

Use of force at Tauranga Hospital

INTRODUCTION

1. On 1 March 2018 Mr X was a patient at Tauranga Hospital. He was under arrest and Police were present to transfer him to Tauranga Police Station after he was discharged from the hospital.
2. Mr X struggled with Police officers when they attempted to escort him from the room where he had been receiving treatment. Hospital staff witnessed the incident and brought it to the attention of their managers. The matter was then referred to Police.
3. Police notified the Independent Police Conduct Authority of the incident, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

BACKGROUND

4. 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.
5. Analysis of the evidence and explanations of where the Authority has accepted, rejected or preferred that evidence are reserved for the 'Authority's Findings' section.

Summary of events

Events prior to Mr X's detention at Tauranga Hospital

6. On Tuesday 27 February 2018 a member of the public saw Mr X leaving his parked car on the side of the road. Mr X behaved in an erratic manner before suffering what appeared to be a medical episode.
7. Police were called and, after locating Mr X a short distance from his car, an ambulance also attended. Mr X was taken to Tauranga Hospital where hospital staff determined he had consumed a large quantity of drugs. Mr X was admitted and sedated due to his condition.

8. While dealing with Mr X, Police saw what appeared to be drugs on the front seat of his car. Police completed searches of Mr X's car and a storage unit hired by Mr X, which led to the recovery of more drugs and drug-related items.
9. Mr X was arrested for drug offences at Tauranga Hospital on Wednesday 28 February 2018 and remained under Police guard until his discharge on Thursday 1 March 2018.

Mr X's behaviour at Tauranga Hospital

10. Ms Y and Ms Z work at Tauranga Hospital. Ms Y told the Authority she felt a general uneasiness when near Mr X, because *"he had a very scary look,"* and she felt threatened by his demeanour.
11. Ms Z said that Mr X deliberately folded his arm at the elbow as she was removing a cannula (medical tube), causing her fingers to become trapped between his forearm and bicep. She asked Mr X to release her fingers but he refused and said he wanted the cannula to make his arm bleed.
12. Mr X's medical notes stated that he was *"poorly compliant"* with treatment, showing agitation and aggression towards staff.

Mr X's discharge from Tauranga Hospital

13. During the morning of Thursday 1 March 2018, Officers A and B relieved two other officers who had been guarding Mr X overnight.
14. Mr X was in a private Intensive Care Unit (ICU) room measuring approximately five-by-six-metres. He was handcuffed to his hospital bed by the right wrist.¹ Other occupied ICU rooms, as well as an open ward, were located near to Mr X's room.
15. Officer A told the Authority that he entered Mr X's room to inform him that he was under arrest and would be taken to Tauranga Police Station when released from hospital. Mr X responded by running his left thumb across his throat. Officer A took this to be a threat and withdrew.
16. According to Officer A, Mr X was clearly agitated and this behaviour seemed to escalate if Police entered his room or were visible to him. Officers A and B therefore remained outside and out of sight as much as reasonably possible.
17. Shortly after midday on Thursday 1 March 2018 Mr X was declared medically fit and discharged.
18. Considering Mr X's prior behaviour, Officers A and B anticipated that Mr X would be reluctant to accompany them. Due to Mr X's physical stature and history of violence,² they requested further officers to help transport Mr X to Tauranga Police Station.

¹ Mr X had been volatile for the duration of his hospital stay. Police made the decision to handcuff him to his bed for his safety and that of others.

² Mr X is 6ft tall and of a solid build.

19. Officer C and Officer D (an acting sergeant) arrived at the hospital at about 1pm to assist Officers A and B.

The plan for dealing with Mr X

20. Officers A, B, C and D told the Authority that it was their intention to build rapport with Mr X. Getting him to accompany them willingly was their preferred option. In the event that this approach did not work, the officers were to physically remove Mr X from his room and escort him to a waiting Police van.
21. In formulating their plan the officers considered the following:
 - a) The deployment of oleoresin capsicum (pepper) spray in Mr X's room was likely to affect the officers and inhibit their ability to deal with Mr X. The officers also recognised that other intensive care patients who were in close proximity were likely to be adversely affected.
 - b) The use of a Taser was discounted on the grounds that its use against someone who had only recently been discharged from hospital after receiving treatment was inappropriate.
 - c) The presence of numerous medical devices that could be contaminated or damaged ruled out the use of any tactical option other than empty handed tactics.³
22. The officers told the Authority that they approached ICU staff and made them aware of how they intended to remove Mr X.
23. Ms Y told the Authority that she felt the officers were very communicative. However, Ms Z said she was unsure which officer was in charge, and had to approach the officers to find out how they planned to deal with Mr X.

