

Officers exceed authority in removing car keys

1. At about 3.00am on 17 September 2023, two Police officers in Hamilton approached a 17-year-old male (Mr X) who was in the driver's seat of a car partially pulled into a driveway. The officers were completing crime prevention activities and requested the name and address of Mr X.
2. Mr X was abusive towards the first officer (Officer A), although he supplied his details, also handing over his driver's licence.
3. As Mr X continued to be abusive towards the officer, the second officer (Officer B) reached in and took the car keys, which were sitting either on the central console or driver's seat. Mr X tried to stop this, and a struggle developed.
4. Mr X was overpowered and placed on the ground in handcuffs. He was arrested for assaulting and resisting Police and was also charged with possession of an offensive weapon when a large kitchen knife was found in the driver's door of his vehicle. He was taken to the Police station and then released as part of a youth justice process.
5. Mr X complained to Police that he had been assaulted and unlawfully arrested. Police notified us as required by section 15 of the Independent Police Conduct Authority Act 1988.
6. Police completed their own investigation and concluded the officers had acted lawfully. We undertook an independent investigation. The publication of this report was delayed until court proceedings for Mr X concluded in late 2024 and until court documents were available in May 2025.

The Authority's Findings

Issue 1: Did Police assault Mr X?

The force Officer B used was justified as self-defence under Section 48 of the Crimes Act.

Issue 2: Were Officers A and B justified and acting lawfully in their engagement with Mr X?

Officer A was justified under section 114 of the Land Transport Act 1988 in speaking to Mr X and requesting his name and address.

Officer B was not justified in attempting to take the car keys to Mr X's vehicle pursuant to section 121 of the Land Transport Act 1988 due to the circumstances not meeting the required threshold.

Analysis of the Issues

ISSUE 1: DID POLICE ASSAULT MR X?

7. Mr X and Police gave different accounts of what happened before the officers decided to arrest him.

What did Mr X say happened?

8. When Mr X made a complaint to Police on 20 September, he provided a statement in which he said that:
- He was parked on the driveway and road when an officer tapped on the window. He opened the car door and put his right foot out onto the road.
 - He was abusive towards the officer, saying: *"What do you c—ts want?"*
 - When asked, he told the officer his name and was just about to hand over his driver's licence when the other officer reached in behind him and picked up the car keys which were on the vehicle's centre console.
 - He grabbed the officer's hand and asked: *"What the f—k are you doing?"*
 - That officer then punched him in the face with a closed fist.
9. Mr X said he was then manhandled out of his car, thrown against the bonnet of the Police car where he was either kneed or elbowed in the ribs and told he was under arrest for assaulting an officer. He was handcuffed and taken back to the Police station.
10. We spoke to Mr X on 14 February 2024, five months after the incident. Initially, his recollection of what occurred differed slightly from what he had outlined in his statement, although he acknowledged that as *"a mix-up on my part"* and that it was *"just (a) long time ago."*
11. Mr X also accepted that he had been abusive towards the officers, but claimed they were insulting towards him. He said that he had consumed cannabis that evening but did not believe this influenced his behaviour or recollection of events.

What did Police say happened

12. Both officers submitted Police statements about what happened, and they provide consistent accounts:
- Officer A says he approached the driver's side. The door was open, so he started speaking to Mr X.
 - Mr X was immediately abusive and stepped out of the car to stand within the open car door. He was confrontational and threatening in manner and continued to be abusive. Officer B agrees with this assessment.
 - Officer A asked for Mr X's details, which were provided. Mr X also handed over his driver's licence which Officer A used to check Mr X's identity via his mobility device (Police phone). Mr X was still highly agitated.
 - Officer B saw the vehicle's keys on the driver's seat and reached in and grabbed the keys to prevent Mr X from using them to start the car and drive away. He says he was concerned that Mr X was in a heightened state and posed a risk to himself and other road users. Officer B says he smelt cannabis when he bent down to pick up the keys. Officer A says he saw Officer B reach into the car and grab the car keys from the driver's seat.
 - Officer B says Mr X grabbed his arm, then leaned into a fighting stance and kicked out, striking him in the stomach. Officer A agrees that Mr X grabbed Officer B's arm and kicked Officer B in the lower torso.
 - Officer B states he used a palm strike to Mr X's face to defend himself by redirecting Mr X away. Officer A also saw Officer B deliver a palm strike to Mr X's head.
 - Both officers arrested and handcuffed Mr X. Mr X resisted for a period, even though he was warned to stop.
13. We spoke to both officers. Each provided detail that matched their earlier accounts.
14. Officer A told us he was surprised with the attitude of Mr X and that he tried to de-escalate his aggression, but this was not working. Officer A said he did not believe Mr X should be driving a vehicle due to the state he was in.
15. Officer B added that he had often worked with Officer A and had always been impressed with how he engaged with people. However, Mr X was unusual; immediately angry and abusive, without any apparent provocation.

