



**IPCA**

Independent Police  
Conduct Authority

Mana Whanonga Pirihimana Motuhake

# **Excessive use of force by off-duty officer in Christchurch**

*June 2019*

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## Introduction

1. On 4 November 2015 in Christchurch, a domestic dispute between Ms S and Mr V led to a physical altercation, which also involved Mr V's friend Officer A (an off-duty Police officer), and Mr Y, Ms S's ex-husband.
2. On 5 November 2015, Ms S contacted Police and laid a complaint of assault against Officer A. Police notified the Authority that the complaint had been received on 9 November 2015.<sup>1</sup> Ms T, Ms S's mother, also laid a complaint with Police on 12 November 2015 on behalf of Ms S and Mr Y.
3. The Authority referred the complaints back to Police to investigate. Ms S and Ms T were advised accordingly in letters dated 12 November 2015.
4. Police conducted a criminal investigation, which led to Ms S receiving a formal warning for breaking a window at Mr V's address. No criminal charges were laid against any of the parties in respect of the physical altercation, due to a lack of independent corroborating evidence. Police also carried out a Code of Conduct investigation in respect of Officer A's involvement in the events of 4 November 2015. He received a disciplinary sanction. Ms S was advised of the outcomes of the criminal and Code of Conduct investigations by Police in a letter dated 19 July 2016.
5. Police reported their conclusions to the Authority on 10 August 2016. The Authority reviewed the Police summary report of their investigation and findings, and based on this information, formed a view that was consistent with Police findings.
6. On 8 March 2017, the Authority received an expression of dissatisfaction from Ms T on behalf of Ms S and Mr Y. The Authority then reviewed the entirety of the Police files relating to both the criminal and Code of Conduct investigations and identified several matters for further investigation. The Authority met with Ms S and Ms T in July 2017 and the Authority agreed to conduct an independent investigation. This report sets out the results of that investigation and the Authority's findings.
7. The Authority has examined the following issues:
  - 1) Was Officer A's conduct while off-duty appropriate in the circumstances?
  - 2) Was Officer A's use of force against Ms S legally justified?
  - 3) Was the initial Police response to the alleged assault appropriate?

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<sup>1</sup> Section 15 of the Independent Police Conduct Authority Act 1988 requires Police to notify the Authority of any complaint received.

- 4) Did Police thoroughly and impartially investigate the alleged assault against Ms S?
- 5) Did Police thoroughly and impartially conduct the Code of Conduct investigation into Officer A's actions?

## Background

8. This section of the report provides a summary of the incident and the evidence considered by the Authority. When quoting or describing the accounts of any officer, complainant or witness, the Authority does not intend to suggest that it has accepted that particular account.
9. Analysis of the evidence and explanations of where the Authority has accepted, rejected or preferred that evidence is reserved for the 'Authority's Findings' section.

### SUMMARY OF EVENTS ON 4 NOVEMBER 2015

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#### Dispute regarding dogs

10. Prior to November 2015, Ms S and Mr V had been in a relationship for approximately two years. Between January 2013 and August 2015, they lived together in Christchurch. During this time, they purchased thoroughbred dogs. When the couple separated, a dispute arose around access to, and ownership of, these dogs.
11. On Wednesday 4 November 2015, Mr V texted Ms S to tell her that she would no longer have access to the dogs. He told Police that after this, he received multiple phone calls from Ms S, and did not answer any of them. He also received several text messages, and did not respond to those.

#### Ms S takes the dogs

12. On the evening of 4 November 2015, Ms S had been out for a meal and drinks with friends. She asked her friend Ms U to take her to Mr V's apartment. She told Ms U that she had arranged to pick up the dogs. Ms U's partner, Mr W, drove them to Mr V's address.
13. When they arrived, Ms S went to the door alone. Mr V was not at home. Ms S broke a windowpane in the door, and climbed through to get inside. She found the dogs, let them out, and put them in Mr W's car. At 9.47pm, Ms S sent Mr V a text message telling him she had taken the dogs, and offering to pay for the damage to his door.
14. Mr W drove Ms S and the dogs to Mr Y's address. Mr Y is Ms S's ex-husband. When Ms S told Mr Y what had happened, he told her to stay the night there with the dogs.
15. On Wednesday nights, Mr V regularly met his friends, Officer A and Mr X, for "Boys' Night". Officer A is a Police sergeant, and was not on duty that evening. The three men were together at a bar/restaurant when Mr V received the text message from Ms S. Mr V told Officer A and Mr X about the text message.
16. Officer A walked the short distance from the restaurant to Mr V's apartment to check the damage. He walked back to the restaurant and confirmed that the window in the front door was broken.

## Officer A's call to 111

17. At 10.02pm, Officer A called 111. A communicator in the Police Northern Communications Centre answered the call.<sup>2</sup> Officer A told the communicator that he was reporting a burglary: that his friend's ex-partner had broken into his house and *"stole their, well, stole his two, um British Bulldogs."* He asked the communicator if she was in Christchurch, and was told that she was in Auckland. Officer A told the communicator that he was an off-duty Police officer, and handed the phone to Mr V to provide the details that Police needed. While Mr V spoke with the communicator, the three men began walking back to Mr V's address.
18. The communicator recorded the information in the Police Computer Aided Dispatch (CAD) system. At 10.09pm the communicator made a note that the *"informant is currently with a friend who is a Police Officer"* along with Officer A's rank, station, and first name. The communicator told Mr V that *"Police will be there as soon as they can"* and the call ended at 10.18pm.
19. Officer B, a senior sergeant, was working the night shift as supervisor in the Canterbury District Command Centre (DCC) from 10.00pm on the night of 4 November 2015.<sup>3</sup> He recalled being alerted to the alleged burglary at about 10.30pm, but could not recall how it came to his attention. Officer B told the Authority that he probably noticed Officer A's name and would have known that Officer A was not working that night.

## Search for the dogs

20. Once back at Mr V's address, Officer A confirmed that the dogs were missing. Mr V was still on the phone with the communicator, so Officer A and Mr X walked a short distance to Ms S's mother's address, to see if Ms S's car was there. Officer A said: *"we could not find any signs of [Ms S's vehicle] or any vehicle of interest"*. Mr X returned to Mr V's address, while Officer A went to his house to *"grab my cell phone and car in order to return and uplift them both to go in search of [Ms S] and the dogs"*.
21. Officer A said that he *"was the logical person to drive having had little alcohol to drink."* Officer A drove the three men to various addresses where Mr V thought Ms S might have taken the dogs. The men knew where the houses were, but not the street addresses. Officer A told the Authority that *"I know the limitations of Police, they're not going to drive around on a whim to certain addresses which [Mr V] didn't even know.... I suppose we were trying to help Police...."*
22. The men visited five addresses that night, including the home of Ms U and Mr W. Mr W later gave a statement to Police in which he said Mr V *"was very aggressive and threatening"* and that *"they had all clearly been drinking alcohol"*. Mr W said that Officer A asked if he knew where Ms S was, and Mr W told him that he did not know. Mr V, Mr X and Officer A left to continue their

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<sup>2</sup> 111 calls will be answered in one of three Police Communications Centres, in Auckland (Northern), Wellington (Central), or Christchurch (Southern), based on availability of communicators at the time. If Police are sent to an incident, the dispatcher will be based in the Communications Centre closest to the incident. All calls to the Communications Centres are recorded.

<sup>3</sup> The focus of the DCC is to plan, deploy, and monitor the prevention activities across the District. The DCC manages all District deployable resources under the direct command of the District Commander. A supervising sergeant is on duty at all times.

search. Mr W later told Police that he had heard Mr V muttering “...kill you and your Irish friends.” Mr W did not wake Ms U or alert Ms S that the men were looking for the dogs.

23. At some time between 11pm and 11.30pm, Mr V, Mr X and Officer A arrived at Mr Y’s address. There are differing accounts of what happened next.

