

Use of force in Auckland Custody Unit not justified

1. On 18 January 2023, Police in Auckland arrested a man (Mr X) for breach of bail and took him to the Auckland Custody Unit (ACU). While at the ACU, a Police sergeant (Officer D) and a custody officer (Officer E) transferred Mr X into another cell and attempted to restrain him on the floor. They lifted Mr X by his legs so that he fell forward and landed on his head.
2. On 19 January 2023, Mr X complained to us, saying:
 - He was wrongfully arrested for breach of bail.
 - He was put inside a cell that was saturated with water.
 - An officer swept his legs out from under him and he ‘faceplanted’ onto the concrete cell bed. He lost consciousness and his mouth was bleeding.
 - The officers were laughing at him.
 - He was not provided with medical treatment.
 - He was in a cold cell without any bedding for 5 hours.
3. As part of our independent investigation, we interviewed Mr X, three custody officers and a Police sergeant. We also reviewed the ACU’s CCTV footage and documents related to the incident.
4. The Authority advised Police of the complaint, and they carried out their own investigation. Mr X chose not to make a complaint to Police.

The Authority's Findings

Issue 1: Were Police justified in their arrest of Mr X?

It was reasonable for Officer A to have concluded that Mr X was breaching a condition of his bail.

Officers B and C lawfully arrested Mr X.

Issue 2: Were Officer D and Custody Officer E justified in using force against Mr X?

Officer D and Custody Officer E were not justified in using force against Mr X.

Issue 3: Was Mr X's care while in custody appropriate?

Officer D, as the officer in charge, should have sought advice from a health professional.

Police failed to record accurately information into the Electronic Custody Module (ECM).¹

The decision to remove the mattress from Mr X's cell was wrong.

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 the Police should consider commencing civil (disciplinary) or criminal proceedings.

ISSUE 1: WERE POLICE JUSTIFIED IN THEIR ARREST OF MR X?

7. On Tuesday 17 January 2023, Mr X was on Court bail, which included a condition of a "24 hour curfew to remain at (bail address) and to present self at door if called upon by Police".² Mr X had an exemption to be away from the address on Tuesdays and Fridays between 10am and 12pm.
8. At about 1:40pm, a Police officer (Officer A), conducted a bail check to ensure Mr X was abiding by his curfew. Mr X's flatmate came to the door and the officer enquired whether Mr X was home. The flatmate said Mr X was not at home and she did not know where he was.
9. Mr X's bedroom was to the right of the front door. Officer A says on previous occasions Mr X has heard knocking on the door, looked out the window and come to the door.

¹ The Electronic Custody Module (ECM) 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.

² A person on Court bail is allowed to stay in the community so long as they meet any conditions set by a Judge.

10. Officer A concluded that Mr X was not present.
11. At about 1:37pm the following day, two Police officers (Officers B and C) went to Mr X's bail address. Mr X came to the front door and Officer B asked where he had been when an officer had conducted a bail check the previous day. Officer B says: "... he (Mr X) was repeatedly answering "I would have been here. I would have been asleep"." The officers say Mr X also told them he had an exemption, although at the time of the bail check he did not.
12. Officer C told Mr X that he was under arrest for breaching his bail. Mr X slammed the door shut and remained inside. A short time later Mr X came outside and was handcuffed. Both officers say Mr X was upset.
13. In our assessment, it was reasonable for Officer A to have concluded that Mr X was not present when he conducted a bail check. Accordingly, we are satisfied that Mr X did breach his bail condition, and his arrest was lawful.

FINDINGS ON ISSUE 1

It was reasonable for Officer A to have concluded that Mr X was breaching a condition of his bail. Officers B and C lawfully arrested Mr X.

ISSUE 2: WERE OFFICER D AND CUSTODY OFFICER E JUSTIFIED IN USING FORCE AGAINST MR X?

14. Here we will consider:
 - a) whether the officers' use of force was justified; and
 - b) if not, whether we recommend Police consider:
 - i) civil or disciplinary action against the officers; and/or
 - ii) criminal proceedings.

What happened?

15. On the afternoon of 18 January 2023, Officer D (a Police sergeant) oversaw the ACU. He had four Custody Officers on duty, including Custody Officers E, F and G. The ACU has a network of CCTV cameras. They do not record audio.
16. At 1:46pm, Officers B and C brought Mr X into the ACU. The CCTV footage shows Mr X was crying. Officer B asked Mr X if he was okay. He said his mental health was poor and asked if he could talk to a nurse.

