

Complaint of excessive force during detention at Henderson

INTRODUCTION

1. At about 12.20am on 11 November 2014, at the North Shore Hospital, a Police officer arrested Ms Z for disorderly behaviour and detoxification. While Police were transporting Ms Z to the Henderson Police Station, she kicked out at the officer driving the car and was subsequently charged with assaulting Police.
2. At the Henderson Police Station, Ms Z suffered a serious injury to her left knee while being placed in a cell. She was kept in custody overnight before Police called an ambulance at 9.15am.
3. In December 2014 Ms Z's partner, Mr Y, made a complaint that Police had used excessive force against Ms Z on 11 November 2014. The Authority initially declined to investigate that complaint on the basis that Ms Z's contact with Police would be dealt with in court.
4. Ms Z revived the complaint that Police used excessive force on her on 24 March 2016, after the court hearing into the assault charge against her was concluded without addressing the issues related to her injury. She told the Authority that her injury occurred after her knee was "*struck from behind*", and that her "*main grievance*" against Police is that they left her in a cell in pain and suffering and that, when she asked for medical help, it was denied.
5. The Authority subsequently conducted an independent investigation into Ms Z's arrest and detention by Police. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

Police attend Ms Z's house

6. At about 10.30pm on 10 November 2014 Police were called to attend Ms Z's house after receiving a report of a domestic disturbance involving Ms Z and her partner, Mr Y.

7. Officers A and B were dispatched to attend this incident, and were advised that Police wanted to interview Mr Y about breaching a protection order. They arrived at Ms Z's address within about ten minutes.
8. Officer A spoke to Ms Z and found her to be very fearful and upset. She told him she had previously dealt with Mental Health services and that her cousin had died recently.
9. Officers A and B needed to take Mr Y back to the North Shore Policing Centre to be interviewed, but Officer A did not think they should leave Ms Z alone. Due to his fears for her safety, he arranged for another Police unit to be sent to Ms Z's address.
10. Officers C and D arrived at about 11.15pm, and Officer A briefed them regarding his concerns about Ms Z's state of mind before leaving the address with Officer B and Mr Y. Officers C and D told the Authority they found Ms Z sitting outside her house and spoke with her.
11. Officer C said that Ms Z was "very drunk", and told him she had consumed one and a half bottles of wine. He recalled her stating that she wanted to drive off to "end everything and disappear". He was concerned that she was having suicidal thoughts and that she was not in a fit state to drive. Officer D also said that Ms Z told him a hitman was coming to assassinate her.
12. Officer D called the Mental Health Crisis Assessment Team (CAT), but they refused to come to Ms Z's address to assess her because she was intoxicated.
13. Meanwhile Officer C continued talking with Ms Z. He said she was happy to talk with him and agreed to go to the North Shore Hospital for a mental health assessment and detoxification.
14. However Ms Z told the Authority that she was forcibly taken to, and placed in, the Police car despite telling the officers multiple times she did not want to go to the hospital. She stated that she had only had a couple of glasses of wine that night, and that she was inside the house when the officers were speaking with her:

"I was tearful, I was quite tearful and then they said 'Would you like to go – we'll take you to the hospital.' And I said, 'Look I don't really want to go.' They said 'We think it's in your best interest.' And I said 'No I really don't feel like going', and as soon as I stepped out, that's when they grabbed me ... I was inside the house but as soon as I stepped out, bang. That's when they grabbed my arms and I said 'Please watch my leg, watch my leg, it's just come out of a moonboot.' I kept saying that."

15. Ms Z had recently been wearing a moonboot for about a month due to a suspected fractured left ankle. She said Officers C and D grabbed her by her arms, handcuffed her with hands behind her back and put her in the back of the Police car.
16. When interviewed by the Authority, the officers said Ms Z did not mention any injury and was calm and willing to go to the hospital with them. They helped Ms Z lock up her house and she got into their Police car voluntarily. There was no need to handcuff her and Officer C sat beside her in the back seat while Officer D drove to the hospital.

Transport to North Shore Hospital

17. Officers C and D said that Ms Z was *“very compliant”* during the drive to the hospital and that it went *“without incident”*.
18. However Ms Z stated that Officer C was pinching her arm on the way to the hospital, and continued to do so when she asked him to stop.
19. Police do occasionally use ‘pain compliance’ techniques to restrain people. However, Officer C told the Authority he did not pinch Ms Z, and that there was no need to apply any pain compliance technique because Ms Z was *“very calm”*. He also explained that he was unaware of pain compliance techniques at the time, because he was a probationary constable who had only recently graduated from the Royal New Zealand Police College.

