into the cell alone and pulled Mr Z to his feet. Mr Z resisted and moved into a corner of the cell, where Custody Officer A struck Mr Z while attempting to restrain him.
3. Two other custody officers entered and assisted in removing Mr Z from the cell. As they escorted Mr Z towards the door, Custody Officer A punched Mr Z in the face.
4. Police commenced an investigation and notified the Authority of the incident.² We completed an independent investigation which included visiting the custody unit. We reviewed the CCTV footage (no audio), Police documents and interviewed the officers who dealt with Mr Z during this incident. We also spoke with Mr Z. However, his recollection of the incident was limited, particularly regarding the details of the specific uses of force we discuss in this report.

The Authority's Findings

Issue 1: Did custody officers act appropriately to prevent Mr Z from self-harming?

Custody officers should have made further attempts to stop Mr Z from banging his head before placing him in the restraint chair.

Custody Officer A should have sought the custody sergeant's authorisation to use the restraint chair before initiating the process of placing Mr Z in it.

¹ A restraint chair is approved Police equipment consisting of an inclined, padded chair on wheels that uses leg, wrist, waist and chest mechanical restraints to immobilise a person. Custody officers are Police staff trained specifically for custody duties only.

² Section 13 of the Independent Police Conduct Authority Act 1988 requires Police to notify the Authority of certain incidents.

Custody Officer A should not have intervened on his own as there was no immediate threat to Mr Z's safety.

Issue 2: Was the force Custody Officer A used on Mr Z justified and reasonable?

It was unnecessary for Custody Officer A to follow Mr Z when he retreated into the corner of the cell. The two subsequent strikes were unreasonable and unjustified.

Custody Officer A was justified in using force to stop Mr Z from spitting at him. However, he used excessive force to do so.

We do not consider Police have evidential sufficiency to charge Custody Officer A with a criminal offence. However, we are satisfied that there are grounds for Police to consider a disciplinary process.

Analysis of the Issues

THE AUTHORITY'S ROLE

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

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

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

ISSUE 1: DID CUSTODY OFFICERS ACT APPROPRIATELY TO PREVENT MR Z FROM SELF-HARMING?

7. In this section we describe what happened when Mr Z was placed into the holding cell and began banging his head against the wall. We consider why Custody Officer A entered the cell on his own and whether it was appropriate for him to do so. We also assess whether the decision to place Mr Z in the restraint chair was appropriate and arrived at in accordance with policy.

What happened?

8. Upon Mr Z's arrival at the custody unit, Custody Officer A completed a risk evaluation, asking Mr Z questions concerning his physical and mental health.³ Custody Officer A noted that Police

³ The information contained in custody evaluations helps to identify any health or welfare needs and to determine how often the detainee will be monitored.

records showed Mr Z had previously threatened or made attempts to self-harm. However, Mr Z told him he was not currently having any thoughts regarding self-harming.

9. Mr Z was calm, cooperative, and compliant for the ten minutes it took the custody officers to search him, conduct the evaluation, and place him in the holding cell.
10. Footage shows that, once left alone in the cell, Mr Z twice punched a glass wall then kicked it 19 times. He then gestured with his finger to the CCTV camera and sat on the cell bench, with his back against the wall. Mr Z elbowed the wall twice, then started banging his head on the wall behind him. Mr Z told us he was having suicidal thoughts and banged his head to get attention.
11. Over the next 40 seconds, there were seven episodes where Mr Z banged his head consecutively, banging it a total of 39 times. Based on our review of the footage, Mr Z was not using significant force when banging his head.
12. A custody officer noticed Mr Z was banging his head and alerted the other custody officers. Custody Officer B says Mr Z was: “... like tapping his head... just lightly up against the wall”. She thought he was banging his head out of boredom and frustration. Custody Officer A explained that: “... when someone comes in like that who is a bit frustrated and then starts banging his head [it’s] pretty standard procedure what we do.” Staff involved told us the standard procedure is to warn the detainee that they will be placed in a restraint chair if they do not stop banging their head. If they do not stop, they are sometimes shown the chair and then placed in it if they persist in banging their head. (This suggests staff may need reminding that restraint chairs should only be used as a last resort as per policy.) Custody Officers A and B took responsibility for warning Mr Z.
13. Custody Officers A and B opened the cell door. As they did so, Mr Z banged his head against the wall a further four times. The custody officers stood at the open door and spoke to Mr Z for about 40 seconds. Custody Officer B initially led the conversation, asking Mr Z why he was banging his head. Mr Z said he could bang his head if he wanted to and told her to: “Shut up, bitch” and “fuck off”. Custody Officers A and B both warned Mr Z that if he continued banging his head they would have to put him in a restraint chair to prevent him from self-harming.
14. Immediately after the cell door was closed, Mr Z banged his head against the wall three times, in quick succession, with more force than he had previously used.
15. Custody Officer A looked through the cell window and saw this. He says the force Mr Z used to bang his head the three times was “a lot harder” than he had used previously. He says he believed he had to try to restrain Mr Z in order to prevent him from harming himself, so he asked Custody Officer B to get the restraint chair.
16. Footage shows, after leaving the cell, Custody Officer B made her way to speak with the custody sergeant, Officer C. She says she intended to tell him what was happening and to create a plan around what to do if Mr Z continued banging his head.⁴ However, as Custody Officer A began re-

