

Record of Investigation

Police officer criticised following a pre-trial hearing in Dunedin

INTRODUCTION

1. On 3 May 2017 a pre-trial hearing was held at the Dunedin District Court before Judge Michael Crosbie to determine the admissibility of the statement of Ms X. Ms X was charged, along with another party, with supplying a Class B drug to Mr W (who had later died) in breach of the Misuse of Drugs Act 1975. After hearing the evidence of three Police officers, the Judge ruled that Ms X's statement had been improperly obtained.
2. In making this ruling, Judge Crosbie was critical of the actions of Officer A, a detective senior sergeant. The criticisms included that Officer A:
 - a) had significant contact with Ms X before she was interviewed by Police;
 - b) had an overall "*casual approach*" and did not keep adequate records of his involvement in the investigation; and
 - c) failed to comply with disclosure requirements.
3. Judge Crosbie also observed that Officer A appeared to have had "*something of a conflict of interest given his relationship with the deceased's family*".
4. The Police notified the Independent Police Conduct Authority of the Judge's criticisms, and the Authority conducted an independent investigation into whether Officer A's role in the investigation was appropriate and complied with good practice.

THE AUTHORITY'S FINDINGS

5. The Authority found that:
 - 1) Officer A did not have a conflict of interest.
 - 2) Officer A's role in the investigation was unclear, and aspects of his involvement did not comply with good practice.

THE AUTHORITY'S INVESTIGATION

6. The Authority conducted interviews with Officer A and a detective sergeant (Officer B), and spoke with Mr Z. The Authority also reviewed the notes of evidence from the pre-trial hearing and the statements taken from the other officers involved in the investigation into Mr W's death.

BACKGROUND

7. In 2016, Ms X was living in a relationship with her partner, Mr Y, at their home in Dunedin. At the time, Ms X was on a prescribed dose of morphine for pain relief.
 8. On the evening of 21 April 2016, Mr W was visiting at this address, socialising and watching television with Ms X and Mr Y. Mr W was aware that Ms X was on prescription morphine and that her tablets were in a paper bag under a coffee table in the lounge.
 9. Later that the evening Mr W fell asleep on the couch before Ms X and Mr Y retired to bed. The following morning Mr Y and Ms X discovered Mr W deceased on the couch. An ambulance was called and Police also attended.
 10. It was apparent to the attending officers that the death may have involved the ingestion of morphine. This was evident from what appeared to be a fresh needle mark on Mr W's arm, and the fact Ms X told them that some of her morphine tablets had gone missing overnight from under the coffee table. In accordance with local Police practice, the on-call Criminal Investigation Branch (CIB) detective sergeant, Officer B, was called to attend the scene, and he was accompanied by Officer A.
 11. Having familiarised themselves with the scene, and the circumstances described above, Officers A and B left the attending officers to arrange removal of the deceased to the mortuary and for a post mortem examination to be conducted. At that stage, it was suspected that Mr W may have overdosed on Ms X's prescription morphine.
 12. Officer A knew Mr W's father, Mr Z, because he was a long-standing customer of Mr Z's retail shop. Officer A visited Mr Z and informed him of his son's death.
 13. On 23 April 2016 the preliminary post mortem results indicated that Mr W had died from a medical event, namely a rupture of the oesophagus. On learning of this, Mr Z telephoned Officer A.
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14. Notwithstanding the preliminary finding as to cause of death, Officer A was concerned that Mr W had ingested morphine and he believed this would be confirmed when the toxicology results became available (as turned out to be the case).
 15. Officer A considered that Police needed to do more work to fully uncover the circumstances of Mr W's death, because Police had a duty to investigate on behalf of the Coroner and would need to be able to explain how Mr W had ingested the morphine, if he had done so. Officer A did not believe that Ms X and Mr Y had been truthful to the attending officers about their knowledge of how Mr W may have ingested the morphine.
 16. Two days later Officer A was off duty and was approached by Ms X in a local supermarket. The two briefly discussed the preliminary findings as to cause of death. During this encounter Officer A told Ms X that he was not comfortable with what she and Mr Y had told the attending officers.
 17. This encounter was followed by a phone call two days later from Ms X to Officer A, requesting that he visit her at home. During this call Officer A again suggested to Ms X that he did not believe the explanation she had given on 22 April 2016, and that she and Mr Y needed to tell the truth. Officer A did not make notes of this call, or the earlier chance meeting at the supermarket.
 18. On 29 April 2016, Officer A visited Ms X and Mr Y at their home where they discussed the preliminary post mortem result and the explanation they had given to the attending officers. When the discussion turned to the needle mark on Mr W's arm, Ms X and Mr Y indicated that they had not told the truth. Officer A told them that they could either tell the truth about the events that evening, or they could be summoned by the Coroner to explain the probable toxicology result. He advised them that he would arrange for statements to be taken from them. Officer A did not make notes of this meeting, although he did email details of the meeting to Officer B and the other officers who had attended the scene of the death.
 19. Subsequently Ms X and Mr Y were contacted by Police and arrangements were made for them to attend the Dunedin Police Station on 6 May 2016 for interview. The two officers assigned to conduct the interviews were familiar with the circumstances surrounding Mr W's death, but had not been made aware of the more recent discussions between Officer A and Ms X and Mr Y.
 20. In the course of Ms X's interview and the recording of her statement, contrary to earlier comments provided to Police, she admitted to assisting the preparation of morphine tablets that were then injected into Mr W's arm by Mr W. Consequently, Ms X and Mr Y were charged as parties to supplying a Class B drug, namely morphine sulphate, to Mr W, in breach of section 6 of the Misuse of Drugs Act 1975. Mr Y pleaded guilty and was convicted of this charge.
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21. About four months later, in preparation for the pre-trial hearing in relation to the admissibility of Ms X's statement, and in response to a request from the prosecutor, details of the 29 April 2016 meeting were sought from Officer A. It was only then that Officer A prepared a job sheet detailing what Ms X and Mr Y had told him at that meeting.
22. At the pre-trial hearing at the Dunedin District Court the Judge ruled Ms X's statement inadmissible in its entirety. He was satisfied that Ms X had not made a truly voluntary statement, due in part to Officer A's significant contact with her before the statement was taken, "*unusually so given he was not the Officer in Charge and not an integral part of the inquiry team*". He also found that Officer A's contact with Ms X, where he made it clear he did not believe what she had told Police, and his actions in bringing about the interview, made Ms X's attendance at the Police station for interview involuntary. Additionally the Judge found that the officer who interviewed Ms X had failed to give her a Bill of Rights caution at the beginning of the interview.
23. In the course of this ruling the Judge was critical of Officer A with respect to the following:
- the uncertainty around his role during the investigation;
 - the absence of file notes relating to his contact with Mr Z, Ms X and Mr Y;
 - his failure to meet disclosure obligations;
 - a "*casual approach*" displayed by Officer A to the investigation; and
 - he had "*something*" of a conflict of interest given his relationship with the deceased's family.