The execution of the plan

24. In accordance with the officers' plan, Officer C (with whom Mr X had had no previous dealings) attempted to engage Mr X in conversation and explain what was happening. This approach was unsuccessful and Mr X remained steadfast in his refusal to be taken to Tauranga Police Station.
25. Believing that they had exhausted all available options to remove Mr X with his consent, Officers A, B, C and D entered Mr X's room and took up positions around his bed.

The removal of Mr X from hospital

26. The following sequence of events was disclosed by Officers A, B, C and D when spoken to by the Authority:

³ 'Empty hand' refers to a weapon less use of force, such as grabbing hold of, pushing, or manually restraining a person.

- a) Officer A, who was standing on Mr X's right side, detached the handcuff securing Mr X's right hand from the hospital bed. The cuff remained attached to Mr X's wrist. Officer A told the Authority that he wanted to hold onto the cuff and maintain some control over Mr X's arm. It was his intention to bring Mr X's arm behind his back.
- b) At the same time Officer B, who was standing opposite Officer A on Mr X's left side, took hold of Mr X's left arm. Officer B told the Authority that he placed a handcuff on Mr X's left wrist, intending to bring his arm behind his back where Mr X's right wrist could also be cuffed.
- c) Officer C was standing at the head of Mr X's hospital bed. Officer D was standing at the foot of Mr X's bed with his back towards the door.
- d) As soon as Officer A released Mr X's right wrist from the bed Mr X tensed, bent his arms at the elbow and brought them towards his body. He then violently thrashed about on the bed, repeatedly kicking his legs out.
- e) Officer C placed his right arm over Mr X's right shoulder and down towards the centre of his chest to try to restrain him and prevent him from sitting up.
- f) Mr X fell off the left side of the bed as a result of his violent movements. Officer A clambered over the bed in an effort to maintain control of Mr X's right arm.
- g) Officer C maintained a hold of Mr X as he fell, with his arm moving up Mr X's chest and around his neck. Officer C told the Authority that he was aware his hold had evolved into a headlock.
- h) Officer C stated that Mr X was violently resisting, and he believed Mr X would have presented a serious risk to his colleagues and others had he been allowed to stand up. Officer C therefore sought to relieve the pressure he was inadvertently applying to Mr X's neck while at the same time keeping him under control.
- i) By this time Mr X was in a sitting position with his legs straight out in front of him. Officer D told the Authority that Mr X continued to kick out at him as he was standing at Mr X's feet. Officer D sought to block Mr X's kicks and secure his feet by crouching down and placing his lower legs over Mr X's legs.
- j) Mr X continued to actively resist the officers' attempts to place him in handcuffs. Officer D punched Mr X once in the abdomen with a clenched right fist, to wind Mr X and help gain control of him. He said this had little or no effect.
- k) The officers told the Authority that, after several minutes, it appeared Mr X became exhausted due to his sustained efforts to resist them. When it became apparent that Mr X was losing energy, the officers were able to roll him onto his stomach and bring his hands behind his back. Due to his size, two sets of handcuffs were used to secure Mr X

before he was returned to an upright sitting position, as the officers were concerned about the risk of positional asphyxia.⁴

- l) A spit hood was placed over Mr X's head once he was sitting upright.⁵ Police had seen Mr X spit at the wall of his hospital room prior to his discharge and, due to his agitated state, Officers A, B, C and D believed that he was likely to spit at them.
- m) Mr X was brought to his feet, and Officer D warned him that he would be tasered if he physically resisted the officers again. Officer D partially withdrew his taser from its holster to reinforce his warning. He did not point it at Mr X.
- n) Mr X agreed to accompany the officers, who were satisfied that he would comply with their directions. The spit hood was removed and Mr X was escorted without incident to a waiting Police vehicle.