Arrest of Ms Z at the hospital

20. When they arrived at the hospital, Officer C took Ms Z inside while Officer D waited outside with the Police car. The hospital’s CCTV footage shows that Ms Z was not handcuffed when she got out of the car.
21. Officer C discussed the situation with hospital staff and rang CAT again, but they told him they wanted Ms Z to sober up before they assessed her. The hospital staff agreed to admit Ms Z for detoxification, awaiting a mental health assessment.
22. Ms Z told the Authority she did not remember very much about what happened at the hospital, except that she was not happy and wanted to go home.
23. At about 12.20am, Officer C, Ms Z and two members of the hospital staff were standing in the lobby. According to Officer C, Ms Z suddenly told the hospital staff: *“You are full of shit”*, and then started *“charging”* towards them. The hospital’s CCTV footage shows Ms Z advancing to within about a metre of the hospital staff and pointing at them with her left hand. It is not clear how fast she was moving due to the poor quality of the video recording.¹
24. At that point Officer C decided to arrest Ms Z for disorderly behaviour and detoxification. Officer C said he arrested her because he *“had the strong impression that she would be assaultive towards the nurses”* and *“just realised she could be very unpredictable”*.
25. The hospital staff did not ask Officer C to arrest Ms Z and it is unknown whether they would have been happy for her to stay at the hospital.
26. Officer C handcuffed Ms Z with her hands behind her back and walked her out of the lobby into the carpark. According to the CCTV footage, this was about 25 minutes after they had first arrived at the hospital. Officer C said Ms Z was screaming that the handcuffs were hurting, and he discovered that one of them had been applied incorrectly.

¹ No audio recording is available.

27. Ms Z said the pain in her wrist from the handcuffs was “*agony*”, and that her left ankle was also still painful from her earlier injury, which made it difficult for her to keep her balance with the handcuffs on.
28. Officer D helped Officer C to reapply the handcuffs, and then the officers placed Ms Z into the back seat of the Police car after a minor struggle. Officer C sat beside her, directly behind the driver’s seat.

Transport to Henderson Police Station

29. Officer D drove from the North Shore Hospital to the Henderson Police Station, which was the nearest custodial hub (equipped to hold prisoners 24/7).
30. Ms Z said that during this trip Officer C was pinching her arm again. Officer C denied this and, as mentioned above, said he would not have pinched her because he was not familiar with that pain compliance technique at the time.
31. As Officer D drove onto the motorway and sped up to 100kph, Ms Z began kicking at Officer D with her right leg. Ms Z told the Authority:

“I felt I was kicking the chair because it was like a reaction, because it was hurting so much, it’s like if someone’s hitting you in the head are you just going to sit there and go, ‘yeah I’ll take that?’”

32. Initially Officer C tried to hold Ms Z’s legs down to prevent her kicking, but eventually she caused Officer D to swerve the Police car. He pulled over on the motorway so that a vehicle leg restraint could be retrieved from the boot and applied to Ms Z’s legs.
33. Ms Z said the leg restraint caused more pain to her left ankle, but she did not suffer any injury to her knee at that point.
34. Officer C was not trained in using the vehicle leg restraint and did not apply it correctly. After some time Ms Z managed to break free of the leg restraint and Officer C had to hold Ms Z’s legs down for the rest of the journey so that she could not kick Officer D.
35. Officers C and D called ahead to the Henderson Police Station to alert them that they were bringing in an aggressive, assaultive prisoner.

Arrival at Henderson Police Station

36. The officers and Ms Z arrived at the Henderson Police Station at about 1am. Officer D told the Authority that Ms Z had calmed down by that stage and was “*fully compliant again*”.
37. Officer C escorted Ms Z to the custody counter area, where Custody Officer E was waiting to receive her into custody. Ms Z was no longer handcuffed and Officer C was carrying one of Ms Z’s shoes which had come off in the car.

