

Use of force following off-duty intervention justified but breached policy

7. We independently investigated Mr Z's complaint. Police completed their own investigation and concluded that the officers acted lawfully and in line with Police policy.

The Authority's Findings

Issue 1: Was Officer A's decision to impound Mr Z's car justified?

Officer A was justified in deciding to impound Mr Z's car.

Issue 2: Was Officer A's use of force justified?

Officer A's push and the force used to restrain and handcuff Mr Z was justified.

Issue 3: Was Officer A's off-duty intervention in line with Police policy?

Officer A's off-duty intervention breached policy.

Analysis of the Issues

ISSUE 1: WAS OFFICER A'S DECISION TO IMPOUND MR Z'S CAR JUSTIFIED?

8. In this section we describe what happened when Officer A decided to impound Mr Z's car. We then assess whether Officer A's response was appropriate and complied with both law and Police policy.

What happened?

9. On the evening of 1 February 2024, CCTV footage captured a car doing burnouts on the local golf course. CCTV footage did not show the make, model or registration number of the car, but the type of vehicle was visible, and a distinctive spoiler could be seen on the rear of the car's roof.
10. Officer A (who is the sole charge officer in a rural community) visited the golf course, observed the damage caused and obtained a copy of the CCTV footage.
11. On 7 February 2024, Officer A was off duty, dressed in plain clothes and speaking with Officer B in a carpark when he saw a Nissan Sentra drive past with the same distinctive spoiler. Officer B, a member of the Commercial Vehicle Safety Team, was on duty, in his Police uniform and driving a marked Police car.
12. Because Officer A was off duty, he asked Officer B to stop the car. Officer B agreed and followed Mr Z in his Police car. Officer A followed in his private car.
13. Mr Z drove the car onto the forecourt of a service station. By the time Officer B arrived, Mr Z was already out of the car.
14. Officer B approached Mr Z and started speaking with him.

15. Officer A then approached. He says he identified himself as a Police officer, showing Mr Z his Police ID card. Officer A's evidence is inconsistent with the terms of Mr Z's complaint. We prefer Officer A's version of events. This is supported by the CCTV footage described in paragraph 47 in which Officer A shows Mr Z something early on in their interaction, more likely than not his ID card.
16. Officer A says he told Mr Z the car was wanted by Police for doing burnouts at the golf course. Mr Z denied any knowledge of the burnouts and told the officers he had just purchased the car from its previous owner.
17. Officer A advised Mr Z his car would be impounded because it had been involved in sustained loss of traction offending (doing burnouts).¹ Mr Z accepts Officer A told him the car would be impounded but he says Officer A did not provide any reasons for the impound. Again, we prefer Officer A's account. This is supported by Officer B who says he heard Officer A explain why Police were impounding the car. Officer A's reasons are explained in paragraph 20.
18. Mr Z later appealed the decision to impound his car.² He appealed on the basis he had only just got the car; therefore, he was not the one driving the car during the burnouts incident at the golf course on 1 February and could not reasonably be expected to know that the car had been used in this way.
19. Mr Z's appeal was successful, and Police agreed to release the car. While Police maintain the officer had legal grounds to impound the car, they granted Mr Z's appeal because they were satisfied he had come into possession of the car after the burnout incident at the golf club, and it was fair to release it to him. Police also agreed to pay the impound fees for the vehicle.

What is the justification for Officer A's impoundment of Mr Z's vehicle?

20. Section 96(1A)(b) of the Land Transport Act 1998 ('the LTA') provides an officer *must*, if practicable, impound a vehicle for 28 days if the officer believes on reasonable grounds that *a person*, without reasonable excuse, operated the vehicle in a manner which caused the vehicle to undergo a sustained loss of traction [emphasis added]. This includes a driver performing burnouts.
21. It follows that under this section, an officer must have a reasonable belief that the car was involved in a sustained loss of traction incident such as the incident described at the golf course, but the officer does not need to be able to identify the driver, only that somebody drove the car in this manner.
22. Officer A later served an Impoundment Notice under section 96 of the LTA. Section (b) of that notice states:

¹ Pursuant to section 96 of the Land Transport Act 1998, which is set out in the Appendix.

² S102 LTA 1998 provides that the owner of a car may appeal to Police against the seizure and impound of their car. Mr Z appealed on the grounds that he did not know and could not reasonably be expected to know that the operator of the vehicle would contravene s22A (by performing burnouts in the car).

“I am seizing and impounding or seizing and authorising the impoundment of the motor vehicle described below for 28 days because I believe, on reasonable grounds that – (b) Without reasonable excuse, you operated that vehicle on a road³ in a manner that caused the vehicle to undergo sustained loss of traction in contravention of section 22(A)(3) of the Act” [emphasis added].

23. The Impoundment Notice and the LTA differ in that the LTA refers to ‘a person operated the vehicle’ whereas the Notice states ‘you operated the vehicle’. However, regardless of the wording of the Impoundment Notice, the LTA takes priority.
24. Officer A identified the vehicle after reviewing CCTV footage from both the golf course and the township, noting the distinctive spoiler. Although the registration number of the vehicle was not confirmed, we accept Officer A had reasonable grounds to believe this was the same car which was seen doing burnouts at the golf course. He therefore had grounds to impound the car.
25. The Police’s decision to release the vehicle early and pay the impound fees does not change our view that the vehicle was lawfully impounded.
26. Police released the car after it was established that Mr Z had only just acquired the vehicle and he was not involved in, nor did he have any knowledge of the incident at the golf course.
27. We also note the wording of the impound notice could result in confusion as this suggests (incorrectly) that legally to impound the vehicle, an officer must believe on reasonable grounds that the person on whom the notice is served was responsible for the sustained loss of traction. We have recommended that Police amend the wording of the Police Impound Notice to align with the wording of section 96(1)(A) of the Land Transport Act 1998.
28. While Officer A was off duty and not in Police uniform, his actions were lawful under the LTA. There is nothing in the LTA which requires an officer to be on duty or in uniform when impounding a car. In any event an on-duty uniformed officer (Officer B) was present during the entire interaction. We discuss the reasonableness of Officer A’s off-duty intervention further at paragraphs 74- 90 below.

FINDING ON ISSUE 1

Officer A was justified in deciding to impound Mr Z’s vehicle.

ISSUE 2: WAS OFFICER A’S USE OF FORCE JUSTIFIED?

29. In this section we assess the two uses of force by Officer A against Mr Z, the initial push to Mr Z’s chest and his subsequent force to restrain and handcuff Mr Z. We will also address Mr Z’s complaint that Officer A broke his glasses during the arrest.

³ Section 2 of the Land Transport Act 1998 defines a road to include “a place to which the public have access, whether as of right or not.”

30. Mr Z and Police gave different accounts of what happened before the officers decided to arrest him and following the arrest, including what happened to Mr Z's glasses.

What happened?

31. The circumstances of Officers A and B approaching Mr Z are set out in paragraphs 9-17 above. Both Officers A and B say they were not aware who Mr Z was when they first approached him.
32. Mr Z gave Officer B his driver licence, who passed it on to Officer A. Both officers say they recognised Mr Z's name.
33. Officer B says he recognised Mr Z's name because it is well known amongst local Police staff that Mr Z has a volatile nature, angers easily, and carries out his threats. Officer B recalled recent Police intelligence communications that advised Mr Z had been threatening people and Police staff should be wary of him.
34. Officer A also says he recognised Mr Z's name from Police intelligence communications; he also recalled officers telling him that Mr Z had pointed a starting pistol at Police and harassed Police – lighting fires at homes and stabbing vehicle tyres.

What does Mr Z say happened?

35. Mr Z says he told Officer A he had no right to impound the car and that he was going to make a complaint, at which point Officer A shoved him backwards. He says Officer B stepped in and tried to calm the situation. He denies that he made any threats to Officer A.
36. Mr Z says he told Officer A his assault will have been captured on camera. He says that Officer A then grabbed him, smashed him into the car, and threw him to the ground. It was only then that Officer A told him he was under arrest. He was injured as a result.
37. Mr Z says his glasses were on the ground and Officer A deliberately stepped backwards on to them.

What do the officers say happened?

38. Officer A says that after he told Mr Z that he was going to impound the car, Mr Z threatened him, saying words to the effect that he would *"get him"* and that Officer A *"wouldn't see him coming."*
39. Officer A says Mr Z's demeanour was angry – he was not shouting but his body language was aggressive as he stood directly in front of Officer A and squared up – looking at him directly in the eye as he threatened him.
40. Officer B also says that Mr Z threatened Officer A saying words to the effect of, *"I'll get you"* then *"I'll get you at night"*.
41. Officer A says his reaction to Mr Z's demeanour and language was to place one hand on Mr Z's chest and push him backwards. The push rocked Mr Z onto his back foot, but he did not fall to

the ground. He says he believed Mr Z was an immediate threat and he was worried Mr Z may have a weapon on him or could punch him and Officer A wanted to create space.

42. Consequently, he says he pushed Mr Z backwards because he believed there was no space behind him to step back and away from Mr Z. They were standing between two vehicles and he could not move to the side and could not move backwards as there was a curb immediately behind him.
43. Officer B says at this point he stepped between Officer A and Mr Z, instinctively, because he had his Police appointments⁴, while Officer A was in civilian clothing.
44. Officer A told Mr Z he was under arrest. Officer B says he heard Officer A tell Mr Z he was under arrest. Mr Z began to walk away.
45. Officer A walked after Mr Z and grabbed him by the arm telling him, again, he was under arrest. He says Mr Z refused to follow instructions and tensed up, saying something like “*come on then*” and challenging him to a fight. Officer A decided to take Mr Z to the ground as he believed it would be easier to control and handcuff him. Officer B also says Mr Z was resisting, Officer A asked him to put his hands behind his back and he refused. This force was necessary to secure him.
46. Officer A denies stepping on Mr Z’s glasses and says he did not see the glasses during their interaction. Officer B did not see Officer A stand on Mr Z’s glasses and does not believe any damage was intentional.

What does the CCTV footage show?

47. The whole incident was captured on the service station’s CCTV. Officers A and B spoke with Mr Z for around 3 minutes. The footage appears to support aspects of both Mr Z’s description of events and those of the officers, though, as there is no audio component, it is not possible to determine what was said. The footage is summarised below:
 - Officer A shows Mr Z something (more likely than not his Police ID).
 - Officer A reacts to something said by Mr Z and his body language becomes more animated.
 - Officer A reaches forward and with one hand pushes Mr Z in the upper chest. Mr Z rocks backwards towards the petrol pumps but does not fall. There is space behind Officer A when he pushes Mr Z.
 - As Officer A pushes Mr Z, Officer B steps between the two, facing Mr Z with his arm out to the side blocking Officer A.
 - Mr Z walks away from the officers and points to the camera. Officer A follows him, grabs him by the arm and pushes him towards the Police car. The view of the camera is slightly

⁴ Police appointments refers to the equipment Police officers are authorised to carry including handcuffs, OC spray, torch, baton, Taser.

obstructed by the petrol pump, but we can see Officer A struggling with Mr Z and pulling him to the ground.

- Officer A restrains Mr Z on the ground with his knee on Mr Z's back. Officer B handcuffs Mr Z, and both officers stand Mr Z up and walk with Mr Z out of shot.

We see Mr Z's glasses are on the ground and Officer A steps back over the glasses. It does not appear that Officer A stood on Mr Z's glasses as Mr Z complains.

Was Officer A justified in pushing Mr Z in self-defence?

48. Section 48 of the Crimes Act 1961 provides that any person, including a Police officer, is legally justified in using reasonable force in defence of themselves or another.
49. 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 Z for the purpose of defending himself/herself or another (a subjective test)?
 - c) Was the officer's use of force against Mr Z reasonable in the circumstances as the officer believed them to be (an objective test)?

What did Officer A believe the circumstances to be?

50. Officer A's view of the circumstances is outlined above in paragraphs 38- 46, specifically that:
- Mr Z posed a physical threat, as he was angry and displaying aggressive body language;
 - Mr Z told him he would "get him" and Mr Z's history showed he was capable of retaliation; and
 - Mr Z was standing within a metre of Officer A immediately prior to the push.
51. Mr Z denies verbally threatening Officer A; however, Officer B's account supports Officer A. Regardless of the reason for the push, CCTV footage shows that Officer A and Mr Z were in an altercation and in close proximity immediately prior to the push.
52. While CCTV footage shows there was space behind Officer A for him to step back, we accept Officer A's evidence that he was not sure where the curb was and believed he had limited space to move and create distance between himself and Mr Z.
53. We accept that Officer A genuinely believed Mr Z posed a risk to his safety and he needed to create space to protect himself.

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

54. We accept that Officer A pushed Mr Z in self-defence because he believed Mr Z posed a threat. There is no evidence that Officer A acted for any other reason.

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

- 55. Officer A's push was a low-level use of force intended to mitigate a perceived threat. Mr Z did not fall or suffer any injury as a result.
- 56. Police train officers to push or redirect a person if that person is aggressive or advancing near them. This technique creates distance and can provide a distraction or means to control the person and protect officers or others.
- 57. In our assessment, it was reasonable for Officer A to push Mr Z back in these circumstances.

Conclusion

- 58. We accept Officer A's push of Mr Z was reasonable and justified under section 48 of the Crimes Act.

Was Officer A justified in using force against Mr Z to overcome force Mr Z used to resist arrest?

- 59. 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"*.
- 60. Under section 39, the Authority must consider:
 - a) Did the officer genuinely believe that the person was using force to resist (a subjective test)?
 - b) If so, was it reasonable for the officer to conclude it was necessary to use force to overcome that resistance (an objective test)?
 - c) If so, was the officer's use of force to overcome that resistance reasonable (an objective test)?

Did Officer A believe Mr Z was resisting arrest at the time he restrained and took Mr Z to the ground?

- 61. Officer A describes Mr Z walking away after being told he was under arrest, refusing to follow instructions, tensing up and challenging him to fight. Officer B's evidence supports this account.
- 62. Mr Z denies being told he was under arrest after Officer A shoved him and says that Officer A went on to grab him and throw him to the ground.
- 63. CCTV cannot verify whether Mr Z was told he was under arrest prior to walking away from the officers. However, on the balance of probabilities we prefer the officers' evidence.

64. We accept Officer A believed Mr Z was resisting arrest by walking away and not cooperating with Police.⁵

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

65. Officer A says he told Mr Z he was under arrest twice, once before Mr Z walked away and again before he pulled him to the ground. Mr Z's reaction to being told he was under arrest for a second time was to challenge him to a fight.
66. CCTV footage shows Officer A struggled with Mr Z before he pulled him to the ground. Officer A says he was forced to wrestle with Mr Z because he held his body rigid and refused to follow instructions.
67. The evidence supports that Mr Z did not cooperate with Officer A; therefore, we find it was reasonable and necessary for Officer A to use force to stop him from leaving.

Was Officer A's use of force reasonable in the circumstances?

68. We prefer Officer A's evidence (supported by Officer B) that he told Mr Z he was under arrest; and Mr Z resisted that arrest by walking away from the officers, holding his body rigid, and refusing to follow instructions.
69. The force used by Officer A was at the lesser end of the scale. He grabbed Mr Z by the arm and pulled him to the ground to handcuff him safely.
70. Mr Z told us that he sustained injuries including marks on his face. A photo taken of Mr Z following his arrest supports that he sustained a small cut to his face above his right eyebrow. Officer B told us this was likely caused by Mr Z's glasses when he was pulled to the ground.
71. In our view, the level of force used was reasonable and we do not find Officer A could have overcome Mr Z's resistance in a less forceful manner.

Conclusion

72. We accept the force used by Officer A in restraining and handcuffing Mr Z was reasonable and justified under section 39.
73. The CCTV evidence does not support Mr Z's complaint that Officer A broke his glasses.

FINDING ON ISSUE 2

Officer A's push and the force used to restrain and handcuff Mr Z was justified.

⁵ Police Use of Force policy provides that active resistance includes "pulls away, pushes away, or runs away."

ISSUE 3: WAS OFFICER A'S OFF-DUTY INTERVENTION IN LINE WITH POLICE POLICY?

74. In this section we assess whether Officer A's actions were appropriate and complied with Police policy on 'Off-duty interventions.'

75. The Police 'Off-duty interventions' policy states:

"The powers and responsibilities of constables apply 24 hours a day and nothing prevents an off-duty constable from taking lawful action in situations where they believe intervention or assistance is necessary and appropriate in the circumstances."

76. The policy requires off-duty officers to conduct a risk assessment and consider the following factors before they act:

- How serious is the offending?
- Is there a real danger of injury to a person or serious damage to property?
- Is the off-duty officer adequately equipped or by intervening do they put their own safety or the safety of others at risk?
- Does action need to be taken immediately to resolve the situation, or can it wait for on-duty constables to arrive?

77. On-duty officers must take over responsibility of an incident as soon as they arrive.

What happened?

78. The circumstances in which Officers A and B approached Mr Z are set out in paragraphs 11-15 above. Officer A was off duty, wearing plain clothes without his Police appointments, but carrying his Police identification card, whereas Officer B was on duty in full Police uniform including his body armour and appointments.

79. Officer A asked Officer B to stop Mr Z's car, without further detail.

80. Officer A took the lead in questioning Mr Z, then advised him the car would be immediately impounded.

81. Following a tense interaction with Mr Z, Officer A pushed Mr Z and took control of arresting him.

82. Officer A accepts the recommended practice is not to intervene when off-duty because of the risks involved. However, he says this is not the reality for sole charge officers in small communities. He says sole charge officers are used to working on their own and they need the trust of their community. In the latter regard, he says it is a bonus if members of the community see the sole charge officer being proactive while off duty.

83. In a report following the incident, he acknowledged he felt very unsafe during the interaction as he was off duty and did not have his appointments. He stated that, had he known Mr Z's identity (as the driver), he would not have dealt with Mr Z while off duty.
84. Officer A says it was not practical for Officer B to take the lead with Mr Z. He says Officer B knew "*absolutely zero*" about the earlier incident at the golf club, he only knew the car needed to be stopped. There was not time to have a further conversation with Officer B prior to dealing with Mr Z so it was better that he took the lead. He says the conversation with Mr Z became heated quickly and he had to make a "*split second*" decision on how to act. There was no time to consult with Officer B.
85. Officer A says he believed the interaction would be straightforward and he did not anticipate how it would turn out. In his view, he had a short amount of time to make decisions as the dynamics changed quickly following Mr Z's identity being established and Mr Z's threatening language and behaviour.
86. Officer B confirms he did not know much about the matter and there was no plan; if Officer A had not followed him to the service station, he would not have known what to do.

Was Officer A's off-duty intervention in line with Police policy?

87. We acknowledge Officer A is a sole charge officer in a small community and that he felt he had to act proactively. However, in our view his intervention was not in accordance with Police's 'Off-duty interventions' policy.
88. The matter did not require urgent intervention, and an on-duty officer was in attendance. Officer A should have considered whether it was safe to lead the interaction given he was off duty and without his appointments.
89. We do not accept it was impractical for Officer B to take charge of the incident. Policy requires on-duty officers to take over responsibility for incidents upon arrival. Officer A had the opportunity to brief Officer B before they approached Mr Z.
90. In our view, Officer A should have deferred to Officer B and Officer B should have taken the lead in questioning Mr Z and impounding his car.

FINDING ON ISSUE 3

Officer A's off-duty intervention breached policy.

Recommendations

91. We recommend Police:

- 1) Amend the wording of the Police Impound Notice to align with the wording of section 96(1)(A) of the Land Transport Act 1998.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

29 September 2026

IPCA: 24-22705

Appendix – Laws and Policies

INSERT ANY RELEVANT POLICY

Land Transport Act 1998

92. Section 96(1A)(b) of the Land Transport Act 1998 states: *“An enforcement officer must, if practicable, seize and impound, or seize and authorise the impoundment of, a motor vehicle for 28 days if the officer believes on reasonable grounds that a person –*

....

(b) without reasonable excuse, operated the vehicle on a road in a manner that caused the vehicle to undergo sustained loss of traction in contravention of Section 22A(3).”

93. Section 22A(3) states: *“A person must not, without reasonable excuse, operate a motor vehicle on a road in a manner that causes the vehicle to undergo sustained loss of traction unless the operation of the vehicle in that manner is authorised by law.”.*

94. Section 96(1B) states: *“An enforcement officer who seizes and impounds (or authorises the impoundment of) a motor vehicle under subsection (1A) must, by means of a notice in the form approved for the purposes of section 115(1), direct that the vehicle is not to be driven on a road.”*

Crimes Act 1961: Use of Force

95. Section 39 of the Crimes Act 1961 states:

“Where any person is justified, or protected from criminal responsibility, in executing or assisting to execute any sentence, warrant, or process, or in making or assisting to make any arrest, that justification or protection shall extend and apply to the use by him or her of such force as may be necessary to overcome any force used in resisting such execution or arrest, unless the sentence, warrant, or process can be executed or the arrest made by reasonable means in a less violent manner:

provided that, except in the case of a constable or a person called upon by a constable to assist him or her, this section shall not apply where the force used is intended or likely to cause death or grievous bodily harm.”

96. 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.”*

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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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