17. At 1:49pm, Mr X was placed into a holding cell.³ Mr X believed he would be processed and taken to Court that afternoon. He sat on the concrete bed with his back against a wall. Officer B placed a cup of water beside Mr X.
18. Officer B phoned the Mental Health Crisis Team who advised they had spoken to Mr X earlier in the day and they had no immediate concerns for his wellbeing.
19. Custody Officer E asked Mr X a series of questions and entered information into the ECM. Mr X told Custody Officer E that he had depression and had taken his medication earlier. The ECM evaluation raised no concerns for Mr X's safety, and determined he would not require a specific monitoring regime.⁴ Custody Officer E recorded on the ECM that Mr X was '*calm*'.
20. Mr X had been sitting quietly in the holding cell for around 30 minutes when the cell door opened. Officer B entered and explained to Mr X that they had missed the cut off time for him to appear in Court that afternoon, meaning he would be staying in Police custody overnight.⁵ Mr X was upset by the news and the footage shows him crying.
21. A few minutes later, Mr X kicked the cup of water onto the cell floor and spat several times on the floor and walls. He got to his feet, kicked the cell window, and threw the empty water cup at the cell door.
22. Mr X recalled Custody Officer E growling at him, telling him to wipe up the spit. Custody Officer E told us Mr X "*flipped out*" after being told he would be spending the night in custody. Custody Officer E decided to give Mr X some time to cool off. Mr X sat down. He repeatedly pushed the intercom button inside the holding cell.
23. A few minutes later, the footage shows Custody Officer E approaching the cell door. Mr X stood, walked toward the cell door, and spat in the direction of the cell window. Custody Officer E opened the cell door, and Mr X, believing he was being moved to another cell, started to walk out of the cell. Custody Officer E lightly pushed Mr X back inside the cell and told him to "*tone his behaviour down*". Mr X immediately sat down on the concrete bed and is seen in the footage talking to Custody Officer E.
24. Custody Officer E says Mr X calmed down, and he decided to move him to another cell.
25. At 2:24pm, Mr X stepped out of the holding cell and slipped his 'slides' onto his feet. Custody Officer E pointed Mr X in the direction of the cell block. The footage shows Mr X was compliant and freely walking toward the cell block. Mr X was followed by Custody Officer E, and behind

³ A holding cell is a temporary cell that holds detainees until they are formally received into the custody unit and allocated a normal cell.

⁴ ECM evaluations record behavioural, mental and physical health indicators in the ECM for the purpose of establishing the level of care and monitoring required. Monitoring regimes are: no specific monitoring, frequent monitoring and constant monitoring. No specific monitoring means the detainee will be checked every 2 hours. Frequent monitoring means the detainee must be checked at least 5 times per hour at irregular intervals. Constant monitoring means the detainee must be directly observed without interruption.

⁵ Officer D says the Court requires a detainee to be at Court by no later than 2pm. This generally means a detainee will need to be brought into the custody unit before 1:30pm to allow enough time for the detainee to be processed and taken to Court.

him was Officer D. Officer D says he decided to follow to make sure there were no issues with Mr X.

26. Mr X told us that other officers in the processing hub (office area) were laughing at him, and he shouted *"fuck yous"* in their direction. Custody Officer E described it as an "open air threat" and did not think too much of it. Officer D says: *"... although Mr X was verbally abusive, he was complying with instructions and moving towards the cell."*
27. The footage shows Mr X walking along the central corridor in cell block B. Eight cell doors are open. Mr X looked over his shoulder at Custody Officer E who pointed toward an open cell door further along the corridor. Mr X continued walking toward the open cell door. Officer D was two to three metres behind Custody Officer E.
28. Mr X started to enter his assigned cell before he hesitated and stepped away from the cell door.

What does Mr X say happened at the cell?

29. Mr X says when he reached the cell door: *"... it (the cell) was drenched with water"*. He did not want to go into a wet cell and asked Custody Officer E for a dry cell. Mr X believed this was a reasonable request. Mr X further told us that Custody Officer E told him he was not getting another cell, and this was his cell for the night.
30. Mr X says Custody Officer E was trying to push him inside the cell, so he used his body weight to resist going into the cell. Mr X believed he was being made to go into a wet cell as punishment for spitting on the floor. Mr X says he accepted that he was going into the wet cell and asked: *"well can I at least have a new bed?"*
31. Mr X says he was inside the cell and facing away from the door. Apart from being told to go into the cell, Mr X says he was not given any other instructions. He recalled another custody officer coming into the cell and removing the mattress. Mr X denied that he was yelling and recalled thinking that the officer was going to get a dry mattress. Mr X says an officer grabbed his legs:

"... I go flying forwards, smashed my head onto the corner bench...