Mr X's transport to and treatment at Tauranga Police Station

- 27. Officer B told the Authority that Mr X was placed in the rear compartment of a Police van. Officer B kept Mr X under observation through an interior viewport during the short journey to Tauranga Police Station.
- 28. Details of what had occurred at Tauranga Hospital, including the fact that Mr X had been restrained around the neck, were relayed to custody staff at Tauranga Police Station on Mr X's arrival. Mr X was examined by a medical practitioner and closely monitored during his time in custody.

Police investigation

- 29. The Police investigation determined that Officer D failed to properly control the incident and that there was a lack of communication with the hospital staff.
- 30. Also, Officers A, B, C and D used enough force during the arrest to warrant completion of a Tactical Options Reporting form (TOR) yet only Officer C did so.⁶ The other attending officers completed TORs once instructed to do so by senior staff.
- 31. Police also investigated a complaint that Mr X made during the Authority's enquiries. There was insufficient evidence to support Mr X's allegation and no further action was taken. The Authority maintained oversight of this other matter and agrees with the outcome.

THE AUTHORITY'S INVESTIGATION

⁴ Positional asphyxia occurs when a person is in a position which prevents them from breathing adequately.

⁵ A spit hood is a restraint device intended to prevent someone from spitting or biting.

⁶ Officers are required to complete a TOR when he or she has used a certain level of force on a member of the public. The report includes each tactical option and a description of the force used and the reasons for using it.

32. During its investigation the Authority interviewed Mr X, the hospital staff who witnessed the incident (Ms Y and Ms Z), and Officers A, B, C, and D who were involved in Mr X's removal from Tauranga Hospital.
33. The Authority also reviewed the Police investigation file and examined the hospital room where Mr X was receiving treatment immediately prior to being discharged.
34. The Authority identified and considered the following issues:
 - 1) Was Mr X's removal from hospital by Police appropriate?
 - 2) Was the force used by Police lawful and justified?
 - 3) Did Police comply with policy after Mr X had been removed from hospital and transported to Tauranga Police Station?

THE AUTHORITY'S FINDINGS

Issue 1: Was Mr X's removal from hospital by Police appropriate?

35. Mr X had a medical emergency and was receiving treatment in hospital at the time of his arrest. Once he was assessed to be fit, he was medically discharged and released into Police custody.
36. As the most senior officer present, Officer D was responsible for taking charge of Mr X's removal and formulating an appropriate plan. Officer D identified that Mr X:
 - a) was agitated and had demonstrated aggressive behaviour towards hospital staff and Police; and
 - b) had been emphatic in his refusal to accompany Police to Tauranga Police Station.
37. Officer D also decided that several tactical options were not suitable, due to Mr X's condition and the immediate hospital environment (see paragraph 21).
38. The Authority accepts Officer D's belief that Mr X would resist attempts to transport him to Tauranga Police Station was sound, based on Mr X's prior and current behaviour. Having spoken to the individuals involved, the Authority is also satisfied that Mr X actively resisted attempts to remove him from the ICU.
39. However, despite the inevitability of this outcome, additional steps could have been considered to limit the exposure to risk and mitigate any disruption. For example:
 - a) the use of a non-Police intermediary to build rapport with Mr X and secure his co-operation;
 - b) actively including hospital staff in the planning process and making them aware of the tactical options likely to be deployed and why;

- c) seeking the assistance of hospital security staff; and
 - d) moving Mr X, while still secured to his hospital bed, to a location away from other patients and sensitive medical equipment, and as near as possible to the vehicle that Police intended to use.
40. Officer D told the Authority that, in hindsight, his plan was limited in scope and lacked depth. He said that it was clear Mr X would not willingly accompany them to Tauranga Police Station. He further stated that, due to the limited options they believed were available to them, their interaction with Mr X was always going to be a battle of attrition that Police were expected to win due to their superior numbers.
41. The Authority accepts that there was no other option but for Police to remove Mr X from Tauranga Hospital, as he had been medically discharged but remained under arrest. However, Officer D's plan for removing Mr X from the hospital was insufficient as he did not adequately communicate with hospital staff or consider other factors capable of limiting any disruption caused.