Were there any witnesses?

16. There was no one else present when the officers engaged with Mr X.

17. Once Mr X was handcuffed, a young woman came out of the house. She told Police she had not seen the earlier events. A two-second video the woman took only captures Mr X in handcuffs. Two other officers then arrived to assist in transporting Mr X to the Police station.

What do we conclude happened?

18. Mr X's and the officers' accounts were inconsistent. Mr X says Officer B punched him in the face after he grabbed the officer's arm, whereas the officers say Mr X kicked Officer B in the stomach which caused Officer B to react in self-defence.
19. Both policemen presented to us as diligent and experienced officers. Their accounts were consistent, and each officer appeared truthful. Mr X also presented well, although he was confused in aspects of his narrative.
20. We prefer the accounts of the two officers. It is clear Mr X was highly agitated. He acknowledged having used cannabis earlier in the evening. On balance, we find his version of events is less credible.
21. It is still necessary for us to assess whether Officer B's palm strike was justified in the circumstances.

Was Officer B's use of a palm strike against Mr X justified under section 48?

22. Section 48 provides that any person, including a Police officer, is legally justified in using "*reasonable*" force in defence of themselves or another.
23. The section 48 assessment involves asking three questions:
- a) What were the circumstances as the officer believed them to be? (a subjective test).
 - b) Was the officer's use of force against Mr X for the purpose of defending himself or another? (a subjective test).
 - c) Was the officer's use of force against Mr X reasonable in the circumstances as the officer believed them to be? (an objective test).

What did Officer B believe the circumstances to be?

24. Officer B believed Mr X was abusive and aggressive and had assaulted him with a kick to the stomach area. He said he thought Mr X was positioning to assault him further and needed to prevent this from happening. We accept Officer B genuinely held this belief.

Was Officer B's use of force against Mr X for the purpose of defending himself or another person?

25. Both officers outlined that Mr X moved into a fighting type stance and kicked out at Officer B's stomach area. We accept Officer B used a palm strike to Mr X's face to defend himself and provide some distance. This also allowed the officers to gain control of the situation so that Mr X could be arrested.

Was Officer B's use of force against Mr X reasonable in the circumstances he believed them to be?

26. Officers A and B were engaging with Mr X who was agitated and abusive, although still cooperating by providing details. We have canvassed below the justification for Officer B reaching in and taking the car keys, which Mr X reacted to aggressively.
27. When Mr X grabbed Officer B's arm, then kicked out at the officer, we consider it was reasonable for Officer B to use a palm strike to Mr X as he reported.
28. In close quarters, the use of empty hand techniques, in this case a palm strike to the face area, is a tactical option that is outlined in Police training.
29. Mr X was medically examined and did not appear to have an injury, although he said his nose was sore from the 'punch' and he had tenderness to his shoulder, an ankle and knee.

FINDING ON ISSUE 1

The force Officer B used against Mr X was justified as self-defence under section 48 of the Crimes Act 1961.

ISSUE 2: WERE OFFICERS A AND B JUSTIFIED AND ACTING LAWFULLY IN THEIR ENGAGEMENT WITH MR X?

30. Mr X's complaint of assault arose when he objected to Police taking his car keys. Police have certain powers when dealing with someone in charge of a vehicle under the Land Transport Act 1998. Powers relevant to this case are:
 - Section 114, which empowers Police to require a driver to give their full name and address; and
 - Section 121(2)(c), which provides that Police may *"take possession of all ignition or other keys of the vehicle, and for that purpose require that person to deliver up immediately all such keys"* if the officer believes on reasonable grounds that a person in charge of a vehicle *"is incapable of having proper control of the vehicle"* because of *"his or her physical or mental condition (however arising)."*

Did Officer A have legal justification for speaking to Mr X and seeking his details?

31. Both officers said they were aware of crime and disorder activity in that location and that Mr X's car was parked on the driveway and road in a way that called for enquiry.
32. Officer A said he used section 114 to obtain Mr X's details. From that he was able to establish that Mr X was driving outside the conditions of his driver's licence, and he said he would have warned Mr X accordingly.
33. We consider Officer A was justified in this action.