I think he had my arms, the officer, the one behind me because I remember that I couldn't put my hands forward to save myself."

32. Mr X believes he was knocked out. He recalled being held down on the floor with his left arm being pulled behind his back. Mr X says he was telling the officers they were going to break his arm and asking them to let go. He says this caused them to hold his arm tighter, and an officer said: *"... you didn't want to be wet, now look at you, you're all wet"*. He says the officers laughed. Officers D and E did not recall any such comments, and denied that anyone laughed at Mr X.
33. After closing the cell door, Custody Officer G stood outside the cell. Mr X recalls he was crying and screaming *"... how could you's do this to me, this is not allowed"*. He says the officer laughed and replied: *"... that's what you get for being a three-year-old"*.

34. A few seconds later, the CCTV footage shows Mr X looking at the floor, completing a 360 degree turn, looking directly at the camera and mouthing: *"... it's wet, all I asked for is for them to put me in a dry cell"*.
35. Mr X sat on the toilet, directly below the intercom. He pushed the intercom button several times. He appeared calm. Mr X spat onto the palm of his right hand and held his palm toward the camera. There was what appeared to be a small amount of blood in the middle of his palm. Mr X told us his mouth was bleeding.
36. For most of the next hour and a quarter, Mr X remained seated on the toilet. He was wearing a t-shirt, shorts and white socks that came up to his calf. Mr X peeled his socks down over his feet and pulled his arms and head inside his t-shirt.
37. Mr X moved to the bed plinth and cocooned himself inside his t-shirt. Mr X estimated that he went without a mattress and blanket for 5 hours.

What does Custody Officer E say happened at the cell?

38. Custody Officer E told us when Mr X reached the cell he refused to go inside saying: *"It's wet"*. He replied to Mr X: *"It's not wet, it's just been mopped, it's not a wet cell"*.
39. Custody Officer E told Mr X: *"Just hop in this cell for now. I'll check another cell and I can move you, but I can't leave you in the corridor, you'll just going to temporarily get in here, I can't check the cells while you're standing in the corridor, there's no one to watch you"*. He says Mr X became aggressive and did not want to listen.
40. Custody Officer E says Mr X backed up, and: *"I then felt it necessary to grab his arm to control him"*. Officer E described holding Mr X's left wrist with one hand and the back of his upper arm with the other. He tried to guide Mr X inside the cell who he says was pulling back and yelling he was not going to go inside the cell. Officer D arrived to assist and they walked Mr X into the cell.
41. Custody Officer E told us: *"Mr X was arcing up again"*. In response, he and Officer D told Mr X to get onto his knees to enable them to exit the cell safely. Custody Officer E says: *"... he's refusing to do that and he's still pulling back, we've given him more than one instruction to get on his knees"*. He believed that Mr X's demeanour suggested that he could become assaultive.
42. Custody Officer E was on Mr X's left. He recalled looking at Officer D and saying that he was going to lift Mr X off the ground. He intended to lift Mr X's left leg with Officer D supporting Mr X's body weight and together they would lower Mr X to the floor. He says Mr X was yelling making communication with Officer D difficult.
43. Custody Officer E explained:

"... pretty much just general training when we do put people in the cells that are threatening us like that is to put them onto the ground to exit the cell without them having an opportunity to react or swing at us or try to push their way out"

of the cell. Unfortunately, it was a bit ..., like he was resisting, like heavily, so we've had to forcefully put him onto the ground".

- 44. Custody Officer E says he confirmed with Officer D that he was ready. He lifted Mr X's left leg while bracing Mr X's left shoulder with his other hand. At the same time, Officer D lifted Mr X's right leg. Custody Officer E says: *"... but because Officer D's lifted as well, I'd gotten the extra weight that I wasn't expecting, so then he's gone crashing down."*
- 45. Custody Officer E recalls Mr X being on the floor in an awkward position, his head on the concrete plinth and his body on the floor. He says they pulled Mr X back from the concrete plinth and: *"I folded his arm up behind his back so he couldn't use it to push himself up or rotate, so securing him. Another colleague has come in and crossed his legs so he can't kick up at us"*.

What does Officer D say happened at the cell?