⁴ Custody Officer B’s recollection of the sequencing of events and how events unfolded was inconsistent with the footage. We have used the footage to provide this account as we assess it to be the most accurate. We are satisfied her intention was to speak with Officer C.

opening the cell door, Custody Officer B changed direction and went down a hallway to prepare the restraint chair.

17. Officer C heard a commotion so made his way to the cell to assist. Footage shows that as Custody Officer A was opening the cell door, he turned and saw Officer C entering the foyer outside the cell.
18. Custody Officer A re-entered the cell alone, six seconds after Mr Z had banged his head. Mr Z was sitting still at the time.
19. Footage shows Custody Officer A used his hands to take hold of Mr Z's left arm and went to drag him upwards. Mr Z rose to his feet and pulled his arm away, causing Custody Officer A to lose grip of him. Mr Z then retreated onto the bench in the back corner of the cell.
20. Custody Officer D came to assist. She entered the cell six seconds after Custody Officer A. Officer C followed two seconds later.

Should Custody Officer A have intervened on his own?

21. Custody Officer A says his main priority in entering the cell was to restrain Mr Z in order to stop him from banging his head. Custody Officer A says he believed he had to enter the cell immediately as: *"I didn't want to wait because... one extra blow on the head may have... made the difference to hurting himself seriously or dying...."*
22. Custody Officer A says staff are mindful of a previous incident where a detainee in their custody unit had died after repeatedly banging his head.⁵ Custody Officer A was not directly involved in this incident. We note the cause of that death was *not* attributed to the detainee banging his head and that the circumstances were different. While we accept this previous incident may have been reasonably factored into Custody Officer A's thinking, he was required to base his assessment on the particular circumstances in front of him regarding the risk Mr Z was posing to himself.
23. Mr Z had already banged his head about 40 times, in what we assess to be a fairly minor manner. While the three bangs made when the custody officers left the cell were harder, Mr Z was sitting still when Custody Officer A entered the cell. There was no indication there was any imminent risk that he was about to cause himself serious harm. Therefore, in our assessment, Custody Officer A did not need to enter the cell as a matter of urgency.
24. Given Mr Z was not banging his head at the time, Custody Officer A could have opened the cell door and spoken with Mr Z, rather than entering and immediately grabbing his arm. We note Mr Z did not bang his head while Custody Officers A and B were speaking with him.

⁵ The IPCA public report on this incident, 'Death of Jaye Taueli while in Police custody', was published on the IPCA website on 27 June 2023.

25. Our assessment of Mr Z's demeanour at the time, and the way Custody Officer A engaged with Mr Z, is that Custody Officer A's primary purpose in re-entering the cell on his own was to begin the process of placing him in the restraint chair.
26. Custody Officer A says he knew other officers saw him enter the cell and was confident they would shortly arrive to assist him. However, in the few seconds he was in the cell on his own, he became engaged in a physical altercation with Mr Z that could have been avoided (this is discussed further in Issue 2).
27. Rather than re-entering the cell on his own, Custody Officer A should have communicated with his colleagues, creating a planned, co-ordinated response to Mr Z's behaviour. By not doing so, Officer A increased the level of risk to himself and his colleagues who arrived to assist in an unplanned extraction.
28. At interview, Custody Officer A agreed that, if he had waited for assistance, removing Mr Z from the cell *"may have gone a bit better... [Mr Z] wouldn't have resisted so much or he might have calmed down a bit quicker and been easier to handle."*

Was it appropriate to decide to place Mr Z in the restraint chair?