38. CCTV footage shows that Ms Z was walking without difficulty at this time and did not appear to be suffering any injury.
39. Ms Z told the Authority that she asked the officers if she could call her family or a friend, but they said “No”. She then asked if she could use the toilet but the officers again refused.
40. Officer C and Custody Officer E denied that Ms Z made these requests. CCTV footage shows that at one point Ms Z walked down a corridor behind the custody counter area and Officer C immediately brought her back. It is possible that Ms Z was seeking out a toilet, however there is no audio recording of what Ms Z and the officers were saying at this time.
41. Custody Officer E told the Authority that Ms Z was “*being non-co-operative from the moment she came in*”, and was ignoring their requests to stand in a specific location and remove her jewellery. According to Custody Officer E, Ms Z objected to her putting on gloves, and was angry, abusive and swearing.
42. Ms Z suddenly began walking towards Custody Officer E. Custody Officer E said that Ms Z “*lunged*” at her with raised arms. Custody Officer E backed away and held up her arms in self-defence, while Officer C grabbed hold of Ms Z’s upper arms from behind to gain control of her. CCTV footage shows that Officer C then walked Ms Z away from the custody counter area and down a corridor leading to the cells. Custody Officer E followed close behind.
43. Meanwhile Officer D was talking with the late-shift custody sergeant, Officer F, in a nearby office. Officer F recalled that Officer D advised her they had just come from the North Shore Hospital because Ms Z had been making suicidal comments and required a mental health assessment, but she was drunk and uncooperative and had assaulted the hospital staff.
44. Officers D and F then heard a commotion and entered the corridor to help Officer C and Custody Officer E take Ms Z to the cells. Officer D took hold of Ms Z’s left arm, while Officer C continued to hold her right arm.
45. When interviewed by the Authority, Ms Z said that while she was in the corridor she was hit twice – once on each side of her left knee. She did not know who did this, or what she was struck with, but stated: “*It was definitely a blow, it was definitely blows to the leg*” and “*It definitely wasn’t accidental.*” She recalled that she dropped to the floor when this happened, and the officers picked her up and carried her into a cell.
46. No CCTV footage is available of the corridor where Ms Z states that her knee was struck, because the recording devices attached to the relevant cameras were no longer recording due to the system being old and overloaded. Unfortunately, the fact that the recording devices were not working was not noticed at the time.²
47. The officers involved have all stated that Ms Z was escorted to the cell without incident, and that she was not hit by anyone and did not fall to the floor at any point. Officer D said Ms Z

² Police have advised the Authority that these cameras are now all working, and that when there are issues with them they are reported and repaired in a timely manner.

*“was walking on her own ... she was just getting led with an escort hold.”*³ Officer D also recalled that Ms Z was screaming and saying *“Let me go”* and *“Why am I here?”*

48. The officers decided to place Ms Z in a CCTV-monitored cell. The CCTV footage of the cell initially shows Custody Officer E entering and placing a mattress down in the middle of the floor before leaving the cell again.
49. Ms Z then walked into the cell with her arms held by Officer D on her left side and Officer C on her right. Custody Officer E was also on Ms Z’s right side, holding the back of her head as the officers lowered Ms Z face-down onto the mattress.⁴ On the CCTV footage, Officer D appears to place his right leg in front of Ms Z’s legs during this process.
50. Officer F and Custody Officers G and H also entered the cell, to assist with searching Ms Z and removing her jewellery and some clothing.
51. Ms Z was initially lying on her right side with her legs slightly curled up. Custody Officer E knelt on the back of her legs to hold her down while Custody Officer G held her feet (after removing her remaining shoe). Custody Officer E then pulled Ms Z’s legs straight and rolled her over into a prone position. She crossed Ms Z’s right leg over the left leg, then bent both legs towards Ms Z’s back and applied pressure to control Ms Z’s movements. Custody Officer E stayed in this position for about three minutes.
52. Custody Officer E said this was a *“standard leg restraint”* technique she had been trained to use, which she employed in this case because Ms Z was kicking and struggling. Officer C also stated that Ms Z *“started kicking while she was just lying on the mattress”*.
53. The CCTV footage of the cell shows that Ms Z’s legs were not moving while she was lying on her right side. Ms Z then appeared to roll slightly backwards and moved her legs just before Custody Officer E rolled her onto her stomach and applied the leg restraint. It is not clear from the footage whether or not Ms Z was kicking out at the officers.
54. Officer C was crouching near Ms Z’s head while she was being searched and her dressing gown and cardigan were removed. He said Ms Z:

“... was trying to kick the staff that was there and then she was just crying she started crying at the time. I don’t know when she exactly started crying, whether it was after the leg restraint was applied or when she was, when she started kicking the staff. But she was crying, she was crying in the cell.”
55. Officer C told the Authority he believed Ms Z was crying because she was upset rather than in pain. Officer D said Ms Z was saying: *“I don’t want to be here, let me go”*, and:

³ Officer D stated: *“She was controlled by myself and another officer which was just like a hand under her armpit and one resting on her shoulder and just slightly leaning her forward, so it’s a very trifling force and she was actually walking on her own volition all the way down that corridor and there was no pauses or stops.”*

⁴ This is standard procedure when dealing with aggressive prisoners, to ensure Police staff do not get assaulted while in a cell.

“At one point I just even had her wrist, I was just holding her wrist down on the mat with no pressure at all and she wasn’t resisting or thrashing around or wincing or saying she was in pain with any sort of injuries.”

56. Custody Officer G also stated that Ms Z was submissive while the officers were holding her down on the mat and removing her jewellery. Custody Officer E and Officer F recalled that Ms Z was yelling and swearing, but she made no mention of being in pain.
57. Ms Z denied resisting or struggling while in the cell. She said she was *“in so much pain”* and could feel the bones moving in her leg.
58. After several minutes the officers left Ms Z alone in the cell, lying face-down on the mattress.

