

Police use incorrect power of arrest at Auckland

1. At about 4.30pm on Friday, 28 April 2023, Police were called to an eight-storey apartment building in central Auckland where a deceased woman had been located at the bottom of an atrium. Early indications were that the unknown woman had fallen from an internal balcony.
2. Mr Z, the partner of the woman, returned to their apartment at about 4.45pm having no knowledge of the incident. When he discovered her death, Mr Z became highly emotional and tried to leave the building and area.
3. Attending officers, who were still investigating what had occurred, tried to talk to Mr Z. An officer was concerned about Mr Z's behaviour, so arrested him for obstruction. Mr Z was placed in handcuffs and later transported to the Auckland Custody Unit.
4. Custody officers were also concerned about Mr Z and arranged an assessment by the mental health team. Police released Mr Z without charge after detaining him for about five and a half hours.
5. On 2 July 2024, Mr Z complained to the Authority about his treatment by Police. We notified Police of the complaint (as required by law)¹ and independently investigated it.
6. The Authority acknowledges this matter involves the death of a woman and we extend our sympathy to the parties involved.

The Authority's Findings

Issue 1: Were Police justified in arresting Mr Z for obstruction?

Police were not justified in arresting Mr Z for obstruction. However, they would have been justified in detaining him for the purpose of a mental health assessment.

¹ Section 16 of the Independent Police Conduct Authority Act 1988.

Police should have promptly taken Mr Z to the custody unit after his arrest.

Issue 2: Did Police appropriately detain Mr Z at the Auckland Custody Unit?

It was reasonable for Police to hold Mr Z in custody for five and a half hours, due to their concern about his mental state and the need to arrange a family member to uplift him.

Mr Z's treatment while in custody was appropriate.

Analysis of the Issues

BACKGROUND

7. Officer A and another officer arrived at the central city apartment building and were taken to the bottom of an atrium within the building. On the first floor, below the balconies that led to apartments above, lay the body of a young woman. At the time, officers did not know her identity, but she was later identified as a 23-year-old, Ms Y.
8. The officers determined Ms Y was deceased and considered that she had fallen from a floor above. Officer A radioed an update to the Emergency Communication Centre (North Comms). A sergeant (Officer B) began travelling to the building to assist.
9. Officers were unaware that Mr Z had entered the building about this time and took a lift to his apartment on the 8th floor. Mr Z did not know what had occurred with Ms Y, who he later said was his flatmate and girlfriend.
10. Mr Z could not find Ms Y in the apartment although he saw her phone and building access cards there. Having concerns, he went out onto the balcony and, looking over, saw Ms Y's body and knew she was dead. Mr Z told us he became extremely emotional and went to leave the building by way of the lift.
11. On the first floor, Officer A heard a distressed male voice from high above and reported this over the Police radio. Officer A relayed that the man was in a descending lift, yelling loudly and banging against the walls. Officer A heard the man, still yelling, go to the ground floor and appear to exit the building.
12. Officer B arrived outside the apartment building, having heard the commentary from Officer A. She saw Mr Z walking from the building and identified him as the distressed man.
13. Officer B spoke with Mr Z, which resulted in him being arrested for obstruction, placed into handcuffs and taken to the Auckland Custody Unit.

ISSUE 1: WERE POLICE JUSTIFIED IN ARRESTING MR Z FOR OBSTRUCTION?

What happened?

What does Mr Z say happened?

14. Mr Z told us he was so overcome with grief that, when he got outside, he could not talk properly as he went towards his friend Mr X (who had driven him to the apartment building and was waiting outside). When he saw a policewoman (Officer B), he approached her and was trying to say *"It's [Ms Y's first name], she's dead."*
15. Officer B asked him his name, so he removed his name tag from around his neck and gave it to her. He then turned to Mr X and said, *"I can't be here."* Mr Z told us that he wished to leave because of what he had seen with Ms Y.
16. Then, without further discussion, Officer B told him he was under arrest, to which he laughed and replied that he was not. Officer B tried to put him into handcuffs, but he kept moving his arms to avoid this. A Police vehicle then arrived and *"a bunch of police officers jumped out... and swarmed onto me."*
17. Mr Z said they managed to get his hands behind his back and apply handcuffs. He was then kept standing outside his apartment building while an officer took Mr X a short distance away and spoke to him.
18. Mr Z pleaded for his handcuffs to be removed and to leave the front of the apartment but was told *"we have to wait for the big guy to get here."* Mr Z said that later, another officer arrived who was dressed differently to the others. Mr Z took this officer to be *"the big guy"* and thought he was a Police Area or District Commander.² He said this officer did not engage with him properly.
19. Mr Z told us he was then kept standing on the roadside outside his apartment, in handcuffs, for about two hours and was there when Ms Y's covered body was taken out of the building and placed into a black hearse. A short time later he was told to get into the back of a Police car, without ever being given any reason or explanation.