### Ms S and Mr Y’s version of events

24. Mr V and Officer A knocked on Mr Y’s front door. Mr Y answered, and Mr V and Mr Y began talking quite calmly about the dogs. Mr Y offered to get the dogs for Mr V to take back. Mr Y said that he could tell that both Mr V and Officer A had been drinking, because he could smell alcohol on them.
25. Ms S heard Mr V and Mr Y talking and came to the door. Mr Y’s recollection is that Officer A was immediately aggressive to Ms S, swearing at and threatening her. Mr Y told Ms S to go inside, and asked Officer A to leave. Officer A started to walk down the driveway towards the street.
26. Ms S went inside, then came back to the front patio and started arguing with Mr V about the dogs. Officer A turned back towards the house. Mr Y said that “as he was approaching from the driveway and onto the patio he continued with the abuse.” When Officer A was about a metre and a half from the door, Ms S and Mr Y heard him tell Ms S “I am going to smash your face in.”
27. Ms S said that Officer A “just came for me.... I went backwards and ... I remember giving him one good shove to get him away.” Mr Y saw Officer A grab Ms S with both hands and pull her towards him. Mr Y said that Ms S was pushing Officer A away but was unable to break free, and then Officer A grabbed Ms S’s hair and forced her head down so she could not get away. Ms S fell to the ground with Officer A on top of her. Ms S is slim and of small stature, whilst Officer A, Mr V and Mr Y are all solidly built and much taller than her.
28. Ms S said that:

*“After hitting the ground I was curled into a ball on my left side. I raised my hands and arms over my face to protect myself. I curled my knees up to my forehead to protect my body.*

*I was punched multiple times in the back of my head. As well as multiple times into my right ribs, back of my neck and lower back where my kidneys are. I remember being grabbed around my upper arms; I also remember being kicked in the right shin.*

*It felt like it was a frenzied attack.”*

29. Mr Y said that Ms S was on her side, on the ground, with her back towards Officer A.

*“[Officer A] was holding her down with two hands. I could see that he was kneeling on the ground and he drew his right knee back and then kneed her a*

*couple of times in her back near her ribs. The blows looked as if he was using a lot of force on her.*

*...I could see that he had all of his weight on [Ms S] with his right knee into her right rib area. I could see that [Ms S] was in pain and she was screaming."*

30. Mr Y recalled trying to separate them, and being held back by Mr V, who put him in a headlock. The four continued to struggle and ended up on the grass next to the raised patio.
31. Officer A released Ms S, stood up, and headed towards the end of the driveway. Mr Y got Ms S inside, and then sent the dogs outside for Mr V to take. Ms S was crying and in pain. The back of her hoodie was torn in an L shape entirely across the bottom and up one side, and her bra had been torn in two through the front in the struggle. Mr Y had scratches on his shoulder and calf, and a dental plate he wore had been cracked.

### Officer A and Mr V's version of events

32. Officer A said that Mr V asked him to come to the front door with him, as Mr Y *"can be a bit of a hot-head"*. He recalled that when Mr V knocked on Mr Y's front door, they could hear dogs barking inside. Mr V recognised the barks as being from his dogs.
33. Mr Y answered the door, and was talking with Mr V about returning the dogs. Officer A stated that Mr Y was *"not overly helpful"*. Ms S came to the door and *"spoke in a raised voice at [Mr V] telling him he should have answered his phone. She appeared agitated."* Officer A considered that Ms S had been drinking. He said he walked away after Ms S came to the door, down the driveway to call Police again, and heard Ms S make a comment about him being *"a corrupt cop"*.
34. Officer A called the DCC and spoke with Officer B, walking towards the street while he did so, to identify the house number and street name. He said that it was easier to call the DCC than the Communications Centre, because *"the job had already been entered ... it's like a hotline, I suppose..."* Officer A told Officer B that *"a job was in the system and that we were with the offender for the burglary"*. Mr V's account of the events that night made no mention of Officer A walking away or calling anyone at this time.
35. According to Officer A, when the call ended he went back to Mr Y's front door to join Mr V, who was still talking with Mr Y and Ms S outside the front door. Officer A said that:

*"I intervened and told [Mr V] Police have been called and that we'll wait for them on the road. Before I turned to leave, I told [Ms S] along the lines to shut her mouth regarding calling me a 'corrupt cop'. [Mr Y] intervened.*

*... without warning [Ms S] launched herself at me. She caught me by surprise by running at me screaming with her hands outstretched. I was standing perhaps three metres away, if not more."*

36. Mr V's recollection was that Ms S told Mr Y that Officer A was a Police officer, and that *"[Mr Y] has then become verbally abusive towards [Officer A]."* Mr V said that Ms S then also began to abuse Officer A, and that *"suddenly [Ms S] lunged at [Officer A] and attempted to hit [him]. She may have made contact... I am not too sure. [Officer A] has had to restrain [Ms S] at this point."*

37. Officer A said that when Ms S lunged at him:

*"I reacted by grabbing [Ms S] by the hair and pushing or pulling her head in a downwards motion as she collided into me. Her hair was the only part of her I had the opportunity to grab as her hands were already past mine."*

38. Ms S had hold of Officer A's open denim jacket. Before Officer A could "fully control [Ms S] and release her", Mr Y also came at him, and then Mr V grabbed hold of Mr Y. The situation developed into a melee. Officer A said "[Ms S] was pinned within the melee and continued screaming."

39. Officer A told the Authority that no punches were thrown and he was glad of this. Officer A's view was that:

*"...her ex-husband [Mr Y] joining us, that certainly worsened things, and then I suppose [Mr V] worsened things even more ... she was trapped in the middle and, you know, the attention diverted to the ex and it was just grabbing each other and then we all fell to the ground and admittedly [Mr V] and I were on top and then it's just like a submission and we backed off."*

40. After the men backed off, Mr V got the dogs and put them in the back of Officer A's car. Officer A, Mr V and Mr X then waited on the street outside Mr Y's house until Officers C and D arrived.

#### **Officer A's first call to the DCC**

41. Officer B said that he received a phone call in the DCC from Officer A at about 11.40pm. Officer A told him that he was at Mr Y's address with Mr V and the "burglar" and requested Police assistance.

42. Officer B said that it was normal for officers to call the DCC rather than the Police Communications Centre, but that:

*"...in this case I was certainly concerned because my first thought was, 'Why are you, as an off-duty officer, attending something when we have duty staff to attend these sorts of things? So why have you chosen to become involved in this?'"*

43. At 11.40pm Officer B made a note in the Police CAD system:

*"DCC Comment. Off duty member [Officer A] is at [Mr Y's address] and is with the offender for this matter. Please send a unit to assist. May need to dispatch a supervisor as well."*

44. Officer A recalled calling the DCC before the physical altercation. However, Officer B said:

*"[Officer A] advised me there was an argument taking place between the complainant in [the alleged burglary at Mr V's address] and [Mr Y]."*

*... [Officer A] indicated to me that he had had to restrain the other party [Ms S] as she had become aggressive. He did not elaborate further on why or how this had occurred."*

45. Officer B said:

*"...the impression was that things hadn't gone well. So there'd certainly been an untidy interaction between the two parties.*

*...there'd certainly been some sort of conflict where there'd been some type of wrestling and somebody may have, he may have even alluded to the fact that someone had gone down onto the ground."*

46. There was no record in the Police CAD system that Officer A had mentioned restraining Ms S or that there had been any physical interactions.

### Ms S's call to 111

47. At 11.45pm, Ms S called 111 to report that she had been assaulted. Ms S told the communicator that she had been assaulted *"actually by a Police officer, but that's okay he's off-duty"*.

48. A transcript of the call shows that Ms S was crying, talking with the communicator and talking with Mr Y about what was happening at the address. Her account of what had taken place was disjointed, and rather than providing a chronological narrative, she responded to prompts from the communicator. For example, when asked how Officer A and Mr V had arrived at the address, Ms S said that she did not know, they just banged on the door, and that her bra was torn. When asked if she and her flatmate had been attacked, she did not tell the communicator that she did not live at the address, or that Mr Y was not her flatmate.