Ms Z in the cell

59. Shortly after the officers left the cell, CCTV footage shows that Ms Z began holding her left knee. She sat up and then slid on her bottom towards the cell door, and appears to have tried to call out and bang on the door for attention. However it is not clear whether anyone was in earshot and nobody responded.
60. Meanwhile Officer F and the custody officers discussed how they would deal with Ms Z while she was in custody. Custody Officer E said they decided *“as a team”* that Ms Z was *“intoxicated but not in need of frequent monitoring”*,⁵ because *“sometimes it can be worse to be checking and waking them every 15 minutes, it gets people even more agitated.”* Officer F commented that Ms Z:

“... was very uncooperative, she was very intoxicated, so I said that I wanted her to be in a monitored cell simply because she was intoxicated and we could keep an eye on her. ... I didn’t think she needed any sort of special frequent monitoring, people like that need to just go to sleep”

61. Although they were aware that Ms Z had made suicidal comments and required a CAT (mental health) assessment, Custody Officer E and Officer F considered her to be intoxicated, aggressive and assaultive rather than suicidal.
62. As the arresting officer, Officer C completed a charge sheet for Ms Z. He answered *“Yes”* to the question whether he was aware of reasons why Ms Z may require special care or be at risk, and wrote *“Refer to PMAF”*.
63. A ‘PMAF’ is a Prisoner Management Assessment Form – an outdated term referring to the Health and Safety Management Plan (HSMP) which must be completed whenever a prisoner is assessed to be ‘in need of care and frequent monitoring’ or ‘in need of care and constant monitoring’. The HSMP details the Police’s contact with mental health services, medical professionals and family, and records the decisions made regarding the prisoner’s care.

⁵ At the time of this incident ‘frequent monitoring’ meant that Police were required check the prisoner at least five times per hour at irregular intervals. See paragraph 108 for relevant policy.

64. Custody Officer E helped Officer C complete some of the HSMP form (since he was inexperienced). The 'frequent monitoring' box on the form was ticked even though it had been decided that Ms Z did not require that level of monitoring.⁶
65. Officer F told the Authority that it was their practice at the Henderson Police Station to complete a HSMP form whenever they used a CCTV-monitored cell, even if the prisoner was not going to be frequently or constantly monitored. She wrote on the HSMP that Ms Z was: *"aggressive and assaulted Police + AO [authorised officer]. States she wants to drive off a cliff + kill herself."*
66. When receiving a prisoner into custody, Police usually conduct a risk assessment process by interviewing the prisoner before they are placed in a cell. However, if the prisoner is too agitated or aggressive, he or she is put straight into a cell and officers complete their risk assessment based on the information available to them without consulting the prisoner. Officers are supposed to attempt to conduct the risk assessment questioning with the prisoner once he or she has calmed down.
67. Ms Z was considered too aggressive to interview, so the risk assessment was completed without her input. Custody Officer E completed the 'Watchhouse Keeper's Evaluation', which concluded that Ms Z was 'not in need of specific care' despite recording the following risk factors: affected by alcohol, agitated, anxious, aggressive behaviour to self or others, alcohol/drug addiction, hospitalised in mental health unit in last six months, currently under care of a mental health unit, and previous attempts or threats to commit suicide.⁷
68. The 'Watchhouse Keeper's Evaluation' also noted that Ms Z was:
- a) *"Unknown for other substances due to aggression and 1M";*
 - b) *"Was taken straight to cell as she tried to attack an officer when being received";*
 - c) *"Known to North Shore mental health. Unable to assess due to level of aggression. CAT to assess."*
69. At 1.17am Custody Officer E entered Ms Z into the Electronic Custody Module (ECM), which Police use to record all prisoner checks and movements. Custody Officer E noted that Ms Z had been assigned a (CCTV-monitored) cell.
70. CCTV monitoring does not replace the required checks for prisoners (see paragraph 108 for policy on checks). No one person at the Henderson Police Station was responsible for watching the CCTV monitors, but they are clearly visible to staff in the custody area. Custody Officer G advised the Authority: *"... if [Ms Z] was in pain or she was struggling or asking out for help, we'd be able to see that and then go assist."*

⁶ Officer C could not recall whether he ticked the 'frequent monitoring' box. Custody Officer E denied doing it.

⁷ The Authority notes that the ECM now has automated risk assessments, so it is not solely up to the officer to decide what level of monitoring the prisoner will receive.