THE ISSUES

24. The Authority's investigation focused on two issues that encapsulate the criticisms of Judge Crosbie:
- 1) Did Officer A have a conflict of interest?
 - 2) Did Officer A's involvement in the investigation comply with good practice?
25. During its interviews of Officer A and Mr Z, the Authority established that Officer A is a longstanding customer of Mr Z's retail shop in Dunedin. The relationship is not a social one. The Authority is satisfied that the relationship did not extend beyond customer-related contacts and unplanned encounters.
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26. Judge Crosbie's observation that Officer A had "*something*" of a conflict of interest was made in the context of a decision on the admissibility of the statement made to Police by Ms X at the 6 May 2016 interview. The judgment makes no other reference to the concept of conflict and given there was no analysis of it and it was not a factor in the ultimate decision on the admissibility of the statement, the Judge's observation can be characterised as incidental and not as a finding.
 27. Therefore, the Authority considers that the relationship between Officer A and Mr Z was not such as to give rise to a conflict of interest.
 28. In relation to Officer A's role in the investigation into Mr W's death, the Authority finds it was unclear and not in accordance with standard practice. While it was appropriate for Officer A to accompany Officer B to the scene, his role in the subsequent investigation was undefined.
 29. Officer A was the most senior officer involved, and contributed to the investigation at various points leading up to Ms X's interview. However he was not the officer in charge of the investigation, and it was not entirely clear to the Authority who was.
 30. Officer A does not accept the Judge's criticism that he was "*casual*" in his approach to the investigation, however he did acknowledge to the Authority that there were some aspects of the investigation that he could have done better.
 31. Officer A said that some of the contact with Ms X, Mr Y and Mr Z leading up to the interview of Ms X was not of his making because it was they who contacted him, and he was not inclined to brush them away. He said he wanted to be empathetic towards them, and the Authority accepts this was the case.
 32. Regarding the lack of record-keeping during the investigation, Officer A acknowledged he should have made notes in some cases, but said it was not practical to do so in others (such as the supermarket encounter and subsequent phone calls with Ms X while he was off duty). Although there are email records of Officer A's contacts with Ms X, Mr Y and Mr Z, these are not the same as contemporary notes. The Authority is of the view that Officer A should have appreciated the need to complete notes, in particular of the 29 April 2016 meeting with Ms X and Mr Y. The Authority considers that notes of this meeting should have been made at the time or soon after, and then brought to the attention of the interviewing officers before the interviews were conducted.
 33. In relation to disclosure requirements, Officer A told the Authority that documents which do not exist cannot be disclosed and therefore he had not breached his obligations. While this is technically correct, the Authority is of the view that Officer A should have appreciated the importance of making notes and the likelihood of a request for disclosure, rather than, in the case of the job sheet, preparing it four months later when the request was made.
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34. The Authority finds that there were aspects of Officer A's involvement that did not meet good practice, particularly given his rank and experience, but also concludes that there was no malice or other bad faith on his part.

OTHER OUTCOMES

The Police conducted an employment investigation into the criticisms expressed by Judge Crosbie, and Officer A received a disciplinary sanction.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

26 June 2018

IPCA: 17-0101



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