29. Restraint chairs are one of the most intrusive of approved mechanical restraints. The Police policy entitled 'Mechanical Restraints' states:

"Restraint chairs must only be used as a last resort to control a detainee who is violent and intent on harming themselves or others, where serious injury or death is a likely result, and where other available restraints would be ineffective."
30. The policy provides an example of such behaviour, where a detainee is striking a wall with their head.
31. The policy also says that a supervisor's authority must be obtained before a restraint chair is used: *"... unless a supervisor is not available and immediate action is required to prevent the person harming themselves and/or others and where serious injury or death is a likely result."*
32. We agree that the custody officers had a duty to stop Mr Z from continuing to bang his head and, by doing so, potentially causing himself harm.
33. As stated in the policy, a restraint chair should only be used as a last resort. Our assessment is that Custody Officer A was too quick to decide to use it. Only one attempt was made to communicate with Mr Z prior to the decision being made to use the chair. Further attempts should have been made to speak with him to calm him down.
34. Also, given there was no imminent threat of serious injury or death, Custody Officer A should have sought Officer C's authority to use the restraint chair before re-entering the cell and beginning the process of removing Mr Z from the cell. Officer C was readily available, being less than five metres away from Custody Officer A when he chose to enter the cell alone.

FINDINGS ON ISSUE 1

Custody officers should have made further attempts to stop Mr Z from banging his head before placing him in the restraint chair.

Custody Officer A should have sought the custody sergeant's authorisation to use the restraint chair before initiating the process of placing Mr Z in it.

Custody Officer A should not have intervened on his own as there was no immediate threat to Mr Z's safety.

ISSUE 2: WAS THE FORCE CUSTODY OFFICER A USED ON MR Z JUSTIFIED AND REASONABLE?

35. In this section, we will discuss the force that Custody Officer A used against Mr Z when he retreated into the corner of the cell, and the force used to strike him in the face as he was escorted out of the cell. We will consider:
- a) whether Custody Officer A's uses of force were unjustified; and
 - b) if so, whether we recommend Police:
 - i) consider disciplinary action against the custody officer; or
 - ii) consider charging the custody officer with assault.

Was Custody Officer A justified in striking Mr Z while in the corner of the cell?

What happened?

36. CCTV footage shows Mr Z moved to sit on the bench in the back corner of the cell. Custody Officer A followed and stood above him.⁶ The position of Custody Officer A obstructed the CCTV camera's view, and we cannot determine exactly what occurred next.
37. It appears Custody Officer A was using his left hand to hold or restrain Mr Z. At this point, Custody Officer A appeared to strike Mr Z. Custody Officer D and Officer C then arrived to assist. They tussled with Mr Z for about ten seconds before raising him to his feet and beginning to escort him from the cell. During this movement, Custody Officer A appeared to strike Mr Z again.
38. Soon after the incident, Custody Officer A completed a report concerning his uses of force. In it, he says while at the back of the cell, he used two 'distraction' forearm strikes on the back of Mr Z's arms, in an unsuccessful attempt to get him to loosen his limbs.
39. Mr Z does not specifically recall these strikes and it is unclear whether they connected with him. However, footage shows Mr Z was hunched over, with his back towards Custody Officer A on

⁶ Custody Officer A is taller than Mr Z and of a larger build.

the occasion of the first apparent strike. It is unlikely therefore that any strike landed on the back of Mr Z's arms, as Custody Officer A's report indicated.

What do Officer C and Custody Officer D say?

40. Custody Officer D recalled that as she entered the cell, Custody Officer A was standing with his hands on his waist, asking Mr Z in a high-pitched voice: *"Hey, what's your problem? Why are you not listening?"* Mr Z was crying, saying: *"I don't know."* Both Custody Officer A and Mr Z were swearing. Mr Z *"shoved"* his hands and head into the corner of the cell. She recalls Mr Z was twisting his body and that Custody Officer A was trying to hold his left arm. She says she did not see Custody Officer A strike Mr Z at all while Mr Z was in the corner.
41. Officer C could only see the back of Custody Officer A as he entered the cell. He recalls hearing Custody Officer A telling Mr Z that he should listen. He saw *"hands flying"* as Custody Officer A struggled to get Mr Z under control but he did not see the strikes.

Were the strikes in the corner justified?