71. The HSMP for Ms Z records that at 1.36am someone called CAT and left a message that Ms Z required an assessment. It is likely this was Officer C, although when he was interviewed by the Authority he did not remember making the call.
72. Meanwhile Ms Z continued to slide around on the floor in her cell, every so often moving between the mattress, the door and the window. She told the Authority: *"I was trying to get help because of my leg ... I was calling out, 'I need a medic, I need help'"*. She stated that she banged on her cell door but no one came to talk to her.
73. Ms Z was apparently unable to attract anyone's attention and at about 2am she lay down on the mattress on her left side, facing the cell window. She told the Authority that she could not recall anyone checking on her throughout the night, and that she tried to sleep but was unable to get comfortable because she could feel the bones moving in her left leg.
74. The CCTV footage shows that at about 2.30am Custody Officer H opened the cell door and gently threw a folded blanket onto Ms Z's legs. He then closed the door again without speaking to Ms Z. Ms Z sat up, and the lights were turned off in the cell. Ms Z unfolded the blanket and lay back down on the mattress. From the CCTV footage it appears she went to sleep, or was trying to sleep.
75. At about 3am the District Shift Commander was conducting an inspection of the Henderson Police Station cells, and she and Custody Officer E checked Ms Z in her cell. The District Shift Commander said she was advised that Ms Z had complained of a sore wrist, so she stood outside the cell window for some time to determine whether Ms Z was in distress. At 3.08am they opened the door and briefly shone a torch into the cell before closing the door again without entering the cell. Ms Z looked up from the mattress then lay back down.
76. Ms Z stayed on the mattress for another hour. At 4.09am she sat up and slid over to the cell door, where she sat holding her left knee. She returned to the mattress about five minutes later and sat facing the cell window. Custody Officer H conducted a check about this time but did not speak to Ms Z. He told the Authority:
- "... usually at this time of night, in the morning, they are all asleep so a visual check is enough for a check, usually we just check for breathing or movements"*
77. Shortly afterwards Ms Z shuffled towards the toilet at the back of the cell, but was unable to stand up and so she returned to the mattress. About ten minutes later she slid towards the cell door again and tapped on it, before returning to lie down on the mattress once more.
78. At 5.44am, Officer F called the CAT team again. They advised her that they would come to the Police station after they had a shift changeover (at about 7am), and Officer F told them Ms Z had been sleeping and was now probably sober enough for an assessment.
79. Soon after this, Custody Officer H opened Ms Z's cell door and placed a meal bag inside. Ms Z appears to have had a brief discussion with him before he closed the door. Custody Officer H

said he may have had a “simple” conversation with her but she did not say anything about being in pain because, if she had, he would have done something about it.

80. At about 6am Ms Z pulled her mattress closer to the cell door, and lay down on it again. At one point she wrapped the blanket around her left knee.
81. At about 6.30am Officer F began conducting a shift handover with the custody sergeant for the early shift, Officer I. Officer I said Custody Officer E briefed him that Ms Z was aggressive and had assaulted Police. Custody Officer E also recalled advising Officer I that Ms Z had slept through the night and had calmed down.
82. Custody Officer E told the Authority she had seen nothing during her checks or her monitoring of the CCTV of Ms Z’s cell that led her to believe Ms Z was in pain or had injured her knee. Officer F and the other custody officers also said that Ms Z never advised them of her injury.
83. Leading up to the shift handover at 7am, Officers F and I checked the prisoners in the cells and noted that they were “All OK” in the ECM. A further check was recorded at 6.53 am, at which time a torch was shone into the cell and Ms Z appeared to be sleeping or trying to sleep.
84. At 7.46am, Custody Officer J opened Ms Z’s cell door and Ms Z spoke with him. He shone a torch on her knee and Custody Officer K came to look at it. They decided to give her two paracetamol pills with water, and the CCTV footage shows this occurring at 7.54am. However Ms Z did not remember receiving any medication. She recalled that someone told her “*There’s nothing wrong with your leg, now stand up*” and she replied “*I can’t, my leg’s broken.*”
85. At 8.38am Ms Z tried to drag herself a short distance towards the toilet, but then slid back over to the cell door and lay down on the mattress again. At 9am she sat in front of the cell door and appeared to be trying to attract someone’s attention.

Ambulance called

86. About ten minutes later the cell lights were turned back on, and Ms Z spoke with Officer I. At 9.15am Officer I recorded in the ECM: “*[Ms Z] complaining of sore left leg to the point where she could not stand to even go to the toilet unassisted. Ambulance called to take to hospital.*” Officer I said that he only saw slight swelling on Ms Z’s knee and had no idea of the severity of the injury.
87. Ms Z was given assistance to use the toilet in her cell, and was then returned to the mattress.
88. The ambulance arrived at 10.03am and two paramedics began assessing Ms Z’s knee. At 10.20am two CAT staff arrived and spoke to Ms Z briefly before leaving the cell.
89. Custody Officers K and L took Ms Z’s photo while she was still lying on the mattress, since she was unable to stand. Ms Z told the Authority this experience was “*just horrible*”.
90. Ms Z was placed on a gurney and taken out of the cell to be transported to hospital at 10.47am.