FINDINGS

It was appropriate for Police to remove Mr X from Tauranga Hospital as he had been medically discharged but remained under arrest.

Officer D's plan for removing Mr X from the hospital was limited in scope and did not include other factors capable of limiting any disruption caused.

Issue 2: Was the force used by Police lawful and justified?

42. 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. Police policy states that the use of any force must be considered, timely, proportionate and appropriate given the circumstances known at the time.⁷
43. Police had legal grounds to take Mr X to Tauranga Police Station to be charged for drug-related offending.
44. However, based on Officer A's, B's, and C's earlier attempts to communicate with Mr X, they believed he would not be willingly escorted from the hospital. They recognised that they may be required to use force and determined that the safest option to restrain Mr X was with empty hand techniques (as outlined in paragraph 21).
45. Mr X told the Authority that while he was in the hospital, he was "agitated", "frustrated", and "angry". He admitted that he had become "increasingly difficult" with medical staff and that he did not intend to comply with Police attempts to remove him from the hospital.

⁷ See paragraphs 67 and 69-74 for an explanation of relevant law and policy

46. When the officers entered the room, Mr X told them he would not “*stand under*” their authority. Consequently, Officers A, B, C, and D positioned themselves around Mr X to restrain his head, chest, arms and legs in order to handcuff him.
47. Mr X said that he resisted the officers’ efforts to handcuff him behind his back and attempted to move off the bed of his own volition. Mr X landed on the floor and a fracas ensued.
48. Ms Y and Ms Z did not witness the incident in its entirety as they were treating other patients in the ICU. However, when they heard noises coming from Mr X’s room, each of them briefly entered the room (at different times) and observed glimpses of the incident.
49. Ms Y and Ms Z both saw Mr X in a headlock. Ms Z described Mr X’s eyes as “*bulging*”. Ms Y said she could see that Mr X was resisting Police and they were struggling to hold him.
50. Officer C told the Authority that he placed his right arm around Mr X’s upper chest to restrain him and prevent him from assaulting Officers A, B, and D. However, Mr X was “*thrashing around*” which resulted in his arm slipping into a headlock. He said that once he noticed the hold was restricting Mr X’s breathing he loosened his grip.
51. Ms Z also said she saw Officer B “*booting*” Mr X in the back and chest with his Police boots. Officer B told the Authority that he pushed his knee into Mr X’s back while trying to pull his arms behind his back in order to handcuff him.
52. Ms Z said she observed one of the officers (Officer D) stand above Mr X and kick his leg while he was sitting on the floor with his legs out in front of him. She also saw him kneel down and punch Mr X, although she could not recall which body part he hit.
53. Officer D told the Authority “*I put my foot down on top of his leg*” to prevent Mr X from kicking him. He also said that he punched Mr X once in the abdomen to “*stun*” him and gain control. However, Officer D stated that “*it had absolutely no effect at all. He didn’t lose momentum, he didn’t lose energy, he’s continued to thrash about.*”

Concluding comments

54. Officers A, B, C, and D, Ms Y and Mr X concurred that Mr X resisted arrest and that the fracas lasted several minutes before Mr X tired and stopped resisting.
55. While the Authority appreciates that it would have been stressful for hospital staff to witness a patient being restrained, it was necessary for Police to remove Mr X from the vicinity. By his own admission, Mr X did not intend to comply with Police, leaving them little option other than to forcibly restrain him.
56. The hospital staff were concerned about the degree of force used to restrain Mr X. However, the officers were frank about their actions and their reasons for using the force they did.
57. Police had a duty of care to Mr X but also took necessary steps to keep others safe by only using empty hand techniques. Officers A, B, C, and D restrained Mr X without significant harm to him, themselves, or medical equipment, as well as hospital staff and other patients.