49. Ms S explained that she had taken the dogs, and she assumed Mr V and Officer A had been looking for her, but that the men had then assaulted her. Prompted by the communicator, Ms S provided descriptions of both Mr V and Officer A, and Mr Y confirmed that they were still waiting outside the property.

50. Ms S told the communicator that:

*"It was an all-out brawl; I don't know who did what. He was swearing and cursing at me and I did push him and then ... I was in the middle of a brawl. I know he went for me but I did push him back."*

### Initial Police response

51. At 11.46pm, Officer B added a note to the Police CAD system, linking Ms S's call with Officer A's earlier 111 call, noting that the two events were related. At 11.47pm, Officers C and D, working the night shift in a patrol car, were dispatched to Mr Y's address by a Police Southern Communications Centre (SouthComms) dispatcher.

52. At some time between 11.47pm and midnight, Officer E, a senior sergeant working the night shift called Officer F, the supervising sergeant for Officers C and D. Officer F was aware that the

officers had been dispatched to a job at Mr Y's address, and Officer E drew his attention to the involvement of an off-duty officer. Officer F read the job details on the Police CAD system, and advised that he was on his way to the address.

53. Officers C and D arrived at Mr Y's address at 11.50pm. Officer C recognised one of the men standing outside as Officer A. Officer A introduced Mr V, and they explained their version of events. Officer A and Mr V told the officers that there had been a fight, and that Officer A had restrained Ms S. Officer C told Officer A and Mr V that Police would be in touch later, and *"sent them on their way"*. Officer A acknowledges that he drove, however neither Officer C nor Officer D saw him get in the car or drive away.

54. Officer C recalled that Officer A and Mr V both appeared intoxicated. He had assumed that Mr X would be driving, as he had remained quiet in the background and appeared to be sober. Officer C told the Authority that he did not see Officer A get into the driver's seat, so had no cause to ask for an excess breath alcohol test (EBA). He said that if he had seen Officer A driving:

*"I would have obviously stopped him... because I knew that he definitely had alcohol on board. How much I wouldn't know because I hadn't put him on the sniff or anything, but I never saw him in the driver's seat..."*

55. Mr V, Mr X, and Officer A returned to Mr V's address. Once there, Officer A said that:

*"... [Mr X] remarked I should wipe my chin. I had a scratch in the middle of my chin that was bleeding. I could only assume [Ms S] caused this when she attacked me."*

56. Officer A took photographs of the damage to Mr V's door and of text messages that Ms S had sent to Mr V. Finally he said that *"I phoned the District Command Centre and thanked [Officer B] for the prompt Police assistance."*

57. Meanwhile, Officers C and D spoke with Ms S and Mr Y inside Mr Y's house. Officer C recalled Ms S wearing a torn hoodie. When Ms S said she wanted to make an assault complaint against both Officer A and Mr V, Officer C asked SouthComms to arrange for Officer F to attend due to Officer A's involvement as an off-duty officer.

58. Officer F arrived at 12.09am. He spoke with Officer C, but not with Ms S or Mr Y. Officer F recognised the potential for a conflict of interest to arise in having general duties staff investigate the involvement of a senior off-duty officer in this incident. Therefore he called Officer E and advised he would have the Night Crime Car, a CIB patrol car for initial attendance at serious incidents, attend if they were available. Officer F then phoned Officer G, a detective constable working that night, and Officer G agreed that the Night Crime Car would attend. At 12.44am, the Police CAD system was updated to show this.

59. Officer F asked Officers C and D to remain at Mr Y's address until the Night Crime Car arrived. Officer F *"... advised [Officer C] of the need to record the details of conversations with all parties in notebooks for obvious reasons surrounding the presence of an off-duty Police member and assault allegations."* Officer F told Officers C and D not to take formal statements from Ms S or

Mr Y, as the Night Crime Officers would take these. Officer F was then called away to another incident.

60. Officer G spoke with her partner that night, Officer H, who was also a detective constable. They were already working on another serious incident, which they expected to take several more hours. Both had concerns about a possible conflict of interest when investigating Officer A, who outranked them, and who had supervised Officer G in the past. Officer H spoke with Officer B about these concerns. Officer B decided not to send the Night Crime Car, but rather to send staff to take statements from Ms S and Mr Y the following day. Officer B told the Authority:

*“...my recollection about that is that the [Night Crime Car] was tied up at another event and they couldn’t be freed up at that time. And at 01.20 hours it wasn’t prudent to keep these people waiting and waiting for a unit to come to take information or to deal with them in a way that could be dealt with the next day just as well.”*

61. Officer B called Officer C and asked him to advise Ms S and Mr Y that someone senior would contact them the next day to take statements. Officer C did so, and then he and Officer D left the address, as instructed by Officer B.
62. At 1.02am, Officer B added another note to the event chronology,<sup>4</sup> confirming that the Night Crime Car would not be attending. The note also confirmed that he had told Officers C and D to wrap up, and that Police would *“revisit this matter when they are free....”*
63. At about 4am on Thursday 5 November 2015, before finishing their shifts, Officers C and D each made a formal statement outlining their attendance at Mr Y’s address.

## CRIMINAL INVESTIGATION

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### Gathering information

64. At 8am on 5 November 2015, Response Commander Officer I received information at his morning briefing about both the break in at Mr V’s house and the subsequent altercation at Mr Y’s address involving Officer A. Officer I considered that some investigation needed to take place before the files would be ready to pass to the Criminal Investigation Branch (CIB).
65. Officer I assigned two sergeants, based in different stations, to gather more information. Officer K was tasked with getting more information from Ms S and Mr Y, while Officer J was instructed to proceed with enquiries involving Officer A and Mr V.
66. Officer I told the Authority that he realised there was a potential for conflict of interest, having sergeants investigate matters involving another sergeant, but he was confident that Officer K and Officer J each had the experience needed to manage this. Officer I also considered that the

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<sup>4</sup> The event chronology is an electronic record of the Police Communications Centres’ involvement in an event, including dispatch of officers.

risk of any conflict of interest was low because neither sergeant would be decision-makers in determining the investigation outcome for either incident.

67. On 5 November 2015, Officer J visited Mr V at his home, and took his statement regarding both the break in and the recovery of the dogs. The statement touched lightly on Officer A's restraint of Ms S, but did not go further into the altercation at Mr Y's address.
68. Officer J was also asked to take a statement from Officer A. Officer J had only recently been appointed to the role of sergeant, but had been acting in the role for some time. Nonetheless, Officer J felt that Officer A had more authority than he did. Officer J told the Authority:

*"I was given two tasks that day and the second task was to speak to [Officer A]... and when I saw [Officer A] he said to me, 'Oh I don't have time. I'll prepare something and I'll, I'll do my own,' so I went, 'Okay that's fine,' and for me being a new sergeant at that stage I thought it was a bit odd that they'd asked me to interview someone like that so I – I was happy that he was – wanted to do his own."*
69. Officer J reported back to his supervisor, and had no further involvement in the Police investigation of either event.
70. Meanwhile Officer K began interviewing Ms S on the morning of 5 November 2015. Mr Z, Ms S's lawyer, telephoned her during the interview, and advised Ms S not to continue with the interview. The interview ended and a new interview time was arranged for the following day.
71. Later on 5 November 2015, Ms S dropped off her torn hoodie and bra at Papanui Police Station. Officer K seized these as exhibits, photographed them, and stored them in a secure exhibit room.
72. On 6 November 2015, Officer K resumed Ms S's interview, this time with Mr Z present. Ms S provided sketches from her doctor, dated 5 November 2015, indicating where she had bruising and felt pain. Ms S asked that Officer A and Mr V be trespassed from her address, and Officer K agreed to do this.
73. In the evening of 6 November 2015, Officer K contacted Mr Y to arrange for his statement to be taken. Mr Y came to the Papanui Police Station and gave his statement that night. Mr Y stated he wished to lay a complaint against Mr V and Officer A for assault, and Officer K advised that he would add this to Ms S's existing assault complaint. Mr Y also wanted Officer A and Mr V trespassed from his address.
74. On 7 November 2015, Officer K arranged for a Police photographer to take pictures of the injuries to Ms S and Mr Y. Police took these photographs the next day. Photographs of Ms S show bruising on her arms and legs, with a larger bruise around her upper arm, and another to the side of her torso. Ms S told the Authority that she had other bruising on her buttocks which she did not feel comfortable showing to the Police photographer, so this was not recorded. Photographs of Mr Y show grazes and cuts to his legs and a graze on his upper arm.
75. Officer K prepared a report for Officer I, dated 7 November 2015. In that report Officer K set out a series of actions required to complete the investigation, including interviews with Mr V, Ms U,