91. Ms Z's medical records show that she suffered a tibial plateau fracture and a fibular fracture to her left knee. She had reconstructive surgery and two plates were inserted along with multiple screws. She was in a cast for about six weeks, and then a knee brace, and had ongoing physiotherapy. She was unable to work for more than four months, and told the Authority she has experienced ongoing health issues including cramps and hip pain.

Police investigation

92. Police undertook an investigation in response to Mr Y's complaint of excessive force in December 2014, and concluded that Custody Officer E did apply force which was likely to have caused the injuries to Ms Z's left leg. However, Police found that the force was "*reasonable, necessary and proportionate in the circumstances*", and therefore the complaint was not upheld.

93. Police re-investigated following Ms Z's complaint in April 2016, and concluded that:

- there was no evidence to support Ms Z's assertion that her knee was struck from behind;
- Police staff were not aware that Ms Z was in pain and she did not bring that to their attention; and
- once Police staff became aware, pain relief was provided initially and then an ambulance was called.

LAWS AND POLICIES

Power to arrest

94. Section 32 of the Crimes Act 1961 provides that a constable is justified in arresting any person whom he believes, on reasonable grounds, to have committed an offence, whether or not the offence has been committed or the person committed it.

Disorderly behaviour

95. Section 3 of the Summary Offences Act 1981 makes it a summary offence, liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000, for any person in or within view of any public place to behave, or to incite or encourage any person to behave, "*in a riotous, offensive, threatening, insulting, or disorderly manner that is likely in the circumstances to cause violence against persons or property to start or continue.*"

Detoxification

96. Section 36 of the Policing Act 2008 states:

"(1) A constable who finds a person intoxicated in a public place, or intoxicated while trespassing on private property, may detain and take the person into custody if—

- (a) the constable reasonably believes that the person is—
- (i) incapable of protecting himself or herself from physical harm; or
 - (ii) likely to cause physical harm to another person; or
 - (iii) likely to cause significant damage to any property; and
- (b) the constable is satisfied it is not reasonably practicable to provide for the person's care and protection by—
- (i) taking the person to his or her place of residence; or
 - (ii) taking the person to a temporary shelter.

(2) A person detained under subsection (1)—

- (a) must be released as soon as the person ceases to be intoxicated:
- (b) must not be detained longer than 12 hours after the person is first detained, unless a health practitioner recommends that the person be further detained for a period not exceeding 12 hours."

Use of force

Legal provisions

97. Section 39 of the Crimes Act 1961 provides for a Police officer to use reasonable force in the execution of their duties such as arrests and enforcement of warrants. Specifically, it provides that officers may use "*such force as may be necessary*" to overcome any force used in resisting the law enforcement process unless the process "*can be carried out by reasonable means in a less violent manner.*"
98. Section 48 of the Crimes Act 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."
99. Section 62 of the Crimes Act 1961 makes a Police officer criminally responsible for excessive use of force.

Police guidance on use of force

100. The Police's '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.
101. Police policy provides a framework for officers to assess, reassess, manage and respond to use of force situations, ensuring 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.

102. An officer 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; emotional state, the influence of drugs and alcohol, and the presence or proximity of weapons; similar previous experiences; and environmental conditions. Police refer to this assessment as an officer's Perceived Cumulative Assessment (PCA).
103. A key part of an officer's decision to decide 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 presenting a threat of grievous bodily harm or death to any person. Ultimately, the legal authority to use force is derived from the law and not from police policy.
104. Police 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.

Duty of care

105. All Police employees are responsible for the care, safety and security of everyone in their custody, and must act professionally at all times.
106. The Police policy in force at the time of this incident was the 'Managing Prisoners' chapter of the Police Manual. The Managing Prisoners policy provided that:

"All people identified as in need of care because of their health, medical condition or the presence of any suicidal warning signs must be examined as soon as practical by a:

- *Police medical officer, or*
- *duly authorised officer, or*
- *(CAT) -Community Assessment Team member."*

107. The Managing Prisoners policy also stated that Police must: *"Call a health professional (use Police medical officers where practical) for advice / assistance if the prisoner has been injured or says they are on any medication."*
108. Detainees who are assessed to be 'not in need of specific care' must be checked at least once every two hours. At the time of this incident, prisoners assessed to be 'in need of care and

frequent monitoring' had to be checked at least five times per hour at irregular intervals. Detainees requiring constant monitoring must be "directly observed without interruption".

