

- obtaining information from Officer C who witnessed part of the incident, and two senior officers Ms X spoke to after the quiz night incident, by email;
 - visiting the station where Officer A approached Ms X;
 - reviewing Police files on the incidents.
6. The Authority identified and considered the following issues:
- 1) Whether Officer A’s comment to Ms X was inappropriate; and
 - 2) Whether Officer A’s conduct towards Officer B was inappropriate.

THE AUTHORITY’S FINDINGS

Issue 1: Was Officer A’s comment to Ms X inappropriate?

7. On 12 October 2018, following a quiz night at the Police station, Ms X, a non-sworn Police employee, was in her office collecting her belongings before heading home.
8. Officer A walked past the office and saw Ms X. Ms X and Officer A have worked in the same Police station for about ten years, but do not have any social relationship. Ms X said she does not consider that she knows Officer A well, and she had not spoken with him during the quiz night.
9. Ms X said Officer A walked up to her with a handful of cash. He pushed the cash towards her and said, “*what about \$20 for a BJ?*” Ms X took the term ‘BJ’ to be a reference to her performing oral sex on him, and she said she told Officer A to “*fuck off*”, which she said was language she would not normally use.
10. In an interview with the Authority, Officer A confirmed that his reference was to oral sex, but that he meant it in a joking manner. He denied having any money in his hands when he made the comment and said that Ms X laughed in response.
11. Both Ms X and Officer A recalled that Officer A then invited Ms X to join some other Police staff at a bar in town. Ms X declined. Officer C arrived, and escorted Officer A away.
12. Officer C told the Authority that he “... *heard [Officer A] say something about requesting a ‘blow job’ or ‘hand job’ from [Ms X].*” He remembered telling Officer A “*that’s no way to speak to [Ms X],*” and all three laughed.
13. Ms X returned to the meal room in the station, where two senior officers were packing up after the quiz night. Ms X told them what had happened but did not ask them to take further action. The following Monday, Ms X spoke to Officer D about the incident. Ms X said she wanted Officer A’s behaviour to stop.

14. The Police 'Discrimination and harassment' policy describes 'sexual harassment' as occurring when a person employed by Police directly subjects another person to language of a sexual nature that is unwelcome or offensive to them, and the behaviour is repeated or of such a significant nature, that it has a detrimental effect on the person's employment, job performance or job satisfaction (set out in paragraph 40 below).
15. The Police Code of Conduct requires Police officers to *"treat all people respectfully, with empathy and dignity ... whether they are members of the public, colleagues, victims or offenders and regardless of the circumstances."*
16. Officer A acknowledged that his behaviour towards Ms X was of a sexual nature and contravened the Code of Conduct and Police Values. Ms X was distressed by the exchange and escalated the matter. Even if it were accepted that Officer A intended his comment as a joke, it was made in the work environment, albeit after hours, and was clearly inappropriate.
17. The Authority considers that Officer A's comment to Ms X was inappropriate, and contravened the 'Discrimination and harassment' policy, Police Values, and the Code of Conduct.

FINDING ON ISSUE 1

Officer A's comment to Ms X was inappropriate, and contravened Police policy, Police Values, and the Code of Conduct.

Issue 2: Was Officer A's conduct towards Officer B inappropriate?

18. While investigating the matter involving Officer A and Ms X, the Authority became aware of an earlier matter concerning Officer A's conduct towards a female colleague that resulted in him being spoken to by Officer D. The Authority requested the file relating to this matter, and decided it was appropriate to also investigate it.
19. Officer B graduated from Police College in June 2018, and in late July 2018, was posted to the same station as Officer A. Officer B usually worked alongside Officer E, her field training officer. One day Officer E was not available, so Officer B and another new constable were assigned to work alongside Officer A. During that day, Officer A and Officer B discovered their mutual interest in sport. Officer A offered to help Officer B join a Police sports team he was connected with. Officer B was happy to accept his help.
20. On 2 August 2018, about two weeks after Officer A and Officer B met, Officer B was writing an email asking for leave to attend a Police sporting event. Before she had finished writing her email, she was called out of the station to attend an incident. Officer A was nearby and offered to complete drafting the email, for Officer B to check and send on her return. Officer B accepted his offer.
21. After writing the email as agreed, Officer A used Officer B's Police email address to compose an email to his Police email address, asking *"Did we just become best friends?"* Officer A then returned to his own computer, and replied to the email under his own name, saying *"I think it's a bit too soon... let me think about it."* When Officer B discovered these emails, she sent a

further email to Officer A in an attempt to make a joke of the exchange and put an end to it. Officer B told Police, *"I did think it was a bit weird at the time, but just thought that was his sense of humour."*

22. Police policies on use of technology (see paragraphs 41 to 43 below) are clear that an officer should not use another officer's logon, and that personal use of Police technology must be consistent with standards of behaviour expected of a Police employee. As an experienced officer, Officer A will have been more familiar with these policies than Officer B, a new constable.