What do Police say happened?

20. Officer B said she tried to be low-key and friendly with Mr Z, although, as she described to us, he appeared *"... heightened, he was chomping his teeth, was wide-eyed and to me presenting as a person high on methamphetamine. That's what his behaviour was exhibiting."*
21. Although Mr Z had provided his name and some detail to Officer B, he was hard to engage with, being evasive and then reluctant to answer further questions. Officer B said Mr Z made some comments about arriving home, having seen a chair and knowing she was dead on the floor

² Auckland City District covers the centre of the Auckland metropolitan area and is led by a District Commander at the rank of Superintendent with three separate areas each led by an Area Commander at the rank of Inspector.

below, but then evaded other questions. She said Mr Z's comments made no sense to her and he appeared to have difficulty stringing sentences together.

22. When Mr Z said he was leaving, Officer B asked him to remain while she went inside, but Mr Z started yelling. He became aggressive, erratic and *"started causing a scene."* Mr Z now loudly said he was leaving.

23. Officer B told us that she believed Mr Z needed to be detained because:

"... there's a deceased female lying in the atrium of a building with severe head injuries. I've got [Mr Z] who's being aggressive, who's presenting as high... or having some form of severe mental health episode, although it didn't really present as mental health, it presented more as a person high on drugs. He'd acknowledged that he had been up in this deceased person's apartment and was associated to her. Due to his heightened behaviour and non-engagement, I had concerns, serious concerns that he'd played a role in this person's death."

24. Officers C and D were also at the scene and saw Officer B speaking to Mr Z. Officer C told us Officer B and Mr Z spoke for some time, and Mr Z's behaviour was *"very erratic"*. Officer C says he also tried to calmly talk to Mr Z, but Mr Z was aggressive and hostile towards him, so he stopped.

25. Officer B asked Officer C to arrest Mr Z for obstruction, which Officer C did, along with Officer D. Officer D told Mr Z the reason for the arrest and advised him of his rights. Both officers said Mr Z resisted being handcuffed but was not violent, just pulling his hands away and being uncooperative.

26. A detective sergeant, Officer E, also attended the scene as is usual for unexplained deaths. Officer E was dressed in plain clothes, and it appears he is the one Mr Z thought was a District or Area Commander (see paragraph 18). We enquired if any other senior officer was present and established that neither the District nor Area Commander attended.

27. Mr Z was already under arrest when Officer E arrived and saw him outside of the apartment building. Officer E told us he wanted Mr Z to stay there until he had done a preliminary assessment because:

"Based on the behaviour that [Mr Z] was presenting to me, which was, in my experience, very atypical from what I've observed in a lot of sudden deaths over the years that I've investigated, I did have some very serious concerns that he may have had some involvement in the death."

28. After assessing the scene and speaking to other officers, Officer E approached Mr Z. He told us he tried to be calm, but Mr Z was agitated and proceeded to shout over the top of him, not listening. Officer E told us:

"I couldn't tell if he was affected by drugs or alcohol. I thought he might be... I had some real concerns for not only his safety, but anyone else's safety as well, if he was released at the scene and allowed to leave."

Were there any other witnesses to what happened?

29. Mr Z's friend, Mr X, saw officers talking with Mr Z. He said the officers appeared to be crowding around him and the discussion became quite heated. Mr X said he tried to calm everyone down, but Mr Z and the officers quickly resumed shouting. Mr Z wanted to leave.
30. Police asked Mr X to walk away, which he did. Then an officer came over to him and Mr X explained how he had just brought Mr Z to the apartment building. His understanding was that Ms Y was dead, and that Mr Z was in shock. Mr X began providing his statement at 5.13pm, and by the time he finished Mr Z was no longer outside the building.
31. Mr X told us he believed the officers should have been trying harder to de-escalate the situation, which did not happen.
32. Police also spoke to the building manager, Mr W. Mr W said he thought Mr Z was under the influence of something and looked fired up and angry. He said he saw Mr Z shouting and starting to shove an officer, and said it looked like he was about to throw a punch. He saw officers restrain Mr Z, put him in handcuffs and then later into a Police car. We were not able to interview Mr W and therefore have found no view in relation to what he told Police.
33. We spoke to one of the people who called emergency services to report Ms Y's death, Mr U. He also saw Mr Z being handcuffed by Police. He told us Mr Z appeared very distressed, confused and frustrated, and thought the officers were not giving him his rights or talking to him appropriately. However, he acknowledged he did not see what had earlier occurred or what exactly was being said. Mr U also said he was significantly impacted by the death of Ms Y.

Was there other evidence as to what occurred outside the building?

