

# Police respond to disorderly group in Beachlands

5. Following our assessment of the complaints, we determined the following concerns warranted particular consideration:
- Allegations of unjustified use of force against Mr Z and Mr X;
  - An allegation Police denied Mr Z his right to consult a lawyer while he was in Police custody;
  - Whether Police provided or offered adequate aftercare and medical attention to Mr Z and Mr X while they were in Police custody; and

<sup>1</sup> 'Laser painting' means to shine the infrared laser sighting system of the Taser on someone. This is usually done as a visual warning, in conjunction with a verbal warning.

<sup>2</sup> Oleoresin capsicum spray is also known as pepper spray.

- The validity of the formal warnings issued in respect of four complainants.
6. We conducted an independent investigation into the matter.<sup>3</sup> During our investigation we examined Police records, including notebook entries and statements, reviewed health records pertaining to Mr Z, reviewed footage, visited the scene, and interviewed three complainants and 10 officers.<sup>4</sup>
  7. After considering the concerns raised in the complaints and undertaking our investigation, we are satisfied that Police acted within their powers and used reasonable and justified force to take the complainants into custody.
  8. Some of the complainants say Police spoke unprofessionally to them. While we cannot rule this out, we have insufficient evidence to make a finding on this.
  9. Mr X complained he was punched in the left eye by an officer, after having been arrested and while being escorted towards a Police car. Despite our enquiries, we have insufficient evidence to make a finding in respect of this allegation and have therefore not discussed it further in this report.

## The Authority's Findings

### **Issue 1: Did Police use unjustified force on Mr Z?**

Officer K kicked Mr Z in the vicinity of his head. On the evidence, we cannot conclude that this was intentional. Accordingly, we cannot reach an adverse conclusion.

### **Issue 2: Did Police provide Mr Z and Mr X with adequate medical attention?**

Police acted reasonably regarding the provision of medical attention to Mr Z and Mr X.

### **Issue 3: Did Police deny Mr Z his right to consult a lawyer?**

We are satisfied Police did not deny Mr Z his right to consult a lawyer.

### **Issue 4: Were the formal warnings valid?**

Police failed to follow the correct process when issuing the formal warnings. Therefore, they were invalid.

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<sup>3</sup> Police also conducted investigations. Officer K resigned before investigations were concluded.

<sup>4</sup> The other three complainants did not engage with us. Their complaints were mainly in support of Mr Z and Mr X.

# Analysis of the Issues

## THE AUTHORITY'S ROLE

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10. 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."*

11. 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 POLICE USE UNJUSTIFIED FORCE ON MR Z?

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### What happened?

12. The first officers to arrive at the scene were Officers A, B and C. They saw Mr Z fighting with Mr Y. This mainly included shouting at each other, pushing and shoving.
13. Officers A and C arrested Mr Y. The officers were then approached by about four of the other young men who were being verbally abusive towards the officers for arresting Mr Y. In response, Officer B used a Taser to laser paint the four young men, making them move back a few metres.
14. The officers then saw Mr Z fighting with Mr X. Both were throwing multiple closed fist punches to the head and upper torso areas.
15. Officer A shouted at Mr Z and Mr X to stop fighting and that they were under arrest. Officer A used their O/C spray to break up the fight. Mr Z and Mr X were arrested and put into handcuffs.
16. Several officers describe seeing Mr Z with grazes/scratches all over his body and multiple cuts to his bloodied face, following his fight with Mr X. Mr X was also seen to have injuries.
17. Mr Z was particularly affected by the O/C spray. He says he felt extreme burning in his eyes, was having trouble breathing, and generally felt extremely panicked. Officers recall Mr Z screaming out and becoming verbally abusive towards Police from this point onwards.
18. Additional officers arrived on the scene to assist with controlling the group of young men who continued to be verbally aggressive towards Police and linger at the scene.