- 46. Officer D told us the detainee inside the cell directly before Mr X's, called out, so he stopped to see what he wanted. The footage shows Officer D outside that detainee's cell for around 10 seconds. Officer D says he was aware that Mr X was refusing to go into the cell because it was wet. He further says Mr X was yelling threats and abuse toward Custody Officer E. Officer D believed Mr X had worked himself up and needed to be inside the cell to calm down.
- 47. Officer D says he went to assist Custody Officer E and briefly tried to explain to Mr X that the sheen of water would be dry within 15 – 20 minutes. He says Mr X was screaming abuse at him, although he did not specifically recall what Mr X was saying. Officer D says he would have been quite happy to check the other cells for a drier one had Mr X been calm.
- 48. Officer D took Mr X's right arm and says: *"... even though he was struggling against my grip , he's a small person and I did not need to apply any further force to get him into the cell."*
- 49. Officer D says Mr X's screaming continued, making it very difficult to hear what Custody Officer E was saying, although he did hear Custody Officer E asking Mr X to kneel down. Officer D recalled Custody Officer F entering the cell and removing the mattress. He says Mr X was resisting and he was having to *"put quite a lot of force into holding him there"*. Officer D did not want to let go of Mr X's wrist for fear that *"Mr X would have a go at him or Custody Officer E"*.
- 50. Officer D could not remember if it was him or Custody Officer E who called for Mr X's legs to be lifted. He says: *"My intention was that one of us would keep control of the upper body while the other moved a leg off the floor."* Officer D told us that both he and Custody Officer E lifted a leg at the same time.
- 51. Officer D says: *"... I had a very, very tense resistant person and then he suddenly was very limp and his whole upper body went down towards the floor."* Officer D thought Mr X landed on his shoulder and side of his head.
- 52. Officer D says Mr X was briefly silent before continuing his verbal abuse. Officer D believed Mr X could potentially lash out with his legs and restrained Mr X by his legs. He folded Mr X's legs from the knee joint over each other while Custody Officers E and F held Mr X by the wrists. Officer D leaned forward and held Mr X's wrists. This enabled Custody Officers E and F to move

toward the cell door. Officer D then got up off Mr X and followed the other two officers out of the cell.

What does Custody Officer F say happened?

53. Custody Officer F says he was at his desk in the processing area and heard *“a bit of a commotion”*. He looked down the B-block corridor and saw *“Mr X having a chat to the two officers (Officer D and Custody Officer E)”*. He decided to go and see if they needed any assistance from him.
54. By the time he arrived, Mr X was inside the cell. He says Mr X was being abusive, although could not specifically remember what he was saying. He recalled Officer D asking him to remove the mattress which he did.
55. Custody Officer F says Officers D and E were: *“... trying to gain compliance, holding his arms, holding his feet, trying to lower him to the ground”*. He says he saw Mr X *“go ... horizontal and land headfirst on the floor”*. He was concerned that Mr X landed *“a bit hard”*. However, there was nothing that suggested to him that Mr X had been injured.
56. Custody Officer F says while Mr X was on the ground he was struggling and believed he could become combative. Although at that time Custody Officer F says: *“... he was just more argumentative”*.

What does Custody Officer G say happened?

57. Custody Officer G was in the processing area and recalled Mr X walking past and making threatening comments like: *“You guys are fucken cunts, I’ll fuck you up if I see you outside”*. He described Mr X as being *“quite small”* and believed Officer D and Custody Officer E would be able to handle him.
58. Custody Officer G noticed that Mr X was refusing to enter the cell. When he got to the cell, Mr X was on the ground and Officers D, E and F were getting ready to exit. He says Mr X was *“... mouthing off but he, it was now more of the, ‘Why did you do that? ... what did I do wrong?’ Along those lines.”*
59. After the officers exited the cell, Custody Officer G closed the cell door. He says Mr X got straight up and was asking *“... why they did that, why’d you have to do that”*. He remembered Mr X pointing to the camera in the cell and saying he was going to make a complaint. Custody Officer G says: *“I didn’t notice any injuries to his head and he wasn’t bleeding”*.

What does the CCTV footage show?

60. A CCTV camera recorded what occurred in the cell. There is no audio. The footage shows the following:
 - A sheen of moisture on the cell floor and bed plinth.
 - Mr X arrived at the cell door, started to kick his footwear off, and backed away from the cell door toward the centre of the corridor.