Mr W, and Officer A in respect of the alleged assault, canvassing Mr Y's neighbours, arranging the trespass orders for Mr V and Officer A as requested, and obtaining reparation amounts for Ms S's damaged clothing and medical expenses. The report noted that on the night of 4 November 2015, Ms S, Mr V and Officer A were all likely under the influence of alcohol, and that Officer A had called the DCC rather than a Police Communications Centre.

76. On 11 November 2015, Officer F made a formal statement regarding the events of 4 November 2015. He discussed Officer C's view that Officer A and Mr V were intoxicated and that Mr X was driving. He explained his instructions to Officer C on the night, and the arrangements he had made for the Night Crime Car to attend, and said that if he had known the Night Crime Car was being stood down, he would have tasked Officer C and Officer D with taking statements on the night.
77. In January 2017, it was discovered that Police had destroyed Ms S's clothing. On 19 December 2016, Officer K authorised the destruction of the exhibit on the basis it was no longer needed for the investigation. The clothing had not been forensically examined. He did not obtain Ms S's consent before doing so, as required. Police have apologised to Ms S for this.

#### Events referred to Criminal Investigation Branch (CIB)

78. Officer I handed the files over to Officer L, a detective inspector in the CIB, for management, due to Officer A's involvement as an off-duty officer. On 12 November 2015, Officer L tasked Officer M, a CIB senior sergeant, with investigating the two incidents. Officer L also contacted Officer N, a Professional Conduct Manager, having identified that Officer A's involvement may be in breach of the Code of Conduct.
79. Officer M oversaw the remainder of the criminal investigations. He arranged for an area canvass of the properties surrounding Mr Y's address, and for further statements to be taken from Mr V, Mr X, Ms U, Mr W, and Ms S's doctor. He asked Officer B to prepare a statement setting out Officer A's calls to the DCC on 4 November 2015. He obtained copies of Ms S's and Mr V's text messages from their cell phone providers. Officer M also arranged for trespass notices to be served on Mr V and Officer A as requested by Ms S and Mr Y.
80. On 12 and 13 November a constable with the CIB undertook an area canvass of five properties surrounding Mr Y's home. His job sheet shows that he spoke with five people from four different addresses. Of those spoken to, three people had heard a woman screaming but did not see anything. None was able to confirm whether a physical altercation took place, nor who was involved in the shouting or what was said.
81. One neighbour gave a formal statement. In this he said that he heard two males arguing at about 11.30pm, and heard the arguing intensify, but he did not see who was involved or what happened. He heard a female on the phone, and thought it sounded like she was talking to Police.
82. On 18 November 2015, Officer M contacted Officer A and asked to speak with him about the alleged assault. Officer A told Officer M that he was assaulted first, and expressed an opinion

that he should have laid a complaint against Ms S. Nonetheless, Officer A did not make a formal complaint about Ms S or Mr Y, and agreed to be available for an interview on 20 November 2015.

83. On 20 November 2015 Officer A contacted Officer M and told him that, having taken legal advice, he was not in a position to make a statement that day. Instead, on 27 November, Officer A provided Officer M with a statement he had prepared. Officer M asked Officer A if he would answer questions in relation to the assault allegation, and Officer A declined, again telling Officer M that *“I’m the victim here.”*

### Criminal investigation findings

84. On 30 November 2015, Officer M prepared a report summarising the findings of the investigation into both incidents that occurred on 4 November. In summarising his investigation, Officer M noted that:

- The background to the incident was set out in Officer K’s report. Officer K’s report contains the summary of events as described by Ms S and Mr Y, and analysis of the burglary complaint. Attached to Officer K’s report is Officer C’s statement, which described Officer A as appearing to be intoxicated, and Ms S as wearing a torn hoodie when Police arrived.
- The photographs of injuries to Ms S show some bruises but that there are no visible bruises to her face or ribs, although Ms S and Mr Y said she was repeatedly punched in the face and kneed in the ribs.
- The area canvass resulted in one interview, in which the neighbour said he had heard males arguing.
- In Ms S’s call to 111 she had told the communicator that there was an *“all out brawl”* which suggested all parties were at fault to some degree.
- In their formal statements to Police, Mr V, Mr X and Officer A made corresponding statements about Ms S rushing at Officer A, and calling Officer A *“a corrupt cop.”*
- Ms S and Mr V’s text messages included text conversation in relation to the incident, but contained *“nothing evidential to assist in either way”*.
- According to Officer B’s statement, Officer A had told him that there was an argument between Mr V and the occupants of Mr Y’s address, and that Officer A had to restrain Ms S.

85. Officer M concluded that there was sufficient evidence that Ms S had damaged Mr V’s door, primarily through Ms S’s own admission, and recommended a Police warning as an adequate outcome. In analysing the alleged assault, Officer M noted that Ms S and Mr Y had described being seriously assaulted, while:

*“[Mr V] and [Officer A] state that [Ms S] lunged at [Officer A] first and that he grabbed hold of her by the hair, becoming unbalanced and falling against a*

*parked car. There is no mention of punches or kicks but it has been described as a 'melee'."*

86. He concluded that the assault as described by Mr Y and Ms S *"is not consistent with the photographs and the medical examination conducted days after the incident."* Ms S was in fact examined by her doctor on 5 November, the day after the incident, which Officer M correctly noted earlier in his report. The Police photographs were taken on 8 November.
87. Officer M's report was submitted to Officer L for review. Officer L then made his own report, dated 1 December 2015, focussing on the appropriateness of prosecution in line with guidelines issued by the Solicitor-General. Officer L considered both the complaint of burglary at Mr V's address, and the complaints of assault at Mr Y's home.
88. Officer L made comments on a number of matters that were part of Officer M's investigation, additional to comments made by Officer M. Specifically, Officer L referred to comments made by Ms S in her 111 call, when she admitted pushing Officer A, and a comment that *"I'm at fault in part as well..."* Officer L also considered text messages from Ms S's phone which referred to having been beaten by Mr V and his mates. Officer L noted that:

*"None of the text messaging corroborates any of the versions of events, nor do they add anything evidentially.*

*"They do however point to her having an unclear recollection of exactly what occurred, as there is no evidence that [Mr V] assaulted her at all. That is not surprising if, as is clear, this was a melee or an 'all out brawl' as she reported to Police Communications."*

89. Officer L did not ask Ms S about the text messages, nor did he task any other officer to do so.
90. In summarising the events, Officer L stated that it was clear that a *"melee or brawl"* took place. He went on to say:

*"This brawl must have lasted only 1-2 minutes, since there were only 3 minutes between [Officer A's] call (11.40pm) from the street to report the finding of the dogs, and [Ms S's] 111 call (11.43pm) from inside the house."*

*"...there was a melee in the front yard of [Mr Y's] address lasting less 1-2 minutes, which could best be described as pushing, shoving, grappling, and all parties falling to the ground."*