19. Mr Z was placed on the ground, sitting with his legs out in front of him and his handcuffed arms behind his back. Officer C sprayed Mr Z's face with an O/C spray aftercare solution to help relieve the pain.<sup>5</sup>
20. Mr Z continued to be verbally abusive then spat on Officer C. Mr Z acknowledges he intentionally spat at Officer C. He says: *"I was upset and angry with the way they were treating me and without thinking and being intoxicated, I stupidly spat in their direction. Not realising at the time, that spitting is a form of assault."*
21. Officers A, C, F, G, H and K all saw Mr Z spit on Officer C. In response, Officer A grabbed Mr Z's shoulder, pushed his face away and held his torso against a large rock, then turned him onto the ground. Officer A took this action to prevent Mr Z from spitting on anyone else.
22. Officers F and K then approached Mr Z, to move him to a Police car. Two officers say they saw Officer K kick Mr Z in the head area before raising him to his feet.
23. Mr Z received some first aid before being escorted to the Police custody truck. While being placed inside the truck, he spat on Officers F and H.<sup>6</sup>
24. Mr Z, Mr Y, Mr X, Mr W and Mr V were all taken to the Manukau Custody Unit in the custody truck.

#### *What did Mr Z say?*

25. Mr Z complained Police used excessive force by physically assaulting him at various times during the incident. He acknowledges he was intoxicated at the time of the incident, and says he cannot be certain about the exact timeline of events. However, he recalls receiving knocks to the back of the head and blows that felt like punches. He also believes he was knocked unconscious at some stage as a result of Police use of force.
26. A key part of Mr Z's account relates to when he was in handcuffs on the ground. Mr Z says he was: *"... cowered away, kind of almost curled up..."*. He heard an officer say something to him like: *"You're not so tough now"*. After hearing this, Mr Z recalls being hit in the head. He says: *"... from that point I think I've ... been picked up by the cuffs and I was kind of like limp weight ..."*.
27. Mr Z did not complain about being kicked in the head area by Officer K. This allegation only arose in the course of the investigation.
28. We found the force used by officers to place Mr Z in handcuffs and onto the ground was reasonable and justified given Mr Z's level of resistance. Officer A was justified in redirecting and restraining Mr Z on the ground after he assaulted Officer C by spitting. However, we had concerns about the alleged kick by Officer K.

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<sup>5</sup> Mr Z initially thought he had been sprayed with O/C spray a second time, while handcuffed on the ground. He later acknowledged it may have been the aftercare spray.

<sup>6</sup> Mr Z denies intentionally spitting at these officers.

## Did Officer K kick Mr Z?

### What did the witness officers say about the kick?

#### Officer G

29. Officer G was standing approximately three to five metres away from where Mr Z was lying on his side on the ground, shouting and swearing at Police.
30. Officer G saw Officers F and K assist Mr Z to his feet by scooping their arms under each of his arms. While doing so, Officer G saw Officer K kick Mr Z once: *"... it was almost like [Officer K] walked into [Mr Z] ... rather than winding your leg up and kicking a ball or something."*
31. Officer G could not confirm exactly where the kick connected with Mr Z's body due to the limited lighting and their position. However, Officer G says the kick definitely landed in Mr Z's upper body area and that Officer K's boot: *"... sort of hit ... his chin, his neck or his head ...".* Officer G recalls Mr Z's upper body then moved in a manner indicating he had felt some force.
32. Officer G said Mr Z then went limp and quiet and was assisted by Officers F and K to walk to a Police car. Officer G says:

*"I also recall seeing the young male's feet initially refusing to walk which lead [sic] me to think he may have been unconscious however; I could not confirm it due to only seeing the back of the young male as he was taken away."*
33. Officer G soon approached the car and spoke with Mr Z, who was trying to apologise for what he had been saying and for spitting on Officer C. Mr Z smelt strongly of alcohol, was slurring his words, and was unable to stand unassisted. Officer G tried to clean Mr Z's bloodied nose and explained to him that he would be moved into a Police custody truck.
34. Officers F and K then assisted Mr Z to walk to the Police custody truck. Officer G saw Mr Z spit on Officer F as he was escorted into the truck.

#### Officer F

35. Upon being instructed to move Mr Z, Officer F reached down to take hold of him under his arm. While doing so, Officer F saw a boot come into view from the right side and connect once with Mr Z's mouth area. Officer F looked up and saw it was Officer K who had kicked Mr Z.
36. After the kick, Officer F noticed Mr Z was quiet and slow. Officer F thought Mr Z could either have been processing what had happened or could have lost consciousness for two to three seconds.
37. While escorting Mr Z towards the Police car, Officer F heard Mr Z say: *"... you kicked me, you kicked me."*
38. Neither Officers G nor F had a view on whether the kick was intentional or not.
39. No other officers recall seeing the interaction.