- Within a second, Custody Officer E arrived at the cell door, looked at the floor and pointed toward the interior of the cell.
- Custody Officer E stepped toward Mr X, reached out with his right hand and grabbed hold of Mr X's upper left arm. He pulled Mr X toward the cell and took hold of Mr X's left wrist with his left hand.
- For around nine seconds Mr X is standing directly outside the cell door, his right side facing the cell. Custody Officer E is holding Mr X's left arm and wrist. Both appear to be talking to each other. Mr X's right arm is relaxed and down by his right side.
- Officer D ambled toward the cell door and stood in front of Mr X. He looked down at the cell floor and with his left hand motioned toward the cell. He appeared to say something to Mr X.
- Two to three seconds later, Officer D stepped toward Mr X and took hold of Mr X's right wrist. Officer D backed into the cell and pulled Mr X inside.
- Mr X was facing the cell wall. The officers were holding his arms. To Mr X's right was a mattress standing against the wall.
- Within five seconds, Custody Officer F entered the cell. He walked behind Mr X and the officers standing either of him. Custody Officer F took hold of the mattress and started to walk toward the cell door with it. Mr X turned his body toward Custody Officer F and said something to him.
- As Custody Officer F is leaving the cell, Custody Officer E applied a wrist lock to Mr X's left wrist. Mr X doubled over and stepped forward onto the edge of bed plinth.
- Custody Officer E was positioned behind and slightly to the left of Mr X. He was holding Mr X's left wrist with both hands.
- Officer D was positioned behind and slightly to the right of Mr X. He was holding Mr X's right arm with both hands.
- Mr X was standing on the bed plinth for around two seconds. In one fluid motion, both officers took one hand off the arm they were holding, grabbed hold of a leg, and each pulled a leg out from under Mr X.
- Mr X's arms remained restrained. Mr X fell headfirst and landed on his head. He ended up lying on his right side with his head against the corner of the bed plinth. Mr X immediately moved his right hand up to the right side of his head.
- Custody Officer F re-entered the cell.
- The officers positioned Mr X onto his front. Officer D was holding Mr X's legs while Custody Officers E and F were each holding one of Mr X's arms behind his back.

- Officer D had his weight on Mr X's legs. He leaned forward, took hold of Mr X's arms, allowing Custody Officers E and F to let go of Mr X.
- The officers backed away from Mr X and exited the cell. Mr X moved from his front to a seated position and stood. He appeared to be crying.

Were Officer D and Custody Officer E justified in using force against Mr X under section 39 of the Crimes Act 1961?

61. 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 any sentence, warrant, or process. *"Necessary"* force in this context is generally accepted as meaning *"reasonable"* and *"proportionate to the degree of force being used to resist."*
62. Under section 39, the Authority must consider:
- a) Did Officer D and Custody Officer E genuinely believe that Mr X was using force to resist the execution of a process? (a subjective test)?
 - b) If so, was it reasonable for Officer D and Custody Officer E to conclude it was necessary to use force to overcome that resistance (an objective test)?
 - c) If so, was the degree of force used by Officer D and Custody Officer E to overcome that resistance reasonable (an objective test)?
63. We propose first to address whether the force used by Officer D and Custody Officer E to overcome Mr X's resistance to being placed inside the cell was justified, and then whether the force used by Officer D and Custody Officer E to take Mr X to the ground was justified.

Were Officer D and Custody Officer E justified in using force to move Mr X into the cell?

Did Officer D and Custody Officer E believe that Mr X was using force to resist the process of being placed into a cell?

64. We accept Mr X was angry after being told he would be staying the night in Police custody, and he swore at custody staff as he walked past the processing hub. Mr X was, however, complying with instructions and walked freely from the holding cell to the cell intended for him.
65. When Mr X started to enter the cell he hesitated, stepped away from the door, and said the cell was wet. Mr X did not comply with the officers' directions to go into the cell. We accept that Officers D and E believed Mr X was resisting the process of being placed inside the cell.

Was it reasonable for Officers D and Custody Officer E to conclude it was necessary to use force to overcome that resistance?

66. We do not accept it was necessary for Officers D and E to have directed Mr X into a damp cell. Had Custody Officer E checked the cell prior to moving Mr X, as he is required to do, he would have noticed the cell had not dried after being cleaned. He could have found a dry cell.

67. The footage shows Mr X standing outside the cell with Custody Officer E holding his left arm. Officer D had stopped to talk to another detainee. It is not evident to us that Mr X was struggling against the hold Custody Officer E had of his arm. Contrary to this, both officers say Mr X was working himself up and it was unsafe for them to look for an alternative cell.
68. We do not accept that Officers D and E genuinely believed, at the time Mr X was outside the cell, that he presented such a risk that it was unsafe for them to look for a dry cell. The footage shows the cell directly opposite the cell intended for Mr X appeared to be dry.

Was the force used by the Officers reasonable?