58. The Authority accepts that Officers A, B, C, and D had no other available course of action and is satisfied with their rationale for the force used. On the balance of probabilities, the level of force used by the officers was appropriate to deal with the threat Mr X posed. However, the force used by Officers A, B, and D was more than trifling and Police Tactical Options Reporting forms should have been completed by the officers before they went off duty.⁸ It was not possible during the course of the Authority’s enquiries to substantiate Ms Z’s observations regarding the force used by Officers B and D (see paragraphs 51 and 52).

FINDINGS

On the balance of probabilities, the level of force used by the officers was appropriate to deal with the threat they believed Mr X posed.

The force used by Officers A, B, and D was more than trifling and Police Tactical Options reports should have been completed by the officers before they went off duty.

Issue 3: Did Police comply with policy after Mr X had been removed from hospital and transported to Tauranga Police Station?

59. On arrival at Tauranga Police Station, Police conducted a thorough evaluation of Mr X. Having been assessed by a mental health professional at the hospital, he was placed on frequent monitoring as per their advice.⁹
60. Records show that he was re-assessed by a doctor while in Police custody, who found no adverse effects from Officer C’s headlock.
61. Mr X was well managed and received appropriate treatment while detained at Tauranga Police Station.

FINDING

Mr X was well managed and received appropriate treatment while detained at Tauranga Police Station.

SUBSEQUENT POLICE ACTION

62. Police liaised with staff at the Tauranga Hospital after being notified of the incident to address their concerns. They agreed on a new protocol to deal with situations where patients who are under arrest, or going to be arrested, are to be removed from hospital when discharged.
63. The protocol includes the following:

⁸ See paragraphs 75-76 for relevant Police policy.

⁹ Frequent monitoring requires detainees to be checked five times an hour at irregular intervals.

63.1 hospital staff must advise the Clinical Nurse Manager if they have a patient in ICU who is under arrest;

63.2 anyone under arrest must leave ICU handcuffed; and

63.3 the patient may be transported in a hospital bed or a wheelchair to the Police vehicle.

64. Officers A, B, and C received further training in Tactical Options Reporting. Officer D received additional training in Command and Control.

CONCLUSIONS

65. The Authority has determined that the officers acted in accordance with the law and Police policy when dealing with Mr X. The force used to restrain him was appropriate to safely manage the threat he posed.

66. The Authority also found that:

- 1) It was appropriate for Police to remove Mr X from Tauranga Hospital as he had been medically discharged but remained under arrest;
- 2) Officer D's plan for removing Mr X from the hospital was limited in scope and did not include other factors capable of limiting any disruption caused;
- 3) The force used by Officers A, B, and D was more than trifling and Police Tactical Options reports should have been completed by them before they went off duty; and
- 4) Mr X was well managed and received appropriate treatment while detained at Tauranga Police Station.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

25 February 2020

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Law

67. Section 39 of the Crimes Act provides an officer can 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.
68. Under section 62 Crimes Act 1961, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

Police policy on use of force

69. The Police Use of Force policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), pepper spray, batons, Police dogs, Tasers and firearms.
70. Police policy provides a framework for officers to assess, reassess, manage and respond to use of force situations, ensuring the response (use of force) is necessary and proportionate given the level of threat and risk to themselves and the public. Police refer to this as the TENR (Threat, Exposure, Necessity and Response) assessment.
71. The overriding principle when applying TENR is that of ‘safety is success’. Public and employee safety are paramount, and every effort must be made to minimise harm and maximise safety.
72. 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).
73. A key part of an officer’s decision to decide when, how, and at what level to use force depends on the actions of, or potential actions of, the people involved, and depends on whether they are: cooperative; passively resisting (refuses verbally or with physical inactivity); actively resisting (pulls, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or presenting a threat of grievous bodily harm or death to any person. Ultimately, the legal authority to use force is derived from the law and not from Police policy.
74. 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.

Timeframes for submitting and reviewing Tactical Options Reporting forms

75. A Tactical Options Reporting form must be completed when empty hand techniques are used (excluding touching, guiding, escorting, lifting and pushing where a person does not fall to the ground).
76. An officer must submit the Tactical Options Reporting form (TOR) to their supervisor before the end of the shift in which they used force, or with their supervisor's approval, within 3 days/72 hours of this shift and prior to any rostered days of or leave during this period.

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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