23. On 8 August 2018, Officer B was on patrol with Officer E when Officer A started sending her a series of text messages. The messages included:

"Can I trust you?"

"it's bad and good at the same time"

"I'd lose my job... /If they found out..."

24. He finally revealed to Officer B that he had used *"an alternative to alcohol"* and told her *"Don't judge me if my pupils are a little bit bigger on Friday..."*, implying that he might be under the influence of an illegal drug while on duty. Officer B told the Authority *"... I started to get the feeling he was trying to hit on me, and I think he was trying to impress me by making out he was a bad boy."* Officer A confirmed in interview that he was trying to impress Officer B.

25. Officer B asked Officer E if it was *"okay for cops to do drugs"*. Officer E said no and pressed her as to why she was asking. Officer B said that an officer was texting her saying he used drugs. As the conversation between Officer B and Officer E continued, *"it became clear that the officer was [Officer A]."* Officer E told Officer B she should stop texting Officer A, which she did.

26. The next day, Officer E raised the matter with a senior officer, who in turn raised it with a Professional Conduct Manager. The matter was considered by a Police Categorisation Committee on 13 August 2018. The Committee agreed that the allegations were potentially criminal and could breach the Police Code of Conduct.

27. On 21 September 2018, Police interviewed Officer A about the text messages referring to drug use. Officer A said that he tried ecstasy once when he was at university, but not since joining Police. He said it was *"a feeble attempt to try and impress [Officer B]."* Officer A was interviewed about potential drug use, and satisfied Police that no criminal activity had taken place. He was spoken to by Officer D about his behaviour towards Officer B.

28. Police Values and the Code of Conduct refer to the importance of treating people with respect and behaving with integrity. The Police 'Maintaining professional distance' policy states that employees are expected to avoid relationships that are *"unethical or inappropriate."* (see paragraph 44 below).

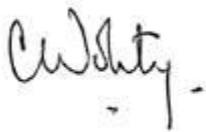
29. At the time of these interactions, Officer A was in his thirties and an officer with more than 10 years' experience in Police. Officer B was 19 years old and newly graduated from Police College. Officer A had worked with Officer B in a situation where he was effectively her supervisor. Officer A ought to have been aware that his actions in seeking to establish anything other than a professional relationship with Officer B were inconsistent with Police policy, Police Values, and the Code of Conduct.
30. The Authority considers that Officer A's conduct towards Officer B was inappropriate and contravened the Police 'Maintaining professional distance' policy, Police Values, and the Code of Conduct.

FINDING ON ISSUE 2

Officer A's conduct towards Officer B was inappropriate and contravened Police policy, Police Values, and the Code of Conduct.

CONCLUSIONS

31. The Authority considers that Officer A behaved inappropriately towards Ms X and Officer B. His actions were inconsistent with Police policy, Police Values, and the Police Code of Conduct.
32. Police conducted an employment investigation into Officer A's behaviour towards Ms X and he received a disciplinary sanction.
33. The Authority is satisfied the two senior officers that Ms X spoke to after the incident with Officer A (discussed in paragraph 13) followed up with Ms X on their return to work the following week. This was appropriate, as was their decision not to take this further when assured by Ms X that she had spoken with Officer D about the incident and it was being addressed.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

3 October 2019

IPCA: 18-0938

Law

34. Section 62 of the Human Rights Act 1993 makes it unlawful for any person, in respect of specified areas, to make a request for sexual intercourse, sexual contact, or any other form of sexual activity which contains an implied or express promise of preferential treatment or threat of detrimental treatment.
35. Section 62(2) of the Human Rights Act 1993 makes it unlawful for any person to subject any other person to behaviour:
- through use of language, visual material, or physical behaviour of a sexual nature;
 - that is unwelcome or offensive (whether or not the other person conveys this to the person), and
 - that is either repeated, or of such a significant nature, that it has a detrimental effect on the other person in respect of specified areas.
36. Specified areas that might be affected by sexual harassment are set out in subsection 62(3), and include employment and professional opportunities, access to places, vehicles and facilities, and participation in fora for the exchange of ideas and information.
37. Sections 108 and 117 of the Employment Relations Act 2000 contain similar protections specifically relating to sexual harassment in the course of employment.

Discrimination and harassment policy

38. The Police 'Discrimination and harassment' policy states:

“Any discrimination and/or harassment is unlawful and unacceptable. NZ Police as an employer will not tolerate any such behaviour in the workplace.”