69. We note that the Officer D and Custody Officer E were each holding one of Mr X's arms and the force they used to move Mr X into the cell was low level. However, we do not accept that any force was required under section 39 as the officers could have simply moved Mr X into a dry cell.

Were Officer D and Custody Officer E justified in using force to take Mr X to the ground under section 39?

Did Officer D and Custody Officer E believe Mr X was using force to resist the process of being placed on the ground?

70. Once Mr X was inside the cell, Custody Officer E says Mr X *"was resisting, like heavily"* and he was concerned that Mr X could become assaultive. Officer D says: *"Mr X locked his body rigid keeping his legs straight. His right arm was extremely tense in my grip I believed he would have lashed out if I'd let him go."* This is not evident from the footage, which showed that Mr X was not struggling, resisting, or in any way tensing his body.
71. According to Officer D, it was necessary for Mr X to kneel on the floor so that he and Custody Officer E could safely exit the cell and close the door. Officers D and E say Mr X was ignoring their directions for him to get onto his knees. Mr X is adamant that he was not told to kneel on the floor. While we are unable to conclude whether directions were given to Mr X, we cannot accept that it was necessary for Mr X to be placed on the ground.
72. Officer D and Custody Officer E say they are trained to place resistive detainees face down on the ground. Officer D described this as *"standard operating protocol"*.
73. As outlined in paragraph 60, while Custody Officer F was leaving the cell with the mattress, Custody Officer E applied a wrist lock on Mr X's left wrist. Mr X doubled over and stepped forward onto the edge of the bed plinth.
74. Mr X's elevation created additional risk and made it more unlikely that Officer D and Custody Officer E would be able to control Mr X's weight when taking him to the floor. We are not satisfied any consideration was given to how best they could safely take Mr X to the ground.
75. A second after Mr X stepped onto the bed plinth, Officer D and Custody Officer E pulled his legs out from under him. According to evidence provided by a Police trainer: *"The take down which has occurred is not an approved form of takedown and not delivered in any current training."*

76. In our assessment, Mr X was standing on the bed plinth facing the back wall of the cell. Officer D and Custody Officer E were standing behind Mr X and could have stepped back from him and exited the cell.
77. We do not accept that Officer D and Custody Officer E genuinely believed Mr X was resisting or about to lash out, but rather that the officers had decided that Mr X needed to be placed on to the floor. It is our view that Officers D and E were not justified by section 39 in the force they used to take Mr X to the floor.
78. As we have found that Mr X was not resisting it is not necessary to address second and third questions outlined in paragraph 63.

Could the officers' use of force be justified under section 48 of the Crimes Act 1961?

79. Officer D and Custody Officer E rely on section 48 of the Crimes Act 1961, which provides that any person, including a Police officer, is legally justified in using reasonable force in defence of themselves or another.
80. The section 48 assessment involves three questions:
- a) What were the circumstances as the officers believed them to be (a subjective test)?
 - b) Was the officers' use of force against Mr X for the purpose of defending himself/herself or another (a subjective test)?
 - c) Was the officers' use of force against Mr X reasonable in the circumstances as the officer believed them to be (an objective test)?

What did Officer D and Custody Officer E believe the circumstances to be?

81. Officer D and Custody Officer E's view of the circumstances at the time they lifted Mr X is outlined above in their descriptions of what happened in the cell. Both officers say Mr X's demeanour led them to believe that he could become assaultive.

Was Officer D and Custody Officer E's use of force for the purpose of defending themselves or others?

82. Officer D and Custody Officer E lifted Mr X by his legs. We do not accept that this force was employed by the officers to defend themselves. Rather, in our view, it was used simply to place Mr X on the floor.
83. Once Mr X was inside the cell, we do not accept that Officer D and Custody Officer E genuinely believed that he presented a risk that necessitated him being forced to the floor. In our assessment, the officers had decided that Mr X needed to be placed on the floor. It is our view that Officers D and E were not justified by section 48 in the force they used to take Mr X to the floor.