### What did Officer K say?

40. Officer K did not recall kicking Mr Z:

*“... I can’t recall if that’s occurred... due to the minimal lighting. I couldn’t even see 100% ... where [Mr Z] was. You could certainly see what was sort of happening but, no... I don’t know anything about [the kick].”*

### Analysis

41. Officers F, G, and K all mentioned the scene was dark, with minimal lighting. It was the early hours of the morning and streetlights were facing towards the road and away from where Mr Z was.
42. Officer F observed the kick from close range, while Officer G observed it from three to five metres away. Despite the minimal lighting, the accounts of Officers F and G are consistent. They both say the kick occurred when Officer K went to lift Mr Z up, and both say the kick landed in Mr Z’s head or thereabouts. Although unable to say precisely where the kick landed, Officer G saw Mr Z’s upper body move as a result of the kick. This suggests the kick involved some force.
43. Both Officers F and G wondered if Mr Z had been knocked briefly unconscious by the kick. For both, this was based on Mr Z’s change in behaviour from moving about and shouting abuse at Police to going quiet, mumbling, moving slowly, and needing assistance to start walking. Officer F then heard Mr Z repeat the words “*you kicked me*” as he was being escorted towards the Police car.
44. While both Officers F and G believed the kick to have been significant enough to cause a loss of consciousness, and discussed it with each other following the incident, neither reported it at the time. They say it was a busy shift and they believed Officer K would be completing a report outlining force used during the incident, and it would address the kick in this. Our understanding is that, as they were not sure about whether the kick was deliberate or not, they did not feel the need to report it. It was only once asked specifically about any force witnessed in this incident that they described the kick.
45. Although Mr Z was intoxicated at the time of the incident, we found him to be a credible witness. He was honest about what he could and could not remember and his confusion around the timeline. There were parts of the incident Mr Z recalled that were supported by other evidence. He believes he went unconscious at some stage and, in particular, he recalls being hit in the head while lying down, then picked up and feeling “*like limp weight*”. Mr Z’s indication as to the time of this is consistent with when Officers F and G thought he may have been knocked unconscious.
46. In response to the allegation of the kick, Officer K did not deny the kick; rather, Officer K said they could not recall it.
47. Officer K did not suggest the kick may have been unintentional when moving to lift Mr Z up, though that is an obvious possible inference.

## Conclusion

48. We have concluded, on the balance of probabilities, that Officer K kicked Mr Z in the vicinity of his head. Officers F, G and Mr Z were credible witnesses and their accounts are consistent. We are not convinced that Officer K gave us a complete account of his recollection of the incident.
49. We have considered whether Officer K's kick constituted an assault on Mr Z. Assault requires intention.<sup>7</sup> On the basis of the evidence that is available to us, we are unable to exclude the possibility that the kick was accidental. Accordingly, we cannot reach an adverse conclusion.
50. If the kick had been intentional, it would have been an unjustified use of force and an assault.

## FINDING ON ISSUE 1

Officer K kicked Mr Z in the vicinity of his head. On the evidence, we cannot conclude that this was intentional. Accordingly, we cannot reach an adverse conclusion.

## ISSUE 2: DID POLICE PROVIDE MR Z AND MR X WITH ADEQUATE MEDICAL ATTENTION?

51. Injuries to Mr Z and Mr X were noted when they were received into the custody unit. They both had dried blood around their faces and hands. They were known to have been fighting. Some of the arresting officers had seen them exchanging punches to the head. Additionally, Mr Z had an open wound to one of his little fingers<sup>8</sup> and Mr X was complaining of a potentially broken thumb.<sup>9</sup>
52. Police have a duty of care to people received into custody. Custody area staff are instructed to call a health professional for advice/assistance if a detainee has been injured (especially where a potential head injury has occurred proximate to the detention).<sup>10</sup>
53. The young men were in Police custody for approximately an hour. During this time, Police spoke with Mr Z and Mr X about receiving medical attention for their injuries and understood they wished to seek medical attention once released from custody. Officer L says Police were mindful they needed to process them efficiently so they could go and receive medical treatment. Police arranged to transport some complainants home and have other complainants picked up by their parents.
54. Given the nature of their injuries, and the short time the young men were in custody, we accept officers agreed to allow Mr Z and Mr X to arrange their own medical treatment upon their release rather than arranging for a doctor to see them while in custody.
55. We make the observation that best practice would have been for Police to take photos of the injured complainants when they were received into custody (especially if they were complaining