91. In respect of the smashed window at Mr V's address and the taking of the dogs, Officer L considered there was sufficient evidence to support a charge of wilful damage, but not burglary. The supporting evidence he relied on was Ms S's admission of the event in her text messages and in her 111 call. Because of Ms S's willingness to pay for the broken window, Officer L recommended that a Police warning would be sufficient to resolve this matter.
92. In respect of the alleged assault, Officer L concluded that:

*“There is insufficient credible evidence to support a charge of assault against anyone involved in this matter. The versions of events are disparate, and there is no credible, independent evidence to support either version....*

*If this matter went to prosecution, it would simply be a case of two parties giving one version of events, and the other two providing a different version.*

*In the absence of any other evidence, no jury properly directed could expect to be satisfied beyond a reasonable doubt that any individual had committed a criminal offence in this case.*

*Under the Crown Law Prosecution Guidelines the Evidential Test is therefore not met.”*

93. Officer L noted that he had consulted with Police Legal Section. This is the only indication that Police received legal advice in respect of either complaint.
94. Officer L recommended that letters be sent to all parties advising that no further action would be taken in respect of the assault and burglary complaints (other than the warning to Ms S for the intentional damage), and that the file should then be referred to Officer N for consideration of Officer A’s conduct.
95. On 3 December 2015, Officer M sent letters to Mr V, Ms S, and Officer A. All letters confirmed that:
  - a) Ms S had given Officer M a cheque for the cost of damages to Mr V’s window;
  - b) Ms S had been formally warned in writing for the offence of wilful damage, and this matter would be filed;
  - c) the criminal investigation into the assault had been completed;
  - d) the criminal investigation matter had been reviewed by Officer L and the Police Legal Section;
  - e) no criminal charges would be laid against any person; and
  - f) the matter would be referred to the Professional Conduct Manager at Christchurch.

### **Police Professional Conduct Review**

96. On 15 December 2015, Officer L wrote to Officer N, forwarding the file for consideration of Officer A’s actions under the Police Code of Conduct. The letter noted that an out-of-district review was advisable to provide independence. Officer L said that he had advised Ms S’s lawyer that the file was being sent to Officer N for consideration, and that it would then be forwarded for review by another district.
97. On 18 December 2015, Officer N forwarded the file to Officer O, a Senior Professional Conduct Manager at Police National Headquarters, to arrange an out of district review. Officer M’s report

on the investigation was attached. Officer N asked Officer O to arrange an independent review before the Code of Conduct Categorisation Committee considered the issue.

98. Officer O conducted a separate review of the file. In a letter to Officer N on 28 January 2016, Officer O set out her view that Officer L, Officer M and Officer N *“have appropriately identified all issues with this matter and correctly applied the Solicitor-General’s guidelines....”*
99. Officer O added some additional comments, noting that:
- Some of Ms S’s injuries *“could also conceivably have been obtained when she smashed the lower window of [Mr V’s] home address and climbed in to obtain the two bulldogs.”*
  - Mr W appeared to have been unconcerned by Mr V’s visit to his address on 4 November 2015, as *“one would assume that if the demeanour of [Mr V] had been that aggressive and angry he would have either called Police or contacted [Ms S] to give her a warning....”*
  - *“A legal opinion has quite correctly been sought and that advice should be strongly considered by the decision maker which is the District Commander.”*
100. The Police file does not contain a written legal opinion, other than Officer L’s comment regarding consulting with Police Legal Section (set out in paragraph 93 above).
101. Officer O concluded that Officer A’s actions *“should quite rightly be considered by a Categorisation group and assessed against the values of Police to see if it falls within misconduct.”* The file was sent back to Officer N.
102. On 15 February 2016, a Code of Conduct Categorisation Committee considered the incident and agreed that there were potential Code of Conduct issues relating to Officer A’s judgement, a possible conflict of interest, and inappropriate use of policing powers. As a potential misconduct matter, the file was allocated to Officer P to investigate. On 23 March 2016, Officer P signed a declaration that he had no conflict of interest in respect of the investigation.
103. On 5 April 2016 Officer P wrote to Officer A advising him that there would be an investigation into allegations of a breach of Code of Conduct.
104. Officer A took part in the Code of Conduct investigation by way of attending a meeting and answering questions in respect of his actions on 4 November 2015. The investigation was concluded on 16 June 2016. Officer A received a sanction for his off-duty conduct in using poor judgment and involving himself in the incident.
105. In a letter dated 19 July 2016, sent to Ms S via her lawyer, Officer N advised that Officer A had been sanctioned under the New Zealand Police Code of Conduct, and apologised to Ms S on behalf of New Zealand Police. He stated *“... notwithstanding this, your complaint that you were assaulted by [Officer A] on 5 November 2015 will be resolved as Not Upheld.”*

## The Authority's Investigation

### THE AUTHORITY'S ROLE

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107. Under the Independent Police Conduct Authority Act 1988, the Authority's functions are to:
- receive complaints alleging misconduct or neglect of duty by any Police employee, or concerning any practice, policy or procedure of the Police affecting the person or body of persons making the complaint; and to
  - investigate, where it is satisfied there are reasonable grounds for doing so in the public interest, any incident in which a Police employee, acting in the course of his or her duty has caused or appears to have caused death or serious bodily harm.
108. The Authority's role on the completion of an investigation is to form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint.
109. The Authority's investigation considered the following key issues:
- 1) Was Officer A's conduct while off-duty appropriate in the circumstances?
  - 2) Was Officer A's use of force against Ms S legally justified?
  - 3) Was the initial Police response following the alleged assault appropriate, including the decision to stand down the CIB officers?
  - 4) Did Police thoroughly and impartially investigate the alleged assault against Ms S?
  - 5) Did Police thoroughly and impartially conduct the Code of Conduct investigation into Officer A's actions?

## The Authority's Findings

### ISSUE 1: WAS OFFICER A'S CONDUCT WHILE OFF-DUTY APPROPRIATE IN THE CIRCUMSTANCES?

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#### Officer A's call to 111

110. Officer A's initial response to hearing that Mr V's house may have been broken into was to walk to the property to check for damage, then return to facilitate Mr V's call to 111. This was appropriate and proportionate, and the Authority is satisfied that Officer A acted in accordance with Police policy on 'Off-duty interventions' at this point (set out in more detail in paragraphs 164 to 172 below).

#### Searching for the dogs

111. Officer A then decided to assist Mr V to recover the dogs, by agreeing to drive Mr V and Mr X around to look for them. However, Officer A ought to have realised that the incident was neither serious nor time critical, and so off-duty intervention was not required. In the Authority's view, Officer A's decision to involve himself further in this incident showed poor judgement.

112. Once Officer A had located Ms S, the 'Off-duty interventions' policy required him to seek assistance from on-duty constables as soon as practical, and to follow normal Police procedures until he handed Ms S over to on-duty officers.

#### Contacting the DCC – timing of the first call

113. Officer A said that he contacted the DCC after finding the dogs at Mr Y's address, but before the physical altercation took place. He recalled that he told Officer B that he had "*found the burglar,*" and returned to the front door after the call had ended.

114. However, Officer B recalled being told that Officer A had needed to restrain Ms S during their first phone conversation. The Authority finds this compelling. Officer B first said this in his statement to Police on 27 November 2015, and again when interviewed by the Authority. Officer B also wanted a supervisor to attend, "*because I had a feeling that this was something that would at least need to be reported on.*"

115. The Authority concludes on the balance of probabilities that Officer A made his first call to the DCC after the altercation.

#### Confrontation leading to the altercation

116. The Authority also considers that Officer A's poor decision-making led to the physical altercation taking place. Officer A was not a neutral party in respect of the conflict between Ms S and Mr V, and should not have become entangled in their argument. He should have waited

for on-duty officers to arrive rather than involving himself in the confrontation at Mr Y's front door.

## FINDINGS

Officer A's decision to call 111 for Mr V was appropriate and consistent with Police policy.

Officer A ought to have recognised that searching for the dogs was not urgent or time critical, so did not require off-duty intervention.