109. The Managing Prisoners policy provided that checks may be carried out by way of observation, a verbal check or a physical check, and that:

"The purpose of a check is to ensure the health, safety and well being of people in Police care. Police must carry out a check of a prisoner that is commensurate with the health and safety risk they are deemed to pose at the time. The frequency and type of check must balance the risks identified after completing the evaluation of prisoner (see Risk categories and monitoring levels for more information).

Prisoner checks allow the continual re-assessment of the health, safety and security of people in custody."

THE AUTHORITY'S FINDINGS

Issue 1: Was Officer C's approach to dealing with Ms Z at the hospital reasonable?

110. Ms Z was arrested at the North Shore Hospital, after Police took her there from her home address due to concerns about her safety and wellbeing. Officers C and D believed that Ms Z consented to going to the hospital.
111. Officer C decided to arrest Ms Z for disorderly behaviour and detain her for detoxification after she "charged" towards two hospital staff and told them they were "full of shit".
112. Under section 3 of Summary Offences Act 1981, disorderly behaviour occurs when a person "in or within view of any public place, behaves ... in a riotous, offensive, threatening, insulting, or disorderly manner that is likely in the circumstances to cause violence against persons or property to start or continue."
113. Police are also empowered under section 36 of the Policing Act 2008 to detain intoxicated people who are incapable of protecting themselves from physical harm, or are likely to cause harm to other people or property (see paragraph 96 above).
114. Ms Z was ultimately not charged with disorderly behaviour, because she was instead charged with assaulting Officer D while being transported to the Henderson Police Station.

After viewing the hospital's CCTV footage, the Authority is of the view that Ms Z's behaviour was arguably not disorderly. Even if it was disorderly, it is the type of behaviour that might be expected from someone who is experiencing mental health issues and is intoxicated. The hospital staff did not tell Officer C they had any concerns about Ms Z's behaviour and, from the CCTV footage, they did not appear to show any concern during the incident leading to her arrest.

115. The Authority considers that it would have been preferable for Officer C to continue talking with Ms Z, and for her to have remained at the hospital for detoxification until a mental health

assessment could be properly undertaken. Ms Z was in need of health care, rather than detention in a Police cell. It also would have been preferable for Officer D to accompany Officer C and Ms Z into the hospital, given the circumstances and Officer C's inexperience in dealing with mental health incidents.

116. However the Authority acknowledges that Officer C believed Ms Z would become assaultive if she remained at the hospital. Even if Ms Z's actions did not amount to disorderly behaviour, Officer C had the power to take her into custody under section 36 of the Policing Act because he reasonably believed that she was a threat to the physical safety of others.

FINDING

Given his inexperience, Officer C's approach to dealing with Ms Z at the hospital was reasonable in the circumstances.

Issue 2: Did Police use excessive force against Ms Z?

117. At some point while she was in Police custody on 11 November 2014, Ms Z received a serious injury to her left leg which caused fractures to her knee.
118. CCTV footage shows that Ms Z was walking without difficulty up until the point when she was escorted to a cell at the Henderson Police Station. After Police left her in the cell, Ms Z's left leg was clearly causing her pain and she was unable to stand up.
119. Ms Z stated that her knee was deliberately struck in the corridor before she was placed in the cell. Regrettably there is no CCTV footage available. However all the officers who were present at the time Ms Z was placed in the cell consistently stated that Ms Z was escorted down the corridor without incident. They have denied that anyone struck Ms Z, or that she fell to the ground.
120. The Authority's view is that, on the balance of probabilities, Ms Z suffered the injury either at the time she was lowered down onto the mattress in the cell, or when Custody Officer E applied the leg restraint technique to control Ms Z's movements and prevent her from kicking out. The Authority is satisfied that, if these actions caused the injury to Ms Z's knee, it was an unfortunate and unintended result.
121. The Authority is unable to make a finding regarding whether Police used excessive force against Ms Z, because there is conflicting evidence regarding whether the level of force that was applied was a justified response to Ms Z's behaviour.

FINDING

The Authority is unable to determine whether or not Police used excessive force against Ms Z.

Issue 3: Did Police assess and monitor Ms Z appropriately while she was in custody?