42. Custody Officer A believed his legal justification for using force was to prevent Mr Z from self-harming.⁷ However, Mr Z was not in any imminent danger of causing himself immediate or serious injury at the time Custody Officer A entered the cell and used force. Therefore, we do not consider that Custody Officer A can rely on this justification. Nevertheless, it is appropriate to consider whether his use of force may be justified in order to execute the process of placing Mr Z in the restraint chair.
43. Section 39 of the Crimes Act 1961 empowers Police to use *"such force as may be necessary"* to overcome any force used in resisting an arrest or the execution of a process. *"Necessary"* force in this context is generally accepted as meaning *"reasonable"* and *"proportionate to the degree of force being used to resist"*. Under section 39, the Authority must consider:
 - a) Did the officer genuinely believe that the person was using force to resist (a subjective test)?
 - b) If so, was it reasonable for the officer to conclude it was necessary to use force to overcome that resistance (an objective test)?
 - c) If so, was the officer's use of force to overcome that resistance reasonable (an objective test)?

Did Custody Officer A believe Mr Z was using force to resist being restrained?

44. Custody Officer A believed Mr Z was using force to resist the process. He says that, when he initially took hold of Mr Z's arm to make him stand up, Mr Z resisted by pulling away and moving backwards into the corner. In his use of force report, Custody Officer A said, once in the corner,

⁷ Section 41 of the Crimes Act 1960 states: *"Every one is justified in using such force as may be reasonably necessary in order to prevent the commission of suicide, or the commission of an offence which would be likely to cause immediate and serious injury to the person or property of any one, or in order to prevent any act being done which he or she believes, on reasonable grounds, would, if committed, amount to suicide or to any such offence."*

Mr Z tensed and pulled his arms tightly against his chest, preventing Custody Officer A from being able to take hold of his arms to place them in an arm bar.⁸

45. We are satisfied Mr Z did resist Custody Officer A's attempts to remove him from the cell and restrain him, though we consider the level of resistance to be low.

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

46. Custody Officer A told us he thought the distraction strikes: "... might take [Mr Z's] mind off being so tense and maybe relax [him] for a second or two just enough to grab him". On the available evidence we are satisfied that Custody Officer A's strikes were for the purpose of distracting Mr Z.
47. Custody Officer A unnecessarily entered the cell and, in doing so, instigated the process of removing Mr Z to place him in the restraint chair on his own. Had he not done this, he would not have found himself in a position where he was alone, facing some resistance from Mr Z.
48. Upon encountering Mr Z's resistance, Custody Officer A should have moved away from him and waited for the other officers to arrive. By doing so, he could have avoided the use of force.
49. We cannot reconcile Custody Officer A's assertion that he entered the cell out of concern for Mr Z harming himself, with his subsequent confrontational manner. Custody Officer A struck Mr Z twice while attempting to gain compliance, rather than waiting for a few more seconds and executing the process in a calm manner, with the assistance of two colleagues.
50. In short, it was unnecessary and unreasonable for the officer to follow Mr Z into the corner and strike him twice in order to execute the process of removing him from the cell and placing him in the chair. Given this conclusion, there is no need to discuss the third question.

Was Custody Officer A justified in striking Mr Z while escorting him out of the cell?

What happened?

51. Footage shows Mr Z resisted being escorted out of the cell. Officer C held Mr Z's right arm behind his back. Custody Officer D stood on Mr Z's left side, looping both her arms around Mr Z's outstretched left arm. Custody Officer A stood in front of Mr Z, to his left side, with one hand holding Mr Z's left wrist and his other hand on Mr Z's left shoulder.
52. Mr Z looked towards Custody Officer A the entire time he was escorted out of the cell. Officer C recalls Mr Z was abusing Custody Officer A, though Officer C cannot recall specifically what Mr Z was saying. As they walked, Mr Z took a step towards Custody Officer A, moving the group in his direction.

⁸ 'Arm bars' are approved manual restraint techniques which officers can use to control a person's movements, or to gain control over a person who may try to escape. The person's arm is 'locked', with the elbow hyper-extended.

53. Custody Officer A says Mr Z then indicated he was about to spit at him. Footage shows Custody Officer A removed his right hand from Mr Z's shoulder and used it to strike Mr Z in the jaw/cheek, at short-range and with a closed fist. The force of the punch caused Mr Z's head to be thrown backwards.⁹
54. Officer C says that by this point he could see Custody Officer A had become "a bit riled up" and saw signs that he was "red misting".¹⁰ He pulled Mr Z towards himself, away from Custody Officer A.
55. Mr Z was eventually brought under control and placed in the chair with the assistance of other officers.

Was the strike justified?