Finding on whether Officer D and Custody Officer E should be charged with assault

84. We considered whether Police should charge Officers D and E with assault. Under the Solicitor-General's Prosecution Guidelines ('Prosecution Guidelines'), the test for prosecution is met if:
- the evidence which can be adduced in Court is sufficient to provide a reasonable prospect of conviction – the evidential sufficiency test; and
 - prosecution is required in the public interest – the public interest test.
85. The evidence the Authority gathers through its interviews with the complainant, subject officers and witnesses is not admissible in evidence against Officers D and E. Thus, evidence we have collected in our interviews will not be available for use by Police in any prosecution.
86. In August 2023, the Police investigation concluded: *"The evidence available could reasonably be expected to satisfy beyond reasonable doubt that the offence of common assault has been committed. The evidential test has been met."* We agree. The Police investigation also concluded that the prosecution of Officer D and Custody Officer E would not be in the public interest.
87. We informed Police why we believed a prosecution was in the public interest:
- Both officers had a duty of care to Mr X while he was in custody.
 - Both officers made poor decisions, and their actions were a considerable departure from best practice, training, and policy.
 - We believe their actions were deliberate and they did not give any consideration to potential consequences.
88. The Police subsequently laid a criminal charge of assault against Officer D and Custody Officer E.
89. At the trial on 27 November 2024, the Court found there was no case to answer and dismissed the charge against both officers (this is outlined in paragraphs 112-118).

FINDING ON ISSUE 2

Officer D and Custody Officer E were not justified in using force against Mr X.

ISSUE 3: WAS MR X'S CARE WHILE IN CUSTODY APPROPRIATE?

90. In this section we address additional aspects of Police policy for managing people in custody.

What happened?

Should Mr X have been provided with medical attention?

91. The Police 'People in Police detention' policy outlines that custody area staff must *"Call a health professional for advice/assistance if the detainee has been injured (especially where a potential head injury has occurred proximate to the detention)."*

92. The footage shows that Mr X landed heavily on his head. Custody Officer E told us Mr X got straight to his feet and: “... *there were no physical injuries that we could see that required further action.*” Officer D says: “*I don’t believe he blacked out at all in that he um was straight away back into his previous behaviour.*”

93. Officer D did not believe that Mr X was in any need of medical intervention. He told us he was monitoring Mr X on a big screen in the processing area:

“I could see he was moving around his cell okay; I could see he had mobility. He wasn’t in any way distressed in the sense that he was holding an arm funny or lying on the floor for extended periods or nothing that gave rise to any major concern”.

94. According to Officer D, Mr X made no mention of being injured, and had he done so he would have called a doctor. The footage shows Mr X pushed the intercom button several times. Mr X told us he used the intercom and asked for medical attention, that he wanted a mattress, and he was going to take custody staff to Court. Officer D says he heard Mr X being abusive over the intercom.

95. Regardless of whether Mr X requested medical assistance or not, custody staff have a responsibility to ensure that any potential head injury is managed properly. According to the officers, Mr X did not appear to be injured. It is concerning that they dismissed the possibility of Mr X having sustained a head injury. They should have contacted a health professional for advice.

Did Police accurately record information in ECM?

96. The Police ‘People in Police detention’ policy outlines that staff are to: “*Record any risk information, all special care instructions, and everything that happens in relation to a detainee, from processing to release, in the ECM.*”

97. At 2:59 pm, Officer D recorded in the ECM:

“Initially okay in holding cell, then started kicking the door and yelling and swearing. Appeared to be upset about being arrested and became louder and resistive. Escorted to cell, then refused to go inside the cell, so was placed in the cell. Started thrashing and kicking, so was placed on the floor, so that staff could safely leave the cell. Spoke with OC, who has been in contact with MH (Mental Health), and have no concerns for him. On camera monitor”.

98. Officer D noted that Mr X: “... *started thrashing and kicking, so was placed on the floor, so that staff could safely leave the cell*”. There is no record of Mr X landing on his head. In our review of the CCTV, there no evidence of Mr X thrashing or kicking, nor was Mr X placed on the floor.

99. When we asked Custody Officer D about the inconsistency and he told us: “*I may have put that down as a general comment, probably in a rush*”. Our assessment is that Officer D’s failure to include any mention of Mr X having landed on his head was not an oversight, but rather, a deliberate effort to conceal what actually happened.

100. As mentioned in paragraph 19, Mr X was on a monitoring regime which required him to be checked at least every two hours. A check involves observing the detainee through a cell port to ensure their wellbeing. At 4:32pm, the ECM record indicates that Custody Officer G conducted a check on Mr X. However, the footage does not show Custody Officer G, or any officer coming to check on Mr X.
101. Furthermore, policy says: *“CCTV is NOT an authorised means of monitoring or carrying out checks on detainees”*. When we asked Custody Officer G why he had not completed a check of Mr X in person he told us he was of the understanding that CCTV could be used if the detainee is walking around the cell or they had spoken to them over the intercom. This is not correct.

Was Mr X deprived of a mattress?