39. The policy sets out a procedure for handling allegations of discrimination and harassment in line with Police obligations under the Human Rights Act 1993, the Health and Safety at Work Act 2015, and the Employment Relations Act 2000. The policy also refers to the Police Code of Conduct and core Police Values.
40. The policy describes 'sexual harassment' with reference to section 62 of the Human Rights Act 1993:

“Sexual harassment of an employee, volunteer or contractor occurs if any person engaged by Police, directly or indirectly, either:

...

- *by the use of language (written or spoken) of a sexual nature, visual material of a sexual nature, or physical behaviour of a sexual nature subjects the employee, volunteer or contractor to behaviour that is*

unwelcome or offensive to them (whether or not that is conveyed to the person) and that is either repeated, or of such a significant nature, that it has a detrimental effect on the employee's, volunteer's or contractor's employment, job performance or job satisfaction."

Technology policies

41. Police have multiple policies around use of technology, including email and text messaging.
42. The Police 'Inappropriate access, use and procurement' policy states that inappropriate use of technology is *"misuse by act or omission,"* and examples of inappropriate use include objectionable use, misrepresentation, and personal access or use. Inappropriate use includes using another person's logon to Police systems.
43. The Police 'Acceptable access and use of technology' policy states that officers must *"only log in or access the Police network using your assigned user ID. **Note:** using someone else's user ID is not permitted."* This policy also states that personal use of Police technology must be consistent with Police Values and standards of conduct expected of a Police employee.

Maintaining professional distance policy

44. The Police 'Maintaining professional distance' policy is intended to help Police manage their relationships to avoid conflicts of interest, including imbalances of power. The policy relates to *"the formation of consensual personal relationships (sexual or otherwise)"* Personal relationships are distinguished from professional relationships as involving *"relationship contact or conduct [which] is personal or intimate as opposed to professional."* The policy also addresses the potential for professional boundaries to be compromised where a conflict of interest or power imbalance arises in a relationship developed through Police work.

Police Values

45. Police's core Values are set out in a document called *"Our Values"*. The values are described as follows:
 - *"Professionalism: We take pride in representing Police and making a difference with the communities we serve.*
 - *Respect: We treat everyone with dignity, uphold their individual rights and honour their freedoms.*
 - *Integrity: We are honest and uphold excellent ethical standards.*
 - *Commitment to Māori and the Treaty: We act in good faith of, and respect, the principles of Te Tiriti o Waitangi – partnership, protection, and participation.*
 - *Empathy: We seek understanding of and consider the experience and perspective of those we serve.*

- *Valuing Diversity: We recognise the value different perspectives and experiences bring to making us better at what we do.”*

Code of Conduct

46. The Police Code of Conduct asks officers to *“consciously exhibit behaviour which is aligned to Our Values.”* The Code applies to everyone working for Police and continues to apply outside of working hours, *“...where our actions may bring Police into disrepute or may damage trust and confidence Police as our employer has in us.”* Employees are asked to apply common sense, to act with self-respect and to consider the reputation of Police in their decision-making.
47. The Code of Conduct, and other related Police policies, refer to *“the SELF test.”* ‘SELF’ is an acronym, a reminder to help officers to assess whether their actions would:
- *“stand up to Scrutiny (e.g. from the media);*
 - *Ensure compliance (e.g. with policy);*
 - *be Lawful (laws, regulations and rules); and*
 - *be Fair (e.g. to community, colleagues, your family and others).”*
48. The Code of Conduct makes repeated references to appropriate behaviour, for example:
- *“We protect Police’s integrity and reputation by speaking up about any inappropriate behaviour we see and hear. By addressing inappropriate behaviour either directly or through managers, we make Police a safer and happier workplace.”*
...
 - *“It also includes never entering into a sexual or intimate relationship with someone we have met in a professional capacity if an imbalance of power exists, or if that person is vulnerable.”*
...
 - *“We need to consistently practice good judgement and integrity when creating, accessing, modifying and using, securing and disclosing all information. We always need to handle information appropriately, for legitimate work purposes and in line with the law, our policies, processes and systems.”*
...
 - *“we treat all people respectfully, with empathy and dignity. We do so whether they are members of the public, colleagues, victims or offenders and regardless of the circumstances.”*

49. The Code of Conduct states that if a person breaches the Code, *“we will talk with you and determine the circumstances and actions that have led to the situation.”* It then refers to the Police disciplinary policy. It is clear that disciplinary action could include termination of employment, depending on the seriousness of the situation. Examples of misconduct and serious misconduct are provided.

ABOUT THE AUTHORITY

Who is the Independent Police Conduct Authority?

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

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

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

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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