34. Police obtained CCTV footage of the entrance way and lift lobby which recorded people entering and exiting. Mr Z left the building, in distress, at 4.49pm. Regrettably, Police did not obtain any footage of what happened outside the building, and if there was any footage, this is now unavailable.
35. Mr Z claimed he was outside the building, under arrest and in handcuffs, for up to two hours and was present when Ms Y's body was removed. Police records show Mr Z was received into the Auckland Custody Unit at 6.13pm, which means he must have left the apartment scene at about 6pm, if not earlier, for the two-kilometre trip at peak traffic time. Officer A, who completed Police death procedures, recorded that funeral staff arrived at 6.51pm and Ms Y's body was removed from the building at 7.03pm. Therefore, Mr Z could not have witnessed the undertaker's involvement as he remembered.

Were Police justified in arresting Mr Z for obstruction?

36. Whilst there is a conflict in the accounts about what happened to Mr Z outside the apartment building, it is not in dispute that Officer B arranged for Mr Z to be detained for obstruction, placed into handcuffs and later taken to the custody unit.
37. Obstruction is an offence under section 23(a) of the Summary Offences Act 1981. To obstruct Police, Mr Z needed intentionally to hinder an officer from executing their duty.³ The duty the officers were carrying out related to investigating the death of Ms Y.
38. Officer B said she had asked Officer C to arrest Mr Z for obstruction because:

"[Mr Z was] making it substantially more difficult for Police to be able to make an initial assessment as to what had occurred, was intentionally withholding the identity of the deceased, suspected of lying about his relationship to the deceased and so his behaviour was hindering the commencement of our sudden death initial procedures and thus obstructing us from being able to commence a lawful sudden death investigation on behalf of the Coroner. His behaviour was also hindering people from being able to return to their apartments because until I could deal with the problems that he himself was presenting I couldn't move on to deal with the sudden death scene."

39. Officer B and the other officers told us that they considered Mr Z's behaviour to be erratic and aggressive. They said they suspected he was affected by drugs or alcohol, or was having a mental health episode that could endanger his own life or pose a risk to others if he was allowed to leave. Additionally, Police had not yet been able to determine whether Mr Z had any role in Ms Y's death.
40. It is clear Mr Z did not wish to remain outside the apartment building and that Officer B wanted him to. Officer B said she considered other ways to detain Mr Z, such as arresting him for disorderly behaviour,⁴ or using Police powers in the Mental Health Act, but determined Mr Z was being intentionally obstructive "for no apparent reason".
41. We asked Officer B whether Mr Z, who was unknown to her, could have been so traumatised by Ms Y's death that it led him to be uncooperative and not intentionally obstructive. Officer B disagreed and maintained Police had used the correct legislation.
42. We agree with officers that, in these circumstances, Mr Z needed to be detained due to his behaviour that raised concerns for his and others' safety. Mr Z's desire to leave the scene, with officers having no knowledge of his intentions, direction or destination, created an issue that needed prompt resolution. We therefore find that, in these circumstances, it was appropriate for Officer B to detain Mr Z.
43. However, in our view Police did not use the correct legislation. Mr Z was not intentionally obstructing Officer B, or any other officer. Rather, he was highly emotional and became uncooperative. His failure to provide information cannot fairly be described as obstruction, as

³ See the Appendix for the full wording of the offence.

⁴ Section 3 of the Summary Offences Act 1981.

he has a right to silence. Furthermore, Officer B could have left Mr Z with other officers at any time and attended to her duties, so her argument that he was preventing her from doing that is unconvincing.

44. The legislation that Officer B should have used to detain Mr Z was section 109 of the Mental Health Act, which enables Police to detain a person appearing to be mentally disordered in a public place for the purposes of an assessment by a mental health practitioner.⁵ This view is supported by the fact that, later in custody, other officers deemed it necessary for Mr Z to undergo a mental health assessment.
45. We accept Officers C and D fairly and fully informed Mr Z as to why he was arrested and provided him his rights, although it is likely Mr Z did not comprehend this. Due to Mr Z's unpredictable behaviour, we find it was reasonable for them to apply handcuffs.
46. We do not find that Mr Z remained outside the apartment building for the two hours that he recalls but accept he was there for an unacceptable period. Officers should have promptly taken him to the custody unit.

What happened to Mr Z's charge of obstruction?

47. Officers B and E progressed their initial investigation of Ms Y's death, and determined Mr Z was not present at any critical time. They decided not to proceed with a charge of obstruction.

FINDINGS ON ISSUE 1

Police were not justified in arresting Mr Z for obstruction. However, they would have been justified in detaining him for the purpose of a mental health assessment.

Police should have promptly taken Mr Z to the custody unit after his arrest.

ISSUE 2: DID POLICE APPROPRIATELY DETAIN MR Z AT THE AUCKLAND CUSTODY UNIT?