Officer A should not have involved himself in the confrontation at Mr Y's front door.

## ISSUE 2: WAS OFFICER A'S USE OF FORCE AGAINST MS S LEGALLY JUSTIFIED?

117. Ms S, Mr Y, Mr V and Officer A all describe force being used during their altercation. On that basis, Police considered assault charges for all parties involved. Following their investigation, none of the four were charged.
118. The Authority can only make findings in respect of the actions of Officer A. Since it is not possible to determine exactly what force was used during most of the altercation, the Authority has focussed on Officer A's initial use of force – his actions in grabbing Ms S by the hair and pulling her head down.

### Self-defence

119. Officer A said he grabbed Ms S to control her (see paragraph 38 above). He later told Police that he was "*the victim*" in the incident. The Authority has interpreted this to mean that Officer A was trying to control Ms S to prevent her from harming him or anyone else.
120. Section 48 of the Crimes Act 1961 provides a justification for the use of force in self-defence: "*Everyone is justified in using, in the defence of him or herself or another, such force as, in the circumstances as he or she believes them to be, it is reasonable to use.*" Excessive force will still give rise to criminal liability under section 62 of the Crimes Act.
121. In order to rely on this defence, a person's actions must be assessed on a subjective and objective basis. This assessment involves three questions:<sup>5</sup>
- 1) What were the circumstances as the person believed them to be (a subjective test)?
  - 2) Did the person use force for the purpose of defending himself or herself or another (a subjective test)?
  - 3) Was the force used reasonable in those circumstances (an objective test)?

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<sup>5</sup> *Adams on Criminal Law* (Brookers, Wellington, 1992) Crimes Act, para CA48.01.

122. In addition to examining the legality of Officer A's use of force, the Authority must consider whether, as a whole, it believes that his actions complied with Police policy and were reasonable in the circumstances.

*What circumstances did Officer A believe he was facing?*

123. Officer A described the circumstances he believed he was facing at the moment he grabbed Ms S by the hair and pulled her head down. He said:

- he thought Ms S had been drinking;
- Ms S had been verbally abusive towards him and had called him a corrupt cop;
- Ms S was much smaller than him;
- Ms S ran at him screaming with her arms outstretched, from about three metres away;
- Ms S collided with him; and
- he needed to restrain Ms S.

124. Officer A said that he attempted to restrain Ms S as she made contact with him. He said that Ms S's hair was the only part of her that he had an opportunity to grab, as her hands had gone past his, and she then grabbed hold of his open jacket.

125. The Authority does not have evidence to contradict Officer A, and accepts his description of the circumstances as he believed them to be.

*Did Officer A use force for the purpose of defending himself or another person?*

126. Officer A described Ms S's actions as sudden, and he said Ms S took him by surprise. He said he was trying to control her. Based on the available evidence, the Authority accepts that Officer A used force in self-defence.

*Was the force used reasonable in the circumstances as Officer A believed them to be?*

127. Officer A said he grabbed Ms S by the hair "*and push[ed] or pull[ed] her head in a downwards motion*". He said Ms S's hair was the only part of her he could reach. As a result, Ms S fell to the ground with Officer A falling on top of her.

128. The Authority does not find Officer A's assertion that Ms S's hair was the only part of her he could reach to be credible. Ms S is much smaller than Officer A, and his reach is longer than hers. Officer A said Ms S's arms had "*gone past*" him, yet she had hold of his jacket. In submissions, Officer A said "*when [Ms S] lunged at me I wasn't standing facing her, and she hit me side-on.*"

129. The Authority can only reconcile these statements with a scenario in which at least part of Ms S's body was in front of Officer A when he grabbed her. The Authority considers on the balance of probabilities that Officer A could have grabbed Ms S's clothes, or held her by her shoulders, arms, or torso to restrain her initially, rather than by her hair.

130. Officer A said he held Ms S's hair and pushed her down, and that both he and Ms S fell to the ground. The force required to simply restrain Ms S, even if she were running toward Officer A, would not have led to both parties being taken to the ground. The Authority considers that the force used was more than that needed to respond to any threat posed by Ms S.
131. The Authority considers that the force used was excessive and was not justified in the circumstances.

*Taken as a whole, were Officer A's actions reasonable in the circumstances?*

132. Even if the Authority had found Officer A's force to be reasonable, it would have found his overall actions unreasonable.
133. In the Authority's view, Officer A's own decisions during the evening of 4 November 2015 directly led to the circumstances in which he used force against Ms S.
134. Officer A agreed to drive Mr V around Christchurch to find the dogs. He accompanied Mr V to the door of Mr Y's property. He started to walk away from the confrontation at the front door, but decided to return and involve himself in the dispute. Officer A said that his intention was to get Mr V off the property, but that he made a comment to Ms S which caused her to 'launch herself at him'.
135. Officer A demonstrated poor judgement when he involved himself in Mr V's search for Ms S the missing dogs. This lack of judgement culminated in his involvement in a physical altercation in which he used excessive force. It is the Authority's position that Officer A's actions were not reasonable in the circumstances.

**FINDING**

Officer A used excessive force against Ms S, and his actions were not reasonable in the circumstances.

**ISSUE 3: WAS THE INITIAL POLICE RESPONSE FOLLOWING THE ALLEGED ASSAULT APPROPRIATE, INCLUDING THE DECISION TO STAND DOWN THE CIB OFFICERS?**

136. Officer C, as one of the first officers on the scene at Mr Y's address, took responsibility for the incident once he arrived. After Ms S complained that Officer A had assaulted her, Officer C properly recognised the need to have a supervisor attend, and called SouthComms to ensure this happened (although Officer F was already on the way). Both Officer C and Officer D took notebook entries and made formal written statements before their shift ended. Their actions showed sound judgement and complied with Police policy.
137. Officer C had no lawful cause to ask Officer A to undergo an excess breath alcohol test, as he did not see him drive a vehicle. He addressed the possibility of Officer A's intoxication in his statement, allowing investigating officers to consider alcohol as a factor in the alleged assault. The Authority is satisfied that Officer C acted appropriately in this respect.

138. Officer A states that he called the DCC and spoke with Officer B prior to the altercation. However, as set out in paragraph 115 above, the Authority finds that the call was made after the altercation.
139. On this basis, the Authority considers Officer B ought to have noted that Officer A had restrained Ms S in his CAD entry. Without this detail, the entry could not give other officers a complete picture as to what had taken place.
140. Nonetheless, Officer F recognised the need to have appropriate safeguards in place against a perceived conflict of interest. He attempted to mitigate this by arranging for the Night Crime Car (Officers G and H) to attend. Officer F said that the purpose of this was to make it clear that Police were taking this allegation against an officer seriously, and to ensure that Officer C in particular was not put in the position of having to investigate and potentially criticise the actions of a higher-ranked officer.
141. Officers G and H were investigating other matters when contacted by Officer F. Although Officer G initially agreed to attend, when this was discussed with Officer H, they formed a view that as detective constables they lacked seniority in relation to Officer A, particularly as Officer A had supervised Officer G in the past. In addition, the incident they were attending was taking several hours to work through, and the Night Crime Car would not be available until after 3am on the Thursday morning.
142. Officer H discussed this with Officer B. Officer B considered that having Officer G and Officer H attend Mr Y's address that night to take statements would not progress the investigation any faster or more thoroughly than if other CIB officers attended to take statements later. On that basis, Officer B decided to stand down the Night Crime Car.
143. Meanwhile, after Officer A, Mr V and Mr X had returned to Mr V's address, Officer A called Officer B at the DCC a second time and thanked Officer B for the prompt Police assistance. It is unclear when this call was made, but it was most likely before Officer B made the decision to stand down the Night Crime Car. Officer B did not make any record of this call, nor did he mention this second phone call in his statement to Police. The notes he made in the Police CAD system were brief and lacked detail. These factors raised questions as to whether Officer B was acting to protect Officer A. On balance, however, the Authority accepts that this was not the case.
144. If Officer B had made clearer and fuller notes, this would have addressed any perception of a conflict of interest, and would have enabled other officers to better understand what had happened on the night.
145. Nonetheless, the Authority considers that the decision to stand down the CIB was a legitimate operational decision and appropriate in the circumstances.