56. 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.
57. The section 48 test involves three questions:
- What were the circumstances as the officer believed them to be (a subjective test)?
 - Was the officer's use of force against Mr Z for the purpose of defending himself/herself or another (a subjective test)?
 - Was the officer's use of force against Mr Z reasonable in the circumstances as the officer believed them to be (an objective test)?

What did Custody Officer A believe the circumstances to be?

58. Custody Officer A says Mr Z turned his head towards him and made a sound as though he was about to spit at him. He says he did not intend to strike Mr Z, but rather to deflect his face away and stop him from spitting:

"I sort of panic reacted to him about to spit on me and pushed his face away with my arm. I thought it was my forearm I was using, but as it turned out it looked like it was my closed fist... that I pushed his face away with."

59. Custody Officer A explained to us that when Mr Z tried to spit at him, it "spun me out a bit" and that after the scuffle in the corner, "adrenaline [was] running probably a bit high". He says he did not know Mr Z and was unsure if he had any illness or infections that may have been transmitted through bodily fluids, causing a threat to him. He indicated to us that he finds spitting particularly abhorrent.
60. There is insufficient evidence to enable us to reach a view as to whether Mr Z was preparing to spit at Custody Officer A. Mr Z says he would never spit and neither Officer C nor Custody Officer D recall being aware he was preparing to do so.

⁹ It is our understanding that Mr Z was not injured.

¹⁰ 'Red mist' is a term used to describe when a person has a feeling of extreme anger that clouds their judgement temporarily.

61. While footage shows Mr Z did not specifically turn his head towards Custody Officer A (as he was already looking at him), it shows Mr Z took a step towards Custody Officer A just prior to being punched.

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

62. We accept Custody Officer A may have genuinely believed Mr Z was about to spit at him and acted to defend himself.

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

63. Custody Officer A was justified in using reasonable force to stop Mr Z from spitting at him. However, in our view, using a closed fist to punch Mr Z in the face was an excessive use of force.
64. It would have been reasonable for Custody Officer A to push Mr Z's face away using an open palm or his arm, as he says he intended to do. Alternatively, he could have stepped away from Mr Z, who was being restrained by two other officers at the time.
65. Custody Officer A accepts that the punch was unreasonable and that he could have handled the situation better.

Should prosecution be initiated in respect of Custody Officer A's conduct?

66. We have concluded that Custody Officer A used excessive force when he struck Mr Z while attempting to restrain him in the corner and when he punched him with a closed fist. In our analysis, we applied the civil standard of proof because we were concerned with whether Custody Officer A had breached the Police Code of Conduct. In this section, we consider whether Custody Officer A's actions constituted a breach of the criminal law.
67. While it is not our job of course to determine criminal liability, we are obliged to reach views as to whether Police action that is the subject of a complaint is justified or not, and may make non-binding recommendations to the Commissioner of Police, including that Police consider criminal prosecution. In deciding whether to recommend prosecution we must consider:
- d) whether in the event of a prosecution there would be a reasonable prospect of a conviction; and
 - e) whether it is in the public interest to prosecute.
68. The first issue concerns evidential sufficiency; whether it can be established beyond reasonable doubt (the criminal standard of proof) that the offence was committed. This requires that the evidence is so convincing that there is no other logical explanation other than that Custody Officer A is guilty of assault/using excessive force.

The law

69. Section 62 of the Crimes Act provides that:

“Every one authorised by law to use force is criminally responsible for any excess, according to the nature and quality of the act that constitutes the excess.”

70. Section 196 of the Crimes Act provides that:

“Every one is liable to imprisonment for a term not exceeding 1 year who assaults any other person.”

Is there sufficient evidence to provide a reasonable prospect of conviction of Custody Officer A for assault?

71. The evidence the Authority gathers through its interviews with complainants, subject officers and witnesses is not admissible in evidence against any person. This means that evidence we have collected in our interviews cannot be used by Police in any prosecution. However, Police have the CCTV footage, the Tactical Options Report, and Police statements from the witness officers. They do not have an account from Mr Z as he did not engage with them.

72. We accept there is insufficient evidence to provide a reasonable prospect of conviction for Custody Officer A’s strikes on Mr Z in the corner. Footage does not show where the strikes landed on Mr Z, the other officers did not see them, and Mr Z has not provided an account to Police.

73. In our assessment, there is sufficient evidence that Custody Officer A used excessive force to strike Mr Z while escorting him out of the cell. However, Police do not have the benefit of the account Custody Officer A provided to us, where he accepts he unintentionally used a closed fist on Mr Z and that this use of force was unreasonable. We find it is unlikely a prosecution could establish beyond reasonable doubt that his use of force was excessive, that is to say establish to the criminal standard that Custody Officer A was not entitled to rely on section 48 of the Crimes Act.