48. As outlined above, Officer C took Mr Z to the Auckland Custody Unit as the arresting officer and completed the charge sheet. This detailed that Mr Z was received at 6.13pm and that the custody supervisor, Officer F, oversaw an initial assessment.

What happened at the Auckland Custody Unit?

What did Mr Z say happened?

49. Mr Z later claimed that his rights and reason for detention were not explained to him until he spoke to a lawyer on the telephone. He said the officers treated him with contempt and, when left alone in a cell, he believed he was having a heart attack and would die. He said he was ignored when he called for assistance.

⁵ Section 109 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 – see the Appendix.

50. Mr Z said he was finally seen by the mental health team, who found nothing wrong with him and demanded he be released immediately.

What do Police records, officers and others outline occurred?

51. Officer F told us that in his assessment, Mr Z appeared under the influence of a drug. Mr Z's custody record shows he was being held for the charge of obstruction and for "detoxification".
52. Police say that Mr Z was fully informed about his arrest, although he refused to sign a form to acknowledge this. They took property from him, which he also refused to sign for. Mr Z was placed in a safety garment and frequently monitored in an observation cell, due to the risk of self-harm. Police custody records outline this process in detail.
53. At 7.30pm Officer B arrived at the custody unit and, after discussion with Officer F, went to Mr Z's cell and advised him he was to be released without being charged. Officer B told us she tried to explain this to Mr Z, but his behaviour and comments were nonsensical.
54. Officer F decided that Mr Z should be assessed by the mental health team due to concerns for his safety when released. Also, Mr Z would not provide a family member or suitable person who could assist his departure from Police custody.
55. At 8.58pm, two people from the community mental health team arrived and assessed Mr Z. We spoke to one of the mental health team. Her description of things was that, speaking to Mr Z that evening, she formed the view that Mr Z, having experienced a significant traumatic event, was in an extended emotional state. She added that she had formed the impression, based on experience, that Mr Z was also under the influence of a drug, perhaps methamphetamine. The reason Mr Z was not promptly released was due to concerns for his safety and that he should not be alone. Guidance was sought on this, which reinforced this approach. For a long period, Mr Z refused to provide contact details for an appropriate person. Police custody staff appear to have been extremely patient with Mr Z and wished to release him as soon as possible.
56. Eventually a family member arrived, and Mr Z was released into their care. The time was recorded as 11.44pm, meaning Mr Z had been at the custody unit for 5 hours and 31 minutes.

What is our assessment of how Mr Z was treated while in custody?

57. Police records outline the timings of Mr Z's arrival, assessments, cells checks and his release. It also details the information provided to him and the taking and returning of his property. The record keeping and process information was to a good standard.
58. We accept that the conclusions reached by Police and the mental health professional, regarding the explanation for Mr Z's behaviour, were at least reasonable, as was the Police detention of Mr Z until he could be released into the care of a family member.

FINDINGS ON ISSUE 2

It was reasonable for Police to hold Mr Z in custody for five and a half hours, due to their concern about his mental state and the need to arrange a family member to uplift him. Mr Z's treatment while in custody was appropriate.

Subsequent Police Action

59. Regarding the death, Police concluded there were no suspicious circumstances and referred the matter to the coroner.
60. Police completed their own investigation regarding Mr Z's complaint and found that his arrest for obstruction was appropriate and lawful in the circumstances, and that his detention and release complied with current policy and best practice.
61. Police later had opportunity to provide submissions on this report, and they then accepted our findings.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

31 July 2025

IPCA: 24-23374

Appendix – Laws and Policies

LAW

Summary Offences Act 1981

62. Section 23(a) states:

“Resisting Police, prison, or traffic officer

Every person is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000 who resists or intentionally obstructs, or incites or encourages any other person to resist or obstruct,—

- (a) *any constable or any authorised officer, or any prison officer, or any traffic officer, acting in the execution of his duty....*

Mental Health (Compulsory Assessment and Treatment) Act 1992

63. Section 109 states:

“Police powers in relation to person appearing to be mentally disordered in public place

- (1) *If any person is found wandering at large in any public place and acting in a manner that gives rise to a reasonable belief that he or she may be mentally disordered, any constable may, if he or she thinks that it would be desirable in the interests of the person or of the public to do so,—*

- (a) *take that person to a Police station, hospital, or surgery, or to some other appropriate place; and*
- (b) *arrange for a mental health practitioner to examine the person at that place as soon as practicable.*

...

- (5) *Detention under this section may last for no longer than the following times:*

- (a) *for the purposes of subsections (1) to (3A), 6 hours or the time it takes to carry out the actions described in those subsections, whichever is shorter....”*

About the Authority

WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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

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

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

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

WHAT ARE THE AUTHORITY'S FUNCTIONS?

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

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

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

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

THIS REPORT

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



Mana Whanonga Pirihimana Motuhake

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