Did Officer B have legal justification for taking the car keys?

34. The purpose of section 121 is to prevent a driver from harming themselves or others. As set out above, the officer making the decision needs to believe on reasonable grounds that the driver is not capable of properly controlling a vehicle because of his or her physical or mental condition, however that condition has arisen.
35. At the point that Officer B took Mr X's car keys, Mr X had not been arrested but was required to stay and provide details under section 114.
36. Officer B told us he saw the keys on the driver's seat when Mr X was standing by the car confronting Officer A. He described Mr X as being in a "*heightened state*" and considered that was a sufficient basis to justify him taking the keys. He says in his Police statement that he took the keys to "*prevent the driver from using them to start his vehicle and drive away from Police.*" However, he emphasised in his post-incident reporting and during his interview with the Authority that he believed he was justified in taking the keys because Mr X's behaviour indicated he was "*unfit emotionally and mentally*" to be safely in control of a vehicle. He says he acted to keep Mr X and other road users safe. Officer B says: "*He was in my opinion in a state that was not suitable to be in control of a vehicle. He was aggressive and assaultive towards us.*"
37. Officer B also commented:
- "... as I've gone in to reach for the keys, I've smelt cannabis which there shouldn't – if he's been consuming cannabis, he shouldn't be in control of a motor vehicle."*
38. Officer B further explained that his concern was based on his considerable experience as a Police officer and behaviours exhibited by other heightened drivers:
- "... a common thing we do see if you let someone often drive off from after they've had a domestic with their partner, they'll do a skid on the roadside or they'll take off at speed. They're heightened, they're angry...."*
39. While we accept the officers were dealing with an agitated and abusive young man, we do not accept that Officer B had reasonable grounds to believe that Mr X was incapable of having proper control of a vehicle due to his "*mental condition*" to a degree that steps needed to be taken pursuant to section 121, or any other power.
40. In forming this conclusion, we have considered factors applied in relevant case law.¹ We also note the following:
- Mr X was abusive and appeared agitated by Police's presence but was cooperating with requirements under section 114. Police established that the vehicle was owned by him and legally entitled to be on the road.
 - Mr X was clearly a young man who was angry, but not visibly out of control, obviously alcohol-affected, or in charge of a vehicle containing passengers, as was the situation in

¹ *Police v Barton* District Court Porirua CRI-2012-091-366, 8 November 2012; *O'Malley v Ministry of Transport* (1988) 3 CRNZ 236 (HC).

other cases where the section 121 power was upheld. While Officer B says he smelt cannabis when he was reaching over to take the keys, he had already made the decision to take them without this being a factor in his reasoning.

41. We therefore find that Officer B was not lawfully justified in taking Mr X's car keys under section 121.
42. Police disagree. They say that Officer B's decision was based on an honest belief that Mr X should not be allowed to drive again that night in the interests of public safety, due to Mr X's abusive, offensive and aggressive behaviour. On this basis, Police say that taking Mr X's keys was a reasonable decision, reinforced by Mr X's young age and driver licence status (in fact, Officer B did not know Mr X was breaching his licence conditions at this point).
43. Police point to Justice Greig's comments in *O'Malley v Ministry of Transport* that the decision is left to the officer and his (or her) belief "*in all the circumstances of the case*" and the officer may have to come to that honest belief at speed and in stressful circumstances:

"It is not to be expected that he will, in the moment of his decision, weigh up, with the same leisure and the nicety of balance of counsel on an appeal, all of the factors that are involved. What he must do is have an honest belief and that must be based upon reasonable grounds that the person is incapable of having proper control of the vehicle. Then he must decide in all the circumstances that in the public and individual interest there should be a prevention of driving immediately."

44. We agree that the officer's belief must be honestly held and accept that the officer's decision must often be formed under pressure. However, the Police analysis appears to ignore that the officer's decision must also be based on reasonable grounds which involves an objective assessment. An honestly held belief alone is insufficient if the evidence does not support it. The officer must form a conclusion that can be justified as a reasonable one when the factual circumstances are examined.
45. We accept that Officer B honestly believed he was justified in taking Mr X's keys in the circumstances. However, we do not accept that Officer B had reasonable grounds to form his belief, to a substantial degree of likelihood, that Mr X was incapable of being in control of a vehicle. We note that section 121 may have applied had Officer B made his assessment and decision at a later point in the interaction with Mr X, after he had smelt cannabis and established that Mr X was driving in breach of his restricted licence conditions.
46. Mr X was clearly annoyed by Officer B's actions in taking his car keys. Judge Kelly in *Police v Barton* considered improper use of section 121 in the circumstances of that case "*... a moderate intrusion of the right to the freedom of movement as guaranteed by s 18 of the New Zealand Bill of Rights Act 1990.*"
47. However, while Mr X was entitled to protest the seizure of his keys, he was not justified in kicking Officer B in the stomach. Therefore, our finding that Officer B's action in taking Mr X's keys was unlawful does not affect the legality of Mr X's arrest or the force Police used to defend themselves or bring Mr X under control.