Subsequent Police action

74. Police completed their own investigation and concluded it was not in the public interest to charge Custody Officer A. Although finely balanced, we agree.

75. Police also completed a disciplinary process regarding Custody Officer A’s use of excessive force, which constitutes *“serious misconduct”* as defined by the Police Code of Conduct. We also agree with this action.

Summary

76. The purpose of intervening when detainees are self-harming is to prevent harm. When a forceful approach is used to manage self-harming behaviours, it can escalate the situation and cause unnecessary additional harm. Custody staff should be making every effort to calm agitated detainees down, only restraining them when left with no other option.
77. If Custody Officer A had taken a different approach with Mr Z, it is unlikely the situation would have escalated as it did and Mr Z would not have been subjected to unnecessary force.

FINDINGS ON ISSUE 2

It was unnecessary for Custody Officer A to follow Mr Z when he retreated into the corner of the cell. The two subsequent strikes were unreasonable and unjustified.

Custody Officer A was justified in using force to stop Mr Z from spitting at him. However, he used excessive force to do so.

We do not consider Police have evidential sufficiency to charge Custody Officer A with a criminal offence. However, we are satisfied that there are grounds for Police to consider a disciplinary process.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

17 April 2025

IPCA: 23-20707

Appendix

POLICY

Arrest and Detention

78. Force used during an arrest must be reasonable and be used only when it is not reasonable to make the arrest in a less violent manner.

Use of Force

79. The Police Use of Force policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest, or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, Tasers, and firearms.
80. Police policy provides a framework for officers to assess, reassess, manage, and respond to use of force situations, and ensure the response (use of force) is necessary and proportionate given the level of threat and risk to themselves and the public. Police refer to this as the TENR (Threat, Exposure, Necessity and Response) assessment.
81. Police officers must also constantly assess an incident based on information they know about the situation and the behaviour of the people involved, and the potential for de-escalation or escalation. The officer must choose the most reasonable option (use of force) given all the circumstances known to them at the time. This may include information on:
- 1) the incident type, location, and time;
 - 2) the officer and subject's abilities;
 - 3) the subject's emotional state;
 - 4) the influence of drugs and alcohol and the presence or proximity of weapons;
 - 5) similar previous experiences with the subject; and
 - 6) environmental conditions.

Police refer to this assessment as an officer's Perceived Cumulative Assessment (PCA).

82. A key part of an officer's decision about when, how, and at what level to use force depends on the actions of, or potential actions of, the people involved, and depends on whether they are:
- 1) cooperative;
 - 2) passively resisting (refuses verbally or with physical inactivity);
 - 3) actively resisting (pulls, pushes or runs away);

- 4) assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or
- 5) or presenting a threat of grievous bodily harm or death to any person.

Ultimately, the legal authority to use force is derived from the law and not from Police policy.

83. The policy states that any force must be considered, timely, proportionate and appropriate given the circumstances known at the time. Victim, public, and Police safety always take precedence, and every effort must be taken to minimise harm and maximise safety.

About the Authority

WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

The Independent Police Conduct Authority is an independent body set up by Parliament to provide civilian oversight of Police conduct.

We are not part of the Police – the law requires us to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Kenneth Johnston KC.

Being independent means that the Authority makes its own findings based on the facts and the law. We do not answer to the Police, the Government or anyone else over those findings. In this way, our independence is similar to that of a Court.

The Authority employs highly experienced staff who have worked in a range of law enforcement and related roles in New Zealand and overseas.

WHAT ARE THE AUTHORITY'S FUNCTIONS?

Under the Independent Police Conduct Authority Act 1988, the Authority receives and may choose to investigate:

- complaints alleging misconduct or neglect of duty by Police;
- complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- notifications of incidents in which Police actions have caused or appear to have caused death or serious bodily harm; and
- referrals by Police under a Memorandum of Understanding between the Authority and Police, which covers instances of potential reputational risk to Police (including serious offending by a Police officer or Police actions that may have an element of corruption).

The Authority's investigation may include visiting the scene of the incident, interviewing the officers involved and any witnesses, and reviewing evidence from the Police's investigation.

On completion of an investigation, the Authority must form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.

THIS REPORT

This report is the result of the work of a multi-disciplinary team. At significant points in the investigation itself and in the preparation of the report, the Authority conducted audits of both process and content.



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