## FINDINGS

Officers attending the incident at Mr Y's address acted appropriately, including seeking assistance to mitigate a potential conflict of interest.

Officer B ought to have documented his conversations with Officer A more fully, so all officers knew what had taken place.

The decision to stand down the Night Crime Car was, on balance, an appropriate operational decision in the circumstances.

## ISSUE 4: DID POLICE THOROUGHLY AND IMPARTIALLY INVESTIGATE THE ALLEGED ASSAULT AGAINST MS S?

### Application of the 'Off-duty interventions' policy

146. Officer A has not claimed to be acting as a Police officer on the night of 4 November 2015, but his actions suggest otherwise. He made decisions to intervene, including visiting addresses and making enquiries to locate the 'burglar', and he used resources, such as contacting the DCC, which are not available to members of the public.
147. The Authority considers that Officer A was acting as an off-duty Police officer on the night of 4 November, and accordingly the 'Off-duty interventions' policy should have been considered as part of the subsequent investigation.
148. The 'Off-duty interventions' policy requires that, if an off-duty officer has used force in an incident, that officer must be interviewed as a witness, with a formal statement taken. Policy also requires that an officer who uses reportable force while off-duty must prepare a Tactical Options Reporting form (a TOR), within three days of the incident.<sup>6</sup>
149. Officer A said that he restrained Ms S by grabbing her hair and that in the resulting altercation all parties fell to the ground. Under the policy, he was required to complete a TOR and be interviewed by Police. Officer A did not prepare a TOR, and there is nothing in the Police file to indicate that he was asked to do so.
150. Officers F and B were both aware that Officer A had used force to restrain Ms S. Neither took steps to arrange for Officer A's statement to be taken. However, both were under the impression at the time that CIB would be attending, and therefore that CIB would take statements.
151. The day after the incident, Officer I asked Officer J, a newly promoted sergeant, to interview Officer A (set out in paragraphs 65 to 68 above). Officer A declined to be interviewed by Officer J, and instead advised he would prepare his own statement. On 18 November 2015, Officer M asked Officer A for an interview, and again Officer A declined to answer questions.
152. Officer A provided a self-prepared statement on 27 November 2015, but because he declined to be interviewed his evidence could not be clarified or tested by Police in any way.

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<sup>6</sup> Reportable force includes empty hand techniques, such as manual restraint of a person and minor contact such as touching, guiding, escorting, lifting, and pushing, where a person falls to the ground.

153. However, the Authority notes that, despite the requirements of Police policy, Officer A had the right to exercise the privilege against self-incrimination and to refuse to complete a TOR or be interviewed on that basis. He should have been asked to complete a TOR, but he would have been justified in refusing to do so.

#### Following all relevant lines of enquiry

154. Having reviewed the entire Police file on this matter, the Authority considers that the following matters merited further documented investigation or analysis to avoid any perception of bias in favour of Officer A:

- There were inconsistencies between Officer A's and Officer B's accounts of Officer A's first call to the DCC, particularly around whether Officer A had told Officer B that Ms S had been restrained (set out in paragraphs 41 to 45 above). These inconsistencies raised a question around Officer A's credibility. The Authority notes that this could not be tested due to Officer A declining to be interviewed; however, these inconsistencies are not addressed in the Police file.
- Officer M stated that the photographs of injuries to Ms S showed some bruises but that there were no visible bruises to her face or ribs. Officer M did not discuss Mr Y's grazes and scratches, other than to conclude that *"the assault described by [Mr Y] and [Ms S] is not consistent with the photographs and the medical examination conducted days after the incident."* However the photographs did show a bruise to the side of Ms S's torso, near her ribs. Because the Police photographs were taken three days after Ms S saw her doctor, it is not surprising that the photographs recorded bruising that was not noted by her doctor. Furthermore, Ms S said that she curled up and used her arms and knees to protect her face and body, which could explain the lack of bruises to her face.
- Officer M stated that Ms S's 111 call provided *"a better picture of events"* and that *"she acknowledges in the telephone call 'pushing [Officer A], which resulted in her being in the middle of a brawl'."* The Authority considers that Ms S was clearly distressed when she made her 111 call. There was little clear narrative of what had happened. While she did acknowledge pushing Officer A, she also said that *"he went for me but I did push him back."*
- Consistencies that did exist between the four accounts of the alleged assault were not considered as factors that might add credibility to one account or another. For example, Ms S, Mr Y, and Officer A agreed that Officer A began walking down the driveway before coming back to the door, at which point the altercation began, while only Officer A states that he made a phone call while walking away (and it seems that this phone call was not made when Officer A said it was).
- Other evidence did not appear to be considered in light of any weight it might add to the different accounts of the alleged assault. For example, Officer C's recollection that Ms S was in torn clothing when Police first arrived at Mr Y's address, or his independent

account that Officer A appeared to have been affected by alcohol, may have added credibility to one account over another.

155. Officer M submitted that his report was a summary of his investigation and did not purport to set out every investigative step taken. However, the Authority reviewed the entire Police file, and could not find documented reasons for not following up these lines of enquiry, nor analysis explaining how his conclusions were reached.

#### Additional matters not followed up

156. When Officer L reviewed Officer M's report, he drew new conclusions that were not presented by Officer M. In particular, Officer L formed a view as to the duration of the altercation. In summarising the events, Officer L states that it is clear that a "melee or brawl" took place. He goes on to say:

*"This brawl must have lasted only 1-2 minutes, since there were only 3 minutes between [Officer A's] call (11.40pm) from the street to report the finding of the dogs, and [Ms S's] 111 call (11.43pm) from inside the house."*

However, this timing can only be correct if it is accepted that Officer A called the DCC before the alleged assault. Since the Authority is satisfied, as set out above, that the call must have been made after the altercation, this timing cannot be correct.

157. Officer O also raised new issues in her review of the file. She raised the possibility that Ms S was injured while taking the dogs, but there is no evidence that Ms S was questioned about any injuries she may have suffered at Mr V's address. Officer O also relied on Mr W's lack of communication with Ms U and Ms S to infer that Mr W was not concerned about the demeanour of Mr V and Officer A, and again, Mr W was not questioned about this. These were new lines of enquiry that were worthy of further consideration.

#### FINDINGS

Police had no legislative authority to require Officer A to be interviewed.

Police should have asked Officer A to complete a TOR, as required by the 'Off-duty interventions' policy, but he was under no obligation to comply.

Reviews of the criminal investigation identified potential lines of enquiry that Police should have followed up.

#### ISSUE 5: DID POLICE THOROUGHLY AND IMPARTIALLY CONDUCT THE CODE OF CONDUCT INVESTIGATION INTO OFFICER A'S ACTIONS?

158. A Code of Conduct investigation is a separate investigation from the criminal investigation. The Police 'Disciplinary Process Guidelines' set out the process that must be followed. The guidelines set out an expectation that all employees will participate in good faith.

159. An independent officer carried out the Code of Conduct investigation, and the investigator made a declaration that he had no conflict of interest arising in this case.
160. A Code of Conduct investigation is, by necessity, focussed on the actions of the employee. The evidential burden in an employment investigation is to establish what happened on the balance of probabilities, and not beyond reasonable doubt. In this case, Officer A accepted the allegations put to him, and so closer inspection of the criminal investigation was not required.
161. The Authority is satisfied that the Code of Conduct investigation was carried out independently and, in a manner, consistent with Police policy. The Police file shows that Officer A took part in the investigation as required, and the Authority considers that the sanction applied was proportionate and appropriate in the circumstances.