<sup>7</sup> 'Assault' means the act of intentionally applying or attempting to apply force to the person of another, directly or indirectly.

<sup>8</sup> This was noted by Officer C at the scene but not noted in Mr Z's custody record.

<sup>9</sup> This was noted in Mr X's custody record.

<sup>10</sup> 'People in police custody' policy.

of excessive use of force), and to have recorded any offers and rejections of medical attention in the complainants' custody records.<sup>11</sup>

## FINDING ON ISSUE 2

Police acted reasonably regarding the provision of medical attention to Mr Z and Mr X.

## ISSUE 3: DID POLICE DENY MR Z HIS RIGHT TO CONSULT A LAWYER?

56. All detainees have the legal right to consult a lawyer in private and without delay.<sup>12</sup> Police 'People in Police custody' policy states that detainees should be given a list of available lawyers and that they be allowed to telephone a lawyer of their choosing.
57. There is a conflict in accounts between Mr Z and Police regarding why he was unable to consult a lawyer during his time in the custody unit.
58. Mr Z told us he wanted to speak to a lawyer because he wanted a third party to see his physical state before his hands were cleaned and fingerprints taken, as he believed his injuries were due to Police using force on him. He recalls Officer L asking for his lawyer's phone number. Mr Z says he knew his friend had a lawyer who he could probably use so told Officer L to call his friend for the contact details. This did not occur. Ultimately, Mr Z agreed to have his hands cleaned on the proviso that Officer L first took photos of him.
59. Officer L mostly dealt with Mr Z while in the custody unit. Officer L says Mr Z continued to be aggressive and verbally abusive towards Police, while in the custody unit. Further, despite several requests, Mr Z would not provide his preferred lawyer's details to staff. Officer L says Mr Z was provided with the option of consulting with the on-call duty lawyer, however, refused the offer. Officer L advised Mr Z that staff would process him as quickly as possible so he could be released and seek medical attention, and also contact his lawyer.
60. We have weighed the evidence available and are satisfied Police did not deny Mr Z his right to consult a lawyer. We accept that Mr Z's lack of co-operation contributed to his inability to consult with a lawyer during his short period of confinement.

## FINDING ON ISSUE 3

We are satisfied Police did not deny Mr Z his right to consult a lawyer.

<sup>11</sup> We note Officer L did take photos of Mr Z in custody, but this was only at Mr Z's request. The injury to Mr Z's finger was not photographed.

<sup>12</sup> Section 23 of the New Zealand Bill of Rights Act 1990.



#### ISSUE 4: WERE THE FORMAL WARNINGS VALID?

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- 61. Before being released, four of the young men were told they were to receive a formal warning.
- 62. Police may issue a formal warning as an alternative to prosecution when seeking to resolve an offence. A formal warning is recorded in the Police database, and is subject to disclosure, for example for Police Vetting Services.
- 63. In response to our request for copies of the four formal warnings issued, Police examined their records and made enquiries with the relevant officers. Police found no formal warnings were actually issued. The officers believed they had issued the warnings but had failed to follow the process, which meant formal warning letters were not created. Therefore, the formal warnings were invalid.
- 64. As a result of the shortcomings regarding the formal warning process, messaging was disseminated to Police staff at Area and District levels to ensure compliance with policy. The same message was to be included in training for new officers.
- 65. Police confirmed the invalid formal warnings are not recorded against the complainants' Police history.

#### FINDING ON ISSUE 4

Police failed to follow the correct process when issuing the formal warnings. Therefore, they were invalid.



**Judge Kenneth Johnston KC**

Chair  
Independent Police Conduct Authority

15 May 2025

**IPCA: 23-20668**

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## About the Authority

### WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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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?

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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

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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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