102. The Police ‘People in Police detention’ policy outlines detainees that are staying overnight are to be given sufficient bedding.
103. Custody Officer F says Officer D instructed him to remove the mattress from Mr X’s cell. The officers spoken to say it is usual practice for them to remove a mattress from a hostile detainee to avoid it being torn apart and potentially used to self-harm.
104. In this case, there was no information to suggest that Mr X would self-harm.
105. Custody Officer F added that mattresses, blankets and toilet paper are withheld *“until they earn it back”*. Custody Officer E says: *“... he was not engaging with us, so he did not get a mattress and blanket, until he had calmed down”*.
106. Officer D says Mr X had been in the cell for 15 – 20 minutes when he asked Custody Officer E to take a mattress to him.
107. The CCTV footage shows Mr X calmly sitting in the cell. He was wearing a t-shirt, shorts and mid-calf socks. Around half an hour after Mr X was put inside the cell, he peeled his socks down doubling them up over his feet and pulled his arms inside his t-shirt. Mr X told us he was cold and he could not feel his legs.
108. At 6:13pm, nearly three hours and 50 minutes after Mr X was put into the cell, the footage shows Custody Officer E arriving outside Mr X’s cell. He opened the cell door and dropped a blanket and mattress onto the floor. Mr X was lying on the concrete plinth with his t-shirt pulled up over his head. This was not recorded in the ECM.
109. Officer D says he later viewed the footage and realised he was wrong when he had said it had been 15 – 20 minutes before Mr X was given a mattress and blanket. He offered: *“But again with a busy shift sometimes these things could happen. I’m not excusing it, it wouldn’t be a deliberate intention of mine to deprive”*.
110. In our assessment, there was no genuine reason for custody staff to withhold bedding from Mr X. In our view, staff were punishing Mr X.

Conclusion

111. Overall, we conclude that standard of care provided to Mr X while he was in custody was well below the standard of care we would generally expect of custody staff.

FINDINGS ON ISSUE 3

Officer D, as the officer in charge, should have sought advice from a health professional.

Police failed to accurately record information into the ECM.

The decision to remove the mattress from Mr X's cell was wrong.

Subsequent Police Action

112. As required by s31 of the Independent Police Conduct Authority Act 1988, having completed our investigation and prepared a draft report, we provided copies to Police and the officers in respect of whom we were proposing to reach adverse conclusions. Police responded by acknowledging our conclusions. They recorded that they had charged Officers D and E with assault, that the charges had been dealt with by way of a judge-alone trial in the District Court on 27 November 2024 and that District Court Judge Singh had dismissed them pursuant to s147 of the Criminal Procedure Act 2011. Police also initiated employment proceedings against Officers D and E. The outcomes of those processes are irrelevant for present purposes.
113. Officers D, F and G elected not to offer any substantive response, though the latter two thanked us politely for the opportunity to do so.
114. Officer E, on the other hand, provided a lengthy response. While we appreciate the evident care and attention Officer E has applied to the matter – and to mean no disrespect – we do not intend to engage on the majority of the points he raises. Clearly Officer E disagrees with our essential conclusion that his actions were unjustified. In his response, he seeks to revisit the factual aspects of the case, and our conclusions. No useful purpose would be served by a laborious reply as it would do no more than repeat the ground already covered in our report.
115. Officer E's primary contention is that having been acquitted of the charge of assault it is no longer open to the Authority to reach an adverse conclusion in relation to his actions. That reasoning is clearly flawed. In the criminal proceedings the judge was dealing with the elements of the charge of assault. He concluded that neither Officer D nor Officer E had the necessary mens rea (or mental component of the charge). In his judgement, the judge said that the officers' actions exhibited neither deliberate intent to assault nor recklessness. The judge went on to observe that their actions may have been careless.
116. Whilst we reached views about whether Officers D and E were guilty of assault, that issue has now been determined by a court of competent jurisdiction. However, the point that Custody Officer E does not appear to grasp is that the Court was dealing with criminal proceedings and the elements of the crime of assault whereas, the IPCA's jurisdiction (as set out in the 1988 Act), involves assessing the actions of the officers to determine whether or not they were *"...contrary to law, unreasonable, unjustified, unfair or undesirable."*

117. Additionally, Judge Singh was applying the criminal standard of proof beyond reasonable doubt, whereas our assessment as to whether Officer D and E's actions were justified is made on the basis of the civil standard, on the balance of probabilities.

118. Our views as to the justifiability of the actions of Officers D and E remain unchanged.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

21 August 2025

IPCA: 23-16544

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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