## FINDING

Police carried out the Code of Conduct investigation thoroughly and impartially.

## CONCLUSIONS

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162. The Authority considers that, on the whole, Officer A's actions on the night of 4 November 2015 showed poor judgement and culminated in a physical altercation. While all the details of the altercation could not be established, the Authority finds that Officer A used excessive force against Ms S.
163. The Authority also considers that:
- 1) Officer A's decision to call 111 for Mr V was appropriate and consistent with Police policy.
  - 2) Officer A ought to have recognised that searching for the dogs was not urgent or time critical, and did not require off-duty intervention.
  - 3) Officer A should not have involved himself in the confrontation at Mr Y's front door.
  - 4) Officer A used excessive force against Ms S, and his actions were not reasonable in the circumstances.
  - 5) Officers attending the incident at Mr Y's address acted appropriately, including seeking assistance to mitigate a potential conflict of interest.
  - 6) Officer B ought to have documented his conversations with Officer A more fully, so all officers knew what had taken place.
  - 7) The decision to stand down the Night Crime Car was, on balance, an appropriate operational decision in the circumstances.
  - 8) Police had no legislative authority to require Officer A to be interviewed.

- 9) Police should have asked Officer A to complete a TOR, as required by the 'Off-duty interventions' policy, but he was under no obligation to comply.
- 10) Reviews of the criminal investigation identified potential lines of enquiry that Police should have followed up.
- 11) Police carried out the Code of Conduct investigation thoroughly and impartially.



**Judge Colin Doherty**

Chair  
Independent Police Conduct Authority

18 June 2019

**IPCA: 15-0881**

## Appendix: Applicable Laws and Policies

### OFF-DUTY INTERVENTIONS

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164. The Police policy on 'Off-duty interventions' states that:

*"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."*

165. As indicated, the policy is framed to provide guidance to officers who come across the commission of an offence or an emergency whilst off-duty. It does not specifically address the actions of officers made in their civilian capacity. However, general principles in the policy could be expected to apply to an officer who becomes involved in an incident while off-duty.

166. Police policy emphasises the importance of using sound judgement and discretion. Other Police policies, including the 'Use of Force' policy, continue to apply, with some modifications to ensure the integrity of Police operations.

167. The policy advises officers to consider a number of factors before taking action, including:

- Consider the TENR risk assessment principles (Threat, Exposure, Necessity, Response) before intervening;
- How serious is the offending? Is there a real danger of injury to any person or serious damage to property?
- Does action need to be taken immediately to resolve the situation or can it wait for on-duty constables to arrive?
- Will your actions breach the law in any way?
- Have you consumed alcohol, used medication or is there anything else that could hinder you from safely and effectively intervening or assisting?
- If alcohol has been consumed, constables should recognise the impact it may have on sound decision-making. Consider calling the Communications Centre to request on-duty assistance or to seek a supervisor's advice before intervening.

168. The policy notes that the key question is whether the off-duty officer can safely and effectively intervene or assist.

169. Once an off-duty officer decides to intervene in a matter, they should seek support from on-duty constables as soon as is practicable. If it is practical, off-duty officers should present their Police identification or clearly identify themselves to offenders and any bystanders as an off-duty officer as soon as possible. Off-duty officers should continually re-assess the situation and withdraw if it becomes difficult to safely and effectively resolve the situation.

170. On-duty constables must take over responsibility of the incident as soon as they arrive, and take notebook entries of every incident they attend when an off-duty officer is involved, even if no arrest is made.
171. If an off-duty officer uses force, the duty supervisor must attend the scene to assess the officer's intervention, including whether there are any risks or issues requiring attention. The off-duty constable must be interviewed as a witness with a formal statement taken – not a self-prepared statement.
172. The Police 'Use of Force' policy applies; this includes the requirement for reportable force used off-duty to be reported in a Tactical Options Reporting (TOR) form as discussed below. The TOR must be completed before the end of the day in which the officer uses force, or with the incident supervisor's approval, within 3 days (72 hours) of the incident.

## USE OF FORCE

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### Law on use of force

173. Section 39 of the Crimes Act 1961 provides for law enforcement officers 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."*
174. 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 or she believes them to be, it is reasonable to use."*
175. Under section 62 of the Crimes Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

### Police policy on use of force

176. The Police 'Use of Force' 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.
177. 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; 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)).

178. 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.

179. Ultimately, the legal authority to use force is derived from the law and not from Police policy.

180. 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.

#### *Reporting on certain uses of force*

181. When officers show, or use, certain types of force, the 'Use of force' policy requires them to complete a Tactical Options Report (TOR). The purposes of the TOR include:

- to provide individual accountability for the use of force, consistent with individual legal accountability; and
- to provide for supervisor and inspector review of the use and reporting of force.

182. Officers are required to submit Tactical Options Reports (TORs) to their supervisors before the end of the shift in which force was used, or with a supervisor's approval, within three days of this shift. The supervisor who reviews the TOR is the officer's immediate supervisor (sergeant or acting sergeant).

183. Supervisors are required to complete their review before the end of the shift in which they received a TOR, or with their supervisor's approval, within three days of this shift. If a supervisor wants an officer to make changes to their TOR, they are to make a comment outlining the additional information needed or changes to be made. If they disagree with the officer's view of what occurred, they should insert a comment noting their own view of what took place.

184. Inspectors are required to complete their reviews within seven days of receipt of TORs from supervisors.

## MANAGING CONFLICTS OF INTEREST

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185. The 'Managing conflicts of interests' chapter of the Police Manual explains that conflicts of interests can occur "*fairly frequently*" in a small country like New Zealand. The policy states that

all actual, potential or perceived conflicts of interest must be declared and appropriately managed:

186. *“All Police employees must be aware of these critical points:*

- *A perceived or potential conflict of interest can be just as damaging as an actual conflict of interest.*
- *All actual, potential or perceived conflicts of interest must be declared to a supervisor by way of the appropriate declaration.*
- *Supervisors must never investigate allegations of sexual or other serious misconduct by employees under their direct supervision.*
- *Supervisors must work with employees who declare conflicts of interest to assess the risks involved, and to identify appropriate strategies to manage those risks.”*

187. The policy defines the following terms:

<b><i>“Actual conflict of interest</i></b>	<i>A conflict between our official duties and our other interests that could interfere with our ability to be impartial, objective and independent.</i>
<b><i>Perceived conflict of interest</i></b>	<i>The perception of outside observers that our other interests may interfere with our ability to be impartial, objective and independent, whether or not that is the case. The perception of a conflict of interest can be just as damaging to reputation as an actual conflict.</i>
<b><i>Potential conflict of interest</i></b>	<i>A situation where our other interests have the potential to interfere with our official duties in the future, or where our official duties could affect our other interests in the future.”</i>

188. The Police Code of Conduct defines a conflict of interest as “a situation where our personal or professional interests may conflict with our position, obligations or responsibilities as a Police employee.”

189. The ‘Managing conflicts of interest’ policy identifies that Police investigations of Police employees, and the resolutions of any incidents or investigations, are “most likely to face scrutiny”. The policy states:

*“It is important when we are involved in informal resolutions, pre-charge warnings and prosecution that we ensure that our objectivity cannot be questioned. Employees involved at this stage of any incident or investigation should be aware of the potential for conflicts of interest, and declare any actual, perceived or potential conflicts of interest to our supervisor in writing as soon as we become aware of the conflict.”*

190. Police policy continually emphasises the need for officers to declare actual, perceived or potential conflicts of interest as soon as they are identified. Officers are advised that they:

*“...may be able to avoid the conflict. If possible, abstain from involvement in the decisions or actions that could be compromised by your other interests. Likewise you should avoid activities where you could be seen to be at an advantage because of information or other resources that you have access to because of your role with Police.”*

## About the Authority

### WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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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 Colin Doherty.

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?

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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.

### THIS REPORT

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This report is the result of the work of a multi-disciplinary team of investigators, report writers and managers. 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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