FINDINGS ON ISSUE 2

Officer A was justified under section 114 of the Land Transport Act 1998 in speaking to Mr X and requesting his name and address.

Officer B was not justified in attempting to take the car keys to Mr X's vehicle pursuant to section 121 of the Land Transport Act 1998 due to the circumstances not meeting the required threshold.

Subsequent Police Action

- 48. Police completed a youth prosecution action with Mr X which went to a defended hearing. This resulted in all charges being dismissed on 16 December 2024 due to delays. To proceed further would have been inappropriate.
- 49. We spoke to staff at Police National Headquarters regarding the use of section 121 by officers. Our concern is that in this event, experienced officers have failed to use the power as intended, therefore better training and policy guidance may be required.
- 50. Police believe section 121 serves them and the public well, saying it has sufficient subjective application to enable Police to make appropriate calls to keep the motoring public safe. They did not believe there was an operational need to provide clarity around its use.
- 51. Police did accept that work is required to enhance the process and data capture in utilising section 121 so that a nationally consistent approach is achieved.

Recommendation

- 52. We recommend that Police have a nationally consistent approach to s121 Land Transport Act 1998 matters to ensure their obligations are fulfilled and appropriate data is captured.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

28 August 2025

IPCA: 23-19704

Appendix – Laws and Policies

LAW

Crimes Act 1961: Use of Force

53. Section 48 of the Crimes Act 1961 states: *“Everyone is justified in using, in the defence of himself or herself or another, such force as, in the circumstances as he believes them to be, it is reasonable to use.”*

Land Transport Act 1998: Police powers

54. Section 114 of the Land Transport Act 1998 enables Police to require a driver to stop and to provide their name, address and details of the vehicles registered owner.
55. Section 121 enables an enforcement officer to immobilise a vehicle if they believe on reasonable grounds that the person in charge of the vehicle:
- because of his or her physical or mental condition (however arising), is incapable of having proper control of the vehicle, or
 - has failed a drink driving procedure.

The enforcement officer may:

- forbid that person to drive a motor vehicle for a specified period,
- direct the person to drive the vehicle to a specified place,
- take possession of the keys of the vehicle, and for that purpose require that person to deliver up immediately all such keys, or
- take such steps to render the vehicle immobile.

POLICY

Arrest and Detention

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

Use of Force

Police policy on the use of force

57. The Police Use of Force policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain

a person, effect an arrest, or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, Tasers, and firearms.

58. Police policy provides a framework for officers to assess, reassess, manage, and respond to use of force situations, and ensure the response (use of force) is necessary and proportionate given the level of threat and risk to themselves and the public. Police refer to this as the TENR (Threat, Exposure, Necessity and Response) assessment.
59. Police officers must also constantly assess an incident based on information they know about the situation and the behaviour of the people involved, and the potential for de-escalation or escalation. The officer must choose the most reasonable option (use of force) given all the circumstances known to them at the time. This may include information on:
 - the incident type, location, and time;
 - the officer and subject's abilities;
 - the subject's emotional state;
 - the influence of drugs and alcohol and the presence or proximity of weapons;
 - similar previous experiences with the subject; and
 - environmental conditions.
60. Police refer to this assessment as an officer's Perceived Cumulative Assessment (PCA).
61. A key part of an officer's decision about when, how, and at what level to use force depends on the actions of, or potential actions of, the people involved, and depends on whether they are:
 - cooperative;
 - passively resisting (refuses verbally or with physical inactivity);
 - actively resisting (pulls, pushes or runs away);
 - assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or
 - or presenting a threat of grievous bodily harm or death to any person.
62. Ultimately, the legal authority to use force is derived from the law and not from Police policy.
63. The policy states that any force must be considered, timely, proportionate and appropriate given the circumstances known at the time. Victim, public, and Police safety always take precedence, and every effort must be taken to minimise harm and maximise safety.

About the Authority

WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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

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

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

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

WHAT ARE THE AUTHORITY'S FUNCTIONS?

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

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

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

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

THIS REPORT

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



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