122. After placing Ms Z in a cell, Police completed a risk assessment as part of their procedures for receiving a person into custody. Officer F and the late-shift authorised officers decided as a team that Ms Z was ‘not in need of specific care’, because she was angry and intoxicated and needed “*to just go to sleep*”.
123. Custody Officer E and Officer F contributed to completing the custody documentation. As part of the risk evaluation, they were aware that Ms Z:
- was agitated, aggressive and assaultive;
 - was affected by alcohol (and it was unknown whether she was affected by ‘other substances’);
 - had a history of mental health issues; and
 - had made suicidal comments that night and needed to be assessed by CAT.
124. The officers completed their risk evaluation without attempting to consult Ms Z, due to her aggression. They took the view that Ms Z needed to be left to ‘sleep it off’, and there was no re-assessment of Ms Z once she had calmed down in the cell. The officers therefore missed an opportunity to gather further information from Ms Z regarding risks to her safety.
125. The Authority considers that the officers should have assessed Ms Z to be ‘in need of care and frequent monitoring’ at least, given the risk factors they had identified – in particular that she was awaiting a CAT assessment and that Officers C and D had taken her to hospital that night due to their concerns for her safety and mental health history.
126. The practice of completing a HSMP while simultaneously assessing the prisoner to be ‘not in need of specific care’ was misguided. The fact that the officers deemed it necessary to complete a HSMP should have indicated to them that Ms Z was actually in need of extra care and that the ordinary level of monitoring (at least one check every two hours) was not sufficient in her circumstances.
127. Police did comply with the level of monitoring required by their assessment of Ms Z. However it appears that most of the checks completed did not involve directly interacting with Ms Z or giving her the chance to alert them to her injury.
128. If the officers had assessed Ms Z correctly, and were frequently or constantly monitoring her, then it is likely they would have realised that her knee was injured much earlier. If they had also conducted physical or verbal checks then Ms Z would have had a better opportunity to advise them she was in pain (see paragraph 109 for policy).

FINDING

Police did not assess and monitor Ms Z appropriately while she was in custody.

Issue 4: Did Police provide Ms Z with timely and appropriate medical assistance?

129. Ms Z stated that her “*main grievance*” against Police is that they left her in the cell in pain and suffering, and that when she asked for medical help, it was denied.
130. Officer F and the late-shift custody officers, who were responsible for Ms Z’s care until 7am, have told the Authority that Ms Z never advised them she was in pain.
131. Ms Z could not recall being checked by anyone while she was in the cell, but it appears she spoke briefly with Custody Officer H when he gave her a meal shortly before 6am. Custody Officer H could not remember the conversation but said if she had told him she was in pain he would have done something about it.
132. The first time Police became aware that Ms Z was in pain was almost two hours later, when two early-shift custody officers looked at her knee and gave her paracetamol at 7.54am.
133. An hour and 15 minutes after that, Ms Z spoke to Officer I and told him she was unable to stand. Officer I called an ambulance, which arrived about 50 minutes later. Officer I said he only saw slight swelling on Ms Z’s knee and the full extent of her injury was not obvious.
134. The Authority has found no evidence to support Ms Z’s view that Police denied her medical assistance once they became aware of her pain. After the paracetamol had proved ineffective, and Ms Z told Officer I she could not stand due to her knee injury, Officer I immediately called an ambulance and ensured she received assistance to use the toilet.
135. The Authority is concerned, however, that none of the officers responsible for checking on Ms Z throughout the night noticed her behaviour in the cell when she was holding her knee, sliding around on the floor, and sitting by the cell door trying to attract someone’s attention. The CCTV footage of Ms Z’s behaviour in the cell was available in the custody area, but did not effectively convey to the officers that she required help.
136. The Authority also notes that although Police called CAT to assess Ms Z numerous times, they only arrived after she had been in a cell for over nine hours.

FINDING

Once they became aware that Ms Z was in pain, Police provided her with timely and appropriate medical assistance.

SUBSEQUENT POLICE ACTIONS

137. Police have provided the officers involved with additional training and advice following this incident.
138. The Waitemata District Custody Unit (DCU) Manager has updated the DCU Sergeants’ checklist and handover notes, which serve as base/desk documents for supervisors and staff working

within the custody unit. He has also had individual and team meetings with all staff, reaffirming protocols and practices around risk management in dealing with 'at risk' prisoners.

CONCLUSIONS

139. The Authority was unable to determine whether or not Police used excessive force against Ms Z.

140. The Authority found that:

- 1) Given his inexperience, Officer C's approach to dealing with Ms Z at the hospital was reasonable in the circumstances.
- 2) Police did not assess and monitor Ms Z appropriately while she was in custody.
- 3) Once they became aware that Ms Z was in pain, Police provided her with timely and appropriate medical assistance.



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

30 May 2017

IPCA: 15-1932

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.

It is not part of the Police – the law requires it to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Sir David J. Carruthers.

Being independent means that the Authority makes its own findings based on the facts and the law. It does not answer to the Police, the Government or anyone else over those findings. In this way, its 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 complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- investigates, where there are reasonable grounds in the public interest, incidents in which Police actions have caused or appear to have caused death or serious bodily harm.

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.



Whaia te pono, kia puawai ko te tika

PO Box 25221, Wellington 6146

Freephone 0800 503 728

www.